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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STEPHEN BARTON, DANIEL LEVINE,  
SANDI MORGAN, TUCKER JAROLL,  
CLAIRE SCHMITT, ANNA BALTZER, and  
RANDALL HARTWRIGHT, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,  
a Washington corporation,

Defendant.

Case No. 2:26-cv-2364

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

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1 Plaintiffs Stephen Barton, Daniel Levine, Sandi Morgan, Tucker Jaroll, Claire Schmitt,  
 2 Anna Baltzer, and Randall Hartwright, (“Plaintiffs”), individually and on behalf of all others  
 3 similarly situated, bring this Class Action Complaint against Defendant Costco Wholesale  
 4 Corporation (“Costco” or “Defendant”) for violations of the Washington Consumer Protection  
 5 Act, RCW 19.86.020, the laws of various other states as a subclass and the common law. Plaintiffs  
 6 allege the following based upon personal knowledge as to allegations regarding themselves, and  
 7 the investigation of their counsel, and on information and belief as to all other allegations.

## 8 I. NATURE OF THE ACTION

9 1. Costco sells Orgain Organic Protein Powder (the “Contaminated Products”) in its  
 10 stores and online. Though represented to have “quality ingredients and higher standards”, and to  
 11 provide “good clean fuel”, and that Orgain is “relentless about quality,” the Contaminated  
 12 Products’ representation is not true and is misleading, as the Contaminated Products are tainted  
 13 with heavy metals which include lead, cadmium, and arsenic.<sup>1</sup>

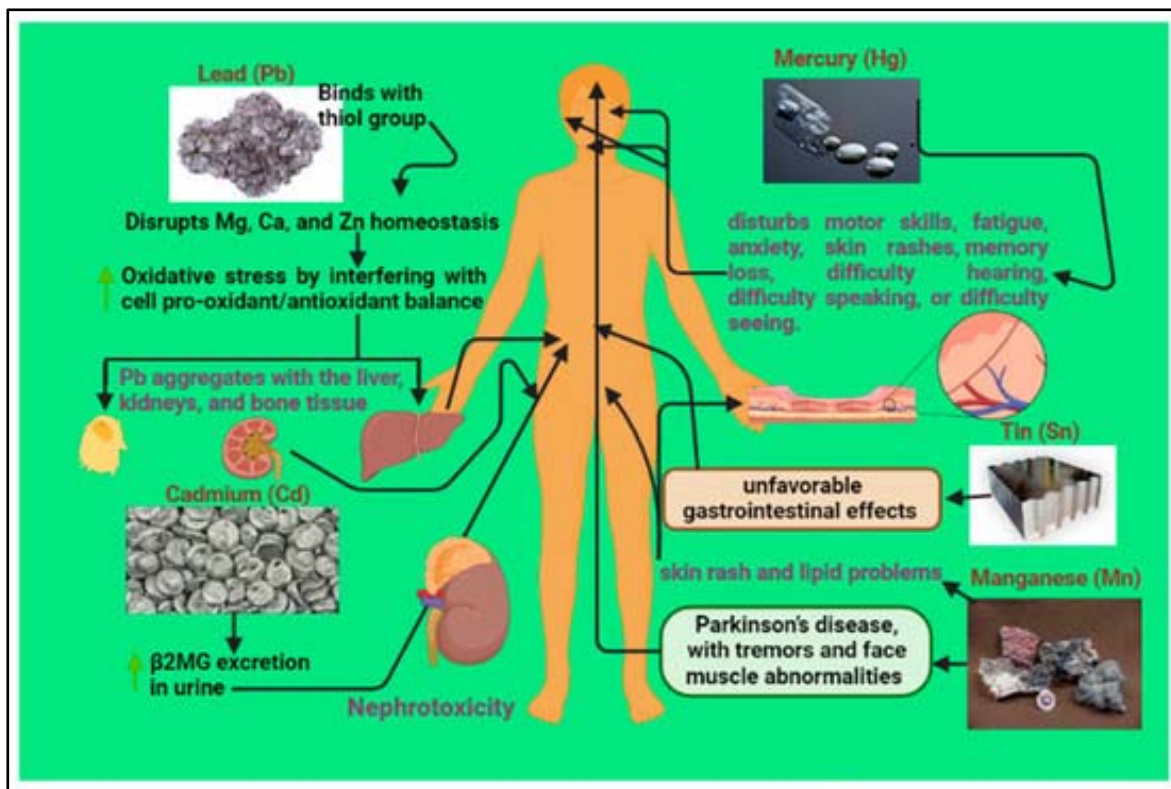
14 2. Heavy metals are known to pose significant and adverse health risks and  
 15 consequences to humans. It is well-recognized that there are no safe levels of human exposure to  
 16 any of the heavy metals, including cadmium and lead.<sup>2</sup> Exposure to heavy metals, including

---

18 <sup>1</sup> As used herein, the “Contaminated Products” collectively refers to Orgain Organic Protein  
 19 Powder in Vanilla Bean and Creamy Chocolate Fudge. Discovery may reveal other products by  
 20 Defendant that contain heavy metals. Plaintiffs reserve their rights to amend and include such  
 additional products and/or heavy metals in this action.

21 <sup>2</sup> Transcript from Public Meeting, *Closer to Zero Action Plan: Impacts of Toxic Element*  
 22 *Exposure and Nutrition at Different Crucial Developmental Stages for Babies and Young*  
 23 *Children*, (Nov. 18, 2021), <https://www.fda.gov/media/155396/download> at 32, 72, 179 (last  
 24 accessed June 25, 2026) (“Closer to Zero Public Meeting Transcript”); *FDA Webinar: Action*  
 25 *Levels for Lead in Food Intended for Babies and Young Children: Draft Guidance*, at 5 (March 2,  
 26 2023), <https://www.fda.gov/media/166188/download> (last accessed June 25, 2026) (“Although we  
 27 may not be able to say the reference level is a safe level, it is a level we could rely on as a  
 28 benchmark to measure exposure to foods.”); *see also* Kevin Loria, *Congressional Report Finds*  
*More Problems With Heavy Metals in Baby Food*, Consumer Reports (Sept. 29, 2021, updated  
 Oct. 20, 2021), <https://www.consumerreports.org/food-safety/problems-with-heavy-metals-in-baby-food-congressional-report-a6400080224/#:~:text=%E2%80%9CThere%20is%20no%20safe%20level,research%20and%20testing%20at%20CR> (last accessed June 25, 2026) (“Consumer Reports: Heavy Metals in Baby Food”); *see, e.g.*, World Health Organization, *Lead Poisoning*, June 10, 2026,

1 cadmium and lead, can cause negative health effects, such as various cancers, gastric and vascular  
 2 disorders, liver, kidney, and brain damage, miscarriages, and reproductive disorders:<sup>3</sup>



3. Critically, the scientific consensus is that there are no known safe levels of heavy metals: *“On the contrary, for the [heavy metals] we are discussing today, we have not identified safe levels of exposure for developmental outcomes.”*<sup>4</sup> Heavy metals accumulate over time resulting in latent health effects that cannot be mitigated and may appear years later.<sup>5</sup> Further,

<sup>3</sup> <https://who.int/news-room/fact-sheets/detail/lead-poisoning-and-health> (last accessed June 25, 2026) (“WHO Lead Poisoning”).

<sup>4</sup> Anirban Goutam Mukherjee, et al., *Heavy Metal and Metalloid Contamination in Food and Emerging Technologies for Its Detection*, Sustainability, Jan. 9, 2023, 15(2), <https://www.mdpi.com/2071-1050/15/2/1195> (last accessed June 25, 2026).

<sup>5</sup> Conrad Choiniere, Center for Food Safety and Applied Nutrition, Closer to Zero Public Meeting Transcript, *supra*, at 32 ) (emphasis added).

<sup>5</sup>See, e.g., Agency for Toxic Substances and Disease Registry (“ATSDR”), *What is the Biological Fate of Lead in the Body?*, May, 24, 2023, [https://archive.cdc.gov/www\\_atsdr\\_cdc\\_gov/csem/leadtoxicity/biologic\\_fate.html](https://archive.cdc.gov/www_atsdr_cdc_gov/csem/leadtoxicity/biologic_fate.html) (“The body accumulates lead over a lifetime and normally releases it very slowly.”) (last accessed June 25,

1 because heavy metals accumulate in the body over time, even very low-level exposure on a regular  
2 basis can be hazardous. This is why the presence of heavy metals is material to reasonable  
3 consumers and must be disclosed.

4 4. The inclusion or material risk of elevated levels of arsenic, cadmium, and lead also  
5 contradict and impede the central function of the Contaminated Products, which are intended to as  
6 a supplement to boost nutrition. Arsenic, cadmium, and lead provide no such benefits and, instead,  
7 pose health risks.

8 5. Costco controls the content of product listings that describe the Contaminated  
9 Products to consumers. It also conveys the Contaminated Products to consumers, by selling the  
10 Contaminated Products directly to consumers through its warehouses and website.

11 6. Costco sells the Contaminated Products at Costco stores and on Costco.com and  
12 markets the Contaminated Products as high quality, clean, and nutritious without disclosing the  
13 presence or risk of heavy metals, including lead, cadmium, and arsenic.

14 7. Defendant fails to disclose the Contaminated Products contain heavy metals.  
15 Nowhere at Costco's point-of-sale (webpages or in its retail stores)<sup>6</sup> does it disclose to consumers  
16 that the Contaminated Products contain heavy metals, including lead, cadmium, and arsenic  
17 (collectively, the "Omissions").

18 8. The packaging and the point-of-sale for the Contaminated Products contain  
19 misrepresentations and partial misstatements that contradict the presence of heavy metals such as  
20 lead, cadmium, and arsenic (collectively, the "Misrepresentations").

21 9. Defendant knew or, at a minimum, should have known, that the Contaminated  
22 Products it sells contained detectable levels of heavy metals, including lead, cadmium, and arsenic,  
23

24 \_\_\_\_\_  
25 2026); Sustainability Directory, "What are Long-Term Effects of Heavy Metal Exposure?"  
26 November 22, 2025, <https://pollution.sustainability-directory.com/question/what-are-long-term-effects-of-heavy-metal-exposure/> ("Bioaccumulation is the key, meaning they build up faster than  
27 they can be removed, concentrating in tissues and organs. This buildup is not just a minor  
28 inconvenience; it disrupts cellular function, which affects normal body processes.") (last accessed  
June 25, 2026).

<sup>6</sup> As used herein, "point-of-sale" refers to Defendant's webpages and retail stores.

1 but chose to remain silent and sold the Contaminated Products anyway in its stores and online, in  
2 violation of its statutory duties.

3 10. Based on the messaging and overall impression communicated by Defendant's  
4 point-of-sale, including the material Misrepresentations and Omissions, no reasonable consumer  
5 purchasing protein powder products would expect the Contaminated Products to contain heavy  
6 metals, especially since the Contaminated Products are marketed as high quality, clean, and  
7 nutritious, and intended to be ingested. Furthermore, reasonable consumers, like Plaintiffs, would  
8 consider the inclusion of heavy metals like lead, cadmium, or arsenic a material fact when  
9 considering what protein powder products to purchase.

10 11. Reasonable consumers, like Plaintiffs, could not learn of the inclusion of heavy  
11 metals in the Contaminated Products unless Costco included a proper disclosure, because  
12 identifying the presence of heavy metals requires expensive and sophisticated laboratory testing.  
13 But Costco failed to perform or require any heavy metal testing, or to disclose the presence of  
14 heavy metals.

15 12. Reporting by the Clean Label Project and Consumer Reports showed detectable  
16 levels of heavy metals in protein powder products, including the Contaminated Products. The  
17 Clean Label Project found 79% of organic protein powders tested over California's Proposition  
18 65's level for lead, with 41% testing more than two times the Proposition 65 level.<sup>7</sup> Consumer  
19 Reports tested Orgain Organic Plant-Based Protein Powder Vanilla Bean and found it exceeded  
20 its "level of concern" for lead.<sup>8</sup>

21 13. Independent laboratory testing conducted by Plaintiff Hartwright and Plaintiffs'  
22 counsel confirmed the presence of heavy metals in the Contaminated Products.

Product	Lead	Cadmium	Arsenic
Orgain Organic Protein Powder in Vanilla Bean	3.37 µg/serving 67 ppb	1.19 µg/serving 24 ppb	0.735 µg/serving 15 ppb

26 <sup>7</sup> <https://cleanlabelproject.org/protein-study/> (last accessed June 25, 2026).

27 <sup>8</sup> <https://www.consumerreports.org/lead/protein-powders-and-shakes-contain-high-levels-of-lead-a4206364640/> (last accessed June 14, 2026).

Product	Lead	Cadmium	Arsenic
Orgain Organic Protein Powder in Vanilla Bean	0.823 µg/serving 16 ppb	1.15 µg/serving 23 ppb	0.577 µg/serving 12 ppb
Orgain Organic Protein Powder in Creamy Chocolate Fudge	1.70 µg/serving 34 ppb	3.45 µg/serving 69 ppb	0.874 µg/serving 17 ppb
Orgain Organic Protein Powder in Creamy Chocolate Fudge	2.30 µg/serving 46 ppb	2.75 µg/serving 55 ppb	0.920 µg/serving 18 ppb
Orgain Organic Protein Powder in Creamy Chocolate Fudge	1.03 µg/serving 20.5 ppb	3.52 µg/serving 70.3 ppb	0.710 µg/serving 14.2 ppb

14. Accordingly, reasonable consumers must and do rely on Defendant to honestly and completely report what the Contaminated Products contain.

15. Defendant intended for consumers to rely on the overall impression, Misrepresentations, Omissions, and other deceptive conduct of the advertising and packaging in purchasing the Contaminated Products at a premium. Defendant's business practices—including the Misrepresentations and Omissions—were deceptive, misleading, unfair, and/or false because, among other things, the Contaminated Products contained undisclosed toxic heavy metals.

16. Defendant knows its customers trust the quality of the Contaminated Products it markets and sells and expect the Contaminated Products to conform to the packaging and advertising and be nutritious, healthy, and high quality with no risk of containing detectable levels of heavy metals.

17. Defendant also knows consumers will pay more (*i.e.*, a premium) for products that they are led to believe are free from harmful contaminants such as heavy metals.

18. By engaging in the conduct alleged in this complaint, Defendant has violated Washington state law.

## II. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act ("CAFA"), because: (a) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs; (b) minimal diversity exists because at least one member of the proposed class is a citizen of a state different from the Defendant; and (c) the proposed class consists of more than 100 members.



1 clean nutrition,” “cleaner ingredients,” and “higher standards,” and relied on those representations  
2 in deciding to purchase the Contaminated Products over lower-priced alternatives.

3 25. Prior to purchasing, Plaintiff Barton saw and relied upon the packaging of the  
4 Contaminated Products and representations on Defendant’s website, including the claims that the  
5 Contaminated Products provide “good, clean nutrition,” contain “cleaner ingredients,” are held to  
6 “higher standards,” and deliver “the power of clean.” These specific representations were material  
7 to Plaintiff Barton’s purchasing decision because they conveyed that the Contaminated Products  
8 were pure, safe, and free from harmful contaminants. During the time Plaintiff Barton was  
9 purchasing and consuming the Contaminated Products, and as a result of the Misrepresentations  
10 and Omissions as detailed herein, Plaintiff Barton was unaware the Contaminated Products  
11 contained or had a material risk of containing heavy metals. Plaintiff Barton expected the  
12 Contaminated Products to be safe and free from detectable levels of undisclosed heavy metals, and  
13 would not have purchased the Contaminated Products or would have paid significantly less for  
14 them if that information had been fully disclosed. Had Plaintiff Barton known the Contaminated  
15 Products contained cadmium at levels as high as 70.3 ppb, Plaintiff Barton would have purchased  
16 one of the many available competitor protein powder products that contain non-detectable levels  
17 of heavy metals at comparable or lower prices. Plaintiff Barton would, however, purchase the  
18 Contaminated Products again in the future, if he could be certain the Contaminated Products do  
19 not contain or have a material risk of containing harmful heavy metals.

20 26. Plaintiff Daniel Levine (“Plaintiff Levine”) is, and at all relevant times was, a  
21 resident and citizen of the State of California. During the Class Period, Plaintiff Levine purchased  
22 Orgain Organic Protein Powder (Creamy Chocolate Fudge flavor) from the Costco warehouse  
23 located in Tustin, California. Plaintiff Levine paid approximately \$30 per container for the  
24 Contaminated Products, purchasing approximately six containers between June 1, 2025 and June  
25 10, 2026. At the time of each purchase, Plaintiff Levine reviewed the product packaging and  
26 Costco’s website, which prominently displayed claims such as “good, clean nutrition,” “cleaner  
27  
28

1 ingredients,” and “higher standards,” and relied on those representations in deciding to purchase  
2 the Contaminated Products over lower-priced alternatives.

3 27. Prior to purchasing, Plaintiff Levine saw and relied upon the packaging of the  
4 Contaminated Products and representations on Defendant’s website, including the claims that the  
5 Contaminated Products provide “good, clean nutrition,” contain “cleaner ingredients,” are held to  
6 “higher standards,” and deliver “the power of clean.” These specific representations were material  
7 to Plaintiff Levine’s purchasing decision because they conveyed that the Contaminated Products  
8 were pure, safe, and free from harmful contaminants. During the time Plaintiff Levine was  
9 purchasing and consuming the Contaminated Products, and as a result of the Misrepresentations  
10 and Omissions as detailed herein, Plaintiff Levine was unaware the Contaminated Products  
11 contained or had a material risk of containing heavy metals. Plaintiff Levine expected the  
12 Contaminated Products to be safe and free from detectable levels of undisclosed heavy metals, and  
13 would not have purchased the Contaminated Products or would have paid significantly less for  
14 them if that information had been fully disclosed. Had Plaintiff Levine known the Contaminated  
15 Products contained cadmium at levels as high as 70.3 ppb, Plaintiff Levine would have purchased  
16 one of the many available competitor protein powder products that contain non-detectable levels  
17 of heavy metals at comparable or lower prices. Plaintiff Levine would, however, purchase the  
18 Contaminated Products again in the future, if he could be certain the Contaminated Products do  
19 not contain or have a material risk of containing harmful heavy metals.

20 28. Plaintiff Sandi Morgan (“Plaintiff Morgan”) is, and at all relevant times was, a  
21 resident and citizen of the State of California. During the Class Period, Plaintiff Baltzer purchased  
22 Orgain Organic Protein Powder (Creamy Chocolate Fudge flavor) online from Costco and from  
23 Costco warehouse locations San Marcos, California and Vista, California. Plaintiff Morgan paid  
24 approximately \$26.99 to \$36.99 per container for the Contaminated Products, purchasing  
25 approximately 120 containers between 2019 and April 2025. At the time of each purchase, Plaintiff  
26 Morgan reviewed the product packaging and Costco’s website, which prominently displayed  
27 claims such as “good, clean nutrition,” “cleaner ingredients,” and “higher standards,” and relied  
28

1 on those representations in deciding to purchase the Contaminated Products over lower-priced  
2 alternatives.

3 29. Prior to purchasing, Plaintiff Morgan saw and relied upon the packaging of the  
4 Contaminated Products and representations on Defendant’s website, including the claims that the  
5 Contaminated Products provide “good, clean nutrition,” contain “cleaner ingredients,” are held to  
6 “higher standards,” and deliver “the power of clean.” These specific representations were material  
7 to Plaintiff Baltzer’s purchasing decision because they conveyed that the Contaminated Products  
8 were pure, safe, and free from harmful contaminants. During the time Plaintiff Morgan was  
9 purchasing and consuming the Contaminated Products, and as a result of the Misrepresentations  
10 and Omissions as detailed herein, Plaintiff Morgan was unaware the Contaminated Products  
11 contained or had a material risk of containing heavy metals. Plaintiff Morgan expected the  
12 Contaminated Products to be safe and free from detectable levels of undisclosed heavy metals, and  
13 would not have purchased the Contaminated Products or would have paid significantly less for  
14 them if that information had been fully disclosed. Had Plaintiff Morgan known the Contaminated  
15 Products contained cadmium at levels as high as 70.3 ppb, Plaintiff Morgan would have purchased  
16 one of the many available competitor protein powder products that contain non-detectable levels  
17 of heavy metals at comparable or lower prices. Plaintiff Morgan would, however, purchase the  
18 Contaminated Products again in the future, if she could be certain the Contaminated Products do  
19 not contain or have a material risk of containing harmful heavy metals.

20 30. Plaintiff Tucker Jaroll (“Plaintiff Jaroll”) is, and at all relevant times was, a resident  
21 and citizen of the State of Illinois. During the Class Period, Plaintiff Jaroll purchased Orgain  
22 Organic Protein Powder (Creamy Chocolate Fudge flavor) from the Costco warehouse located in  
23 Chicago, Illinois. Plaintiff Jaroll paid \$33.99 per container for the Contaminated Products,  
24 purchasing one container on April 1, 2025. At the time of each purchase, Plaintiff Jaroll reviewed  
25 the product packaging and Costco’s website, which prominently displayed claims such as “good,  
26 clean nutrition,” “cleaner ingredients,” and “higher standards,” and relied on those representations  
27 in deciding to purchase the Contaminated Products over lower-priced alternatives.

1           31. Prior to purchasing, Plaintiff Jaroll saw and relied upon the packaging of the  
2 Contaminated Products and representations on Defendant’s website, including the claims that the  
3 Contaminated Products provide “good, clean nutrition,” contain “cleaner ingredients,” are held to  
4 “higher standards,” and deliver “the power of clean.” These specific representations were material  
5 to Plaintiff Jaroll’s purchasing decision because they conveyed that the Contaminated Products  
6 were pure, safe, and free from harmful contaminants. During the time Plaintiff Jaroll was  
7 purchasing and consuming the Contaminated Products, and as a result of the Misrepresentations  
8 and Omissions as detailed herein, Plaintiff Jaroll was unaware the Contaminated Products  
9 contained or had a material risk of containing heavy metals. Plaintiff Jaroll expected the  
10 Contaminated Products to be safe and free from detectable levels of undisclosed heavy metals, and  
11 would not have purchased the Contaminated Products or would have paid significantly less for  
12 them if that information had been fully disclosed. Had Plaintiff Jaroll known the Contaminated  
13 Products contained cadmium at levels as high as 70.3 ppb, Plaintiff Jaroll would have purchased  
14 one of the many available competitor protein powder products that contain non-detectable levels  
15 of heavy metals at comparable or lower prices. Plaintiff Jaroll would, however, purchase the  
16 Contaminated Products again in the future, if he could be certain the Contaminated Products do  
17 not contain or have a material risk of containing harmful heavy metals.

18           32. Plaintiff Claire Schmitt (“Plaintiff Schmitt”) is, and at all relevant times was, a  
19 resident and citizen of the State of Minnesota. During the Class Period, Plaintiff Schmitt purchased  
20 Orgain Organic Protein Powder (Vanilla Bean and Creamy Chocolate Fudge flavors) from Costco  
21 warehouse locations Maplewood, Minnesota and Maple Grove, Minnesota. Plaintiff Schmitt paid  
22 \$33.99 per container for the Contaminated Products, purchasing approximately six containers  
23 between August 2025 and April 2026. At the time of each purchase, Plaintiff Schmitt reviewed  
24 the product packaging and Costco’s website, which prominently displayed claims such as “good,  
25 clean nutrition,” “cleaner ingredients,” and “higher standards,” and relied on those representations  
26 in deciding to purchase the Contaminated Products over lower-priced alternatives.

1           33. Prior to purchasing, Plaintiff Schmitt saw and relied upon the packaging of the  
2 Contaminated Products and representations on Defendant’s website, including the claims that the  
3 Contaminated Products provide “good, clean nutrition,” contain “cleaner ingredients,” are held to  
4 “higher standards,” and deliver “the power of clean.” These specific representations were material  
5 to Plaintiff Schmitt’s purchasing decision because they conveyed that the Contaminated Products  
6 were pure, safe, and free from harmful contaminants. During the time Plaintiff Schmitt was  
7 purchasing and consuming the Contaminated Products, and as a result of the Misrepresentations  
8 and Omissions as detailed herein, Plaintiff Schmitt was unaware the Contaminated Products  
9 contained or had a material risk of containing heavy metals. Plaintiff Schmitt expected the  
10 Contaminated Products to be safe and free from detectable levels of undisclosed heavy metals, and  
11 would not have purchased the Contaminated Products or would have paid significantly less for  
12 them if that information had been fully disclosed. Had Plaintiff Schmitt known the Contaminated  
13 Products contained cadmium at levels as high as 70.3 ppb, Plaintiff Schmitt would have purchased  
14 one of the many available competitor protein powder products that contain non-detectable levels  
15 of heavy metals at comparable or lower prices. Plaintiff Schmitt would, however, purchase the  
16 Contaminated Products again in the future, if she could be certain the Contaminated Products do  
17 not contain or have a material risk of containing harmful heavy metals.

18           34. Plaintiff Anna Baltzer (“Plaintiff Baltzer”) is, and at all relevant times was, a  
19 resident and citizen of the State of Ohio. During the Class Period, Plaintiff Baltzer purchased  
20 Orgain Organic Protein Powder (Vanilla Bean flavor) from the Costco warehouse located in  
21 Perrysburg, Ohio. Plaintiff Baltzer paid approximately \$35 per container for the Contaminated  
22 Products, purchasing approximately 2 containers between 2022 and 2025. At the time of each  
23 purchase, Plaintiff Baltzer reviewed the product packaging and Costco’s website, which  
24 prominently displayed claims such as “good, clean nutrition,” “cleaner ingredients,” and “higher  
25 standards,” and relied on those representations in deciding to purchase the Contaminated Products  
26 over lower-priced alternatives.

1           35. Prior to purchasing, Plaintiff Baltzer saw and relied upon the packaging of the  
2 Contaminated Products and representations on Defendant’s website, including the claims that the  
3 Contaminated Products provide “good, clean nutrition,” contain “cleaner ingredients,” are held to  
4 “higher standards,” and deliver “the power of clean.” These specific representations were material  
5 to Plaintiff Baltzer’s purchasing decision because they conveyed that the Contaminated Products  
6 were pure, safe, and free from harmful contaminants. During the time Plaintiff Baltzer was  
7 purchasing and consuming the Contaminated Products, and as a result of the Misrepresentations  
8 and Omissions as detailed herein, Plaintiff Baltzer was unaware the Contaminated Products  
9 contained or had a material risk of containing heavy metals. Plaintiff Baltzer expected the  
10 Contaminated Products to be safe and free from detectable levels of undisclosed heavy metals, and  
11 would not have purchased the Contaminated Products or would have paid significantly less for  
12 them if that information had been fully disclosed. Had Plaintiff Baltzer known the Contaminated  
13 Products contained cadmium at levels as high as 70.3 ppb, Plaintiff Baltzer would have purchased  
14 one of the many available competitor protein powder products that contain non-detectable levels  
15 of heavy metals at comparable or lower prices. Plaintiff Baltzer would, however, purchase the  
16 Contaminated Products again in the future, if she could be certain the Contaminated Products do  
17 not contain or have a material risk of containing harmful heavy metals.

18           36. Plaintiff Randall Hartwright (“Plaintiff Hartwright”) is, and at all relevant times  
19 was, a resident and citizen of the State of Texas. During the Class Period, Plaintiff Hartwright  
20 purchased Orgain Organic Protein Powder - Vanilla Bean, Creamy Chocolate Fudge, Strawberries  
21 & Cream, and Pumpkin Spice - from Costco warehouse locations in the State of Texas, including  
22 Dallas, Frisco, East Plano, West Plano, Allen, Duncanville, Fort Worth, and possibly Arlington.  
23 Plaintiff Hartwright paid approximately \$30 to \$39 per container for the Contaminated Products,  
24 purchasing approximately 30 to 40 containers between 2022 and 2025. At the time of each  
25 purchase, Plaintiff Hartwright reviewed the product packaging, which prominently displayed  
26 claims such as “good, clean nutrition,” “cleaner ingredients,” and “higher standards,” and relied  
27  
28

1 on those representations in deciding to purchase the Contaminated Products over lower-priced  
2 alternatives.

3 37. Prior to purchasing, Plaintiff Hartwright saw and relied upon the packaging of the  
4 Contaminated Products and representations on Defendant's website, including the claims that the  
5 Contaminated Products provide "good, clean nutrition," contain "cleaner ingredients," are held to  
6 "higher standards," and deliver "the power of clean." These specific representations were material  
7 to Plaintiff Hartwright's purchasing decision because they conveyed that the Contaminated  
8 Products were pure, safe, and free from harmful contaminants. During the time Plaintiff Hartwright  
9 was purchasing and consuming the Contaminated Products, and as a result of the  
10 Misrepresentations and Omissions as detailed herein, Plaintiff Hartwright was unaware the  
11 Contaminated Products contained or had a material risk of containing heavy metals. Plaintiff  
12 Hartwright expected the Contaminated Products to be safe and free from detectable levels of  
13 undisclosed heavy metals, and would not have purchased the Contaminated Products or would  
14 have paid significantly less for them if that information had been fully disclosed. Had Plaintiff  
15 Hartwright known the Contaminated Products contained lead at levels exceeding California's  
16 Proposition 65 safe harbor by more than 600%, Plaintiff Hartwright would have purchased one of  
17 the many available competitor protein powder products that contain non-detectable levels of heavy  
18 metals at comparable or lower prices. Plaintiff Hartwright would, however, purchase the  
19 Contaminated Products again in the future, if he could be certain the Contaminated Products do  
20 not contain or have a material risk of containing harmful heavy metals.

21 38. Plaintiffs bring this action on behalf of themselves and all others similarly situated,  
22 pursuant to Federal Rule of Civil Procedure 23(b)(3).

23 39. Defendant Costco Wholesale Corporation ("Costco") is a Washington corporation  
24 with its principal offices at 999 Lake Drive, Issaquah, Washington 98027. Costco operates  
25 approximately 600 warehouse locations in the United States and sells Orgain Organic Protein  
26 Powder as a regular inventory item in its stores and online at Costco.com.

1 40. At all relevant times, Costco was engaged in the trade and commerce of selling  
2 consumer goods, including dietary supplements and protein powder products, to the general public  
3 in Washington and nationwide. Costco marketed and sold the Contaminated Products to  
4 consumers, including Plaintiffs and Class Members, through its retail warehouse locations and its  
5 website.

#### 6 IV. FACTUAL ALLEGATIONS

##### 7 A. The Contaminated Products

8 41. The Contaminated Products are plant-based protein supplements sold through  
9 Costco warehouse stores and Costco.com.

10 42. Plaintiffs and the Class Members were exposed to the Misrepresentations and  
11 Omissions on the packaging and on Defendant's point-of-sale for the Contaminated Products.

12 43. The Contaminated Products' packaging does not contain any disclosure or warning  
13 regarding the presence of lead, cadmium, arsenic, or other heavy metals. The packaging  
14 prominently features the "USDA Organic" certification mark, which a reasonable consumer would  
15 associate with purity and the absence of harmful contaminants.

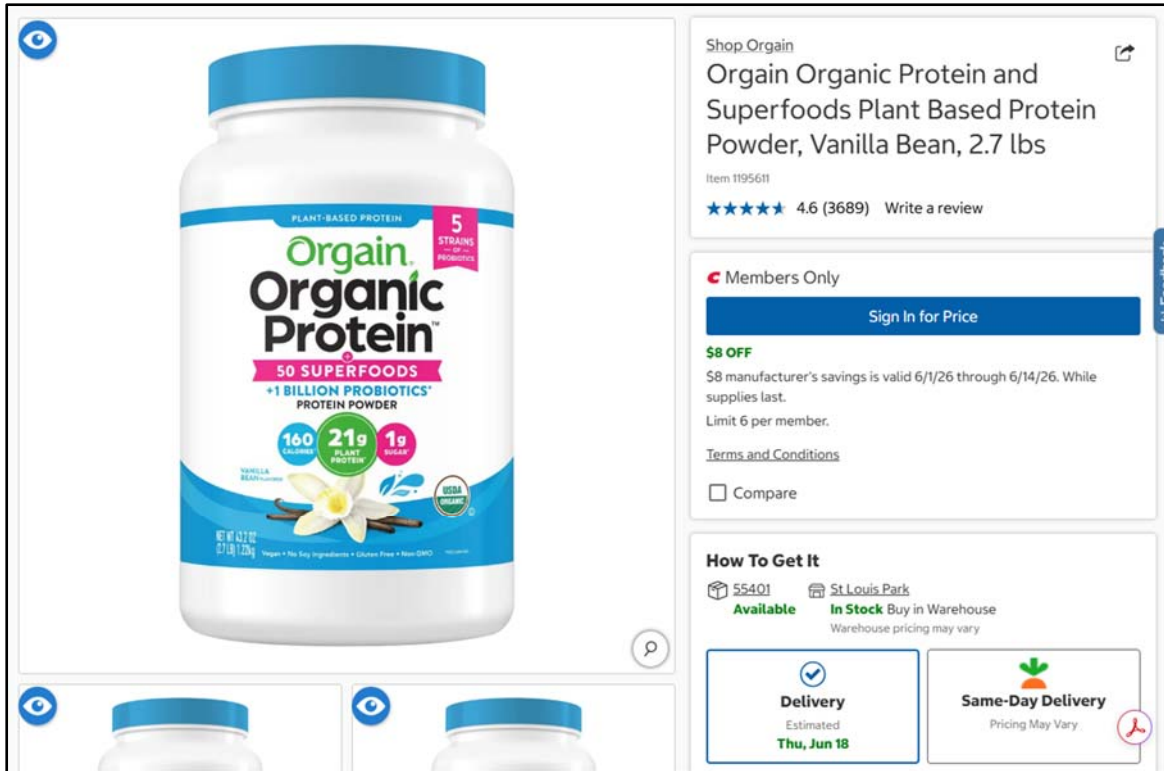
##### 16 B. Costco Controls and Creates Content for the Contaminated Products' Detail Pages

17 44. Costco controls the content for the point-of-sale for products sold to consumers on  
18 its website.

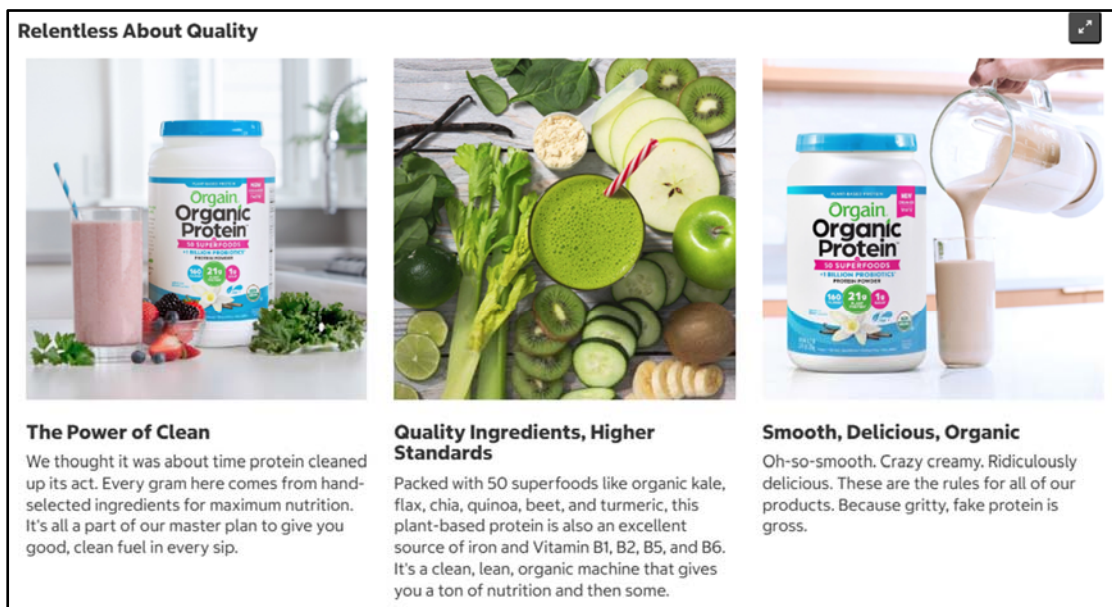
19 45. Each of the Contaminated Products is sold on Costco's website via a product page.  
20 The page for each product includes a product description and pictures of the product packaging  
21 and ingredient panel.

22 46. Defendant does not require the manufacturer of the Contaminated Products to test  
23 its products for heavy metals or to include the results of such tests on the product pages.

24 47. For example, the product page for Orgain Organic Protein in Vanilla Bean is set  
25 forth below:



48. The product page contains language touting the product’s “power of clean,” “quality ingredients [and] higher standards,” provides “good clean fuel,” and that it is “relentless about quality.” Nowhere does it disclose that the product contains heavy metals, including lead, cadmium, and arsenic.

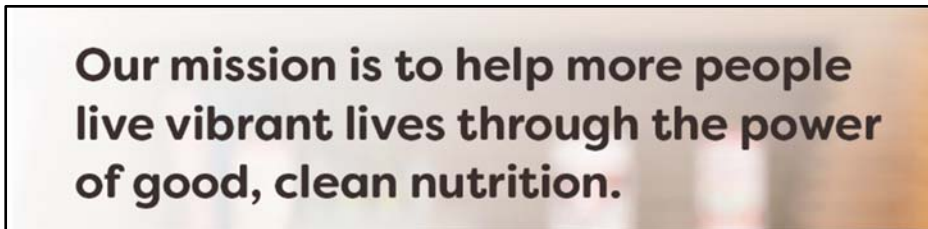


1 49. The product page also includes the statement, “delivering clean nutrition,” along  
2 with icons touting it as, *e.g.*, “certified organic,” “certified plant based,” containing “50 organic  
3 superfoods,” and “non-GMO.”



9

10 50. Additionally, the product page identifies the manufacturer’s mission: “to help more  
11 people live vibrant lives through the power of good, clean nutrition”:



16

17 51. The product page also includes a video of the Contaminated Products’  
18 manufacturer’s founder, Andrew Abraham, where the last message states, “Orgain: Clean  
19 Nutrition”:



24 52. The content of the product pages for the Contaminated Products show that  
25 Defendant knows the benefits and ingredients of a protein powder are material to consumers and  
26 that it fails to disclose to consumers the fact that the Contaminated Products contain heavy metals.

C. **The Packaging’s Overall Impression and Misrepresentations and Partial Misrepresentations Contradict the Presence of Heavy Metals**

53. The Contaminated Products’ packaging states the Contaminated Products are “good, clean nutrition,” has “cleaner ingredients,” it is subject to “higher standards,” and is “perfect when you wanna shake things up, bake things up, or just have some good, clean fun.”



54. The packaging also highlights Orgain’s commitment to “clean nutrition” and its mission “to help people live vibrant lives through good, clean nutrition.”



55. The packaging makes no disclosure whatsoever regarding the presence of any heavy metals in the Contaminated Products. To the contrary, the Contaminated Products' packaging misleadingly and deceptively conveys to reasonable consumers that the Contaminated Products are high quality, clean, and nutritious, and not contaminated with heavy metals.

56. Defendant knows reasonable consumers expect the Contaminated Products to be healthy and not have detectable levels of harmful heavy metals, including lead, cadmium, and arsenic. The representations above reinforce these reasonable expectations.

57. When reasonable consumers view the packaging's overall impression, Misrepresentations and Omissions, they would have no reason to suspect that the Contaminated Products contain or risk containing heavy metals. Foods that contain high levels of heavy metals are neither nutritious nor healthy.

58. Consumers like Plaintiffs and Class Members rely heavily on Defendant to supply clean, nutritious Products and to provide accurate and complete information about the contents of the Contaminated Products it sells.

59. Defendant had a duty to ensure the Contaminated Products were not deceptively, misleadingly, unfairly, or falsely marketed and that all material information was properly and fully disclosed, which it failed to do, including by its failure to sufficiently or adequately monitor or test for (or require the Contaminated Products' manufacturer to sufficiently or adequately monitor or test for) and disclose the presence (or material risk) of heavy metals in the Contaminated Products.

60. As detailed below, the inclusion or material risk of elevated levels of lead, cadmium, and arsenic contradict and impede the central function of the Contaminated Products. Lead, cadmium, and arsenic provide no such benefits and instead pose health risks.

**D. The Consumption of Heavy Metals Poses Real Health Risks**

61. Heavy metals are neurotoxins, *i.e.*, poisons that affect the nervous system.<sup>9</sup>

62. Exposure to heavy metals, even in small amounts, can lead to life-long effects. Heavy metals can remain in the human body for years and, as a result, can accumulate in the body, such as in the kidneys and other internal organs, increasing their risk to a person over time.<sup>10</sup>

63. Because heavy metals bioaccumulate in the body, even regular consumption of small amounts can increase the material risk of various health issues, including bladder, lung, and skin cancer; cognitive and reproductive problems; and type 2 diabetes.<sup>11</sup>

64. Exposure to heavy metals has also been shown to have long-lasting effects on cardiovascular toxicity, hypertension, arrhythmia, atherosclerosis,<sup>12</sup> as well as gastrointestinal and kidney dysfunction, nervous system disorders, skin lesions, vascular damage, immune system dysfunction, birth defects, and cancer.<sup>13</sup>

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<sup>9</sup> See, e.g., U.S. House of Representatives, Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, Staff Report, *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, at 2, Feb. 4, 2021, <https://oversightdemocrats.house.gov/imo/media/doc/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (last accessed June 25, 2026) (“Congressional Committee Report”) (“The Food and Drug Administration and the World Health Organization have declared them dangerous to human health, particularly to babies and children, who are most vulnerable to their neurotoxic effects.”).

<sup>10</sup> Consumer Reports: Heavy Metals in Baby Foods, *supra*.

<sup>11</sup> *Id.*

<sup>12</sup> Pan Ziwei, Gong Tingyu, and Ping Liang, *Heavy Metal Exposure and Cardiovascular Disease*, *Circulation Research*, Apr. 26, 2024, <https://www.ahajournals.org/doi/epub/10.1161/CIRCRESAHA.123.323617> (last accessed June 25, 2026).

<sup>13</sup> Mahdi Balali-Mood, Kobra Naseri, Zoya Tahergorabi, Mohammad Reza Khazdair, Mahmood Sadeghi, *Toxic Mechanisms of Five Heavy Metals: Mercury, Lead, Chromium, Cadmium, and Arsenic*, *Frontiers in Pharmacology*, Apr. 12, 2021, <https://www.frontiersin.org/journals/pharmacology/articles/10.3389/fphar.2021.643972/full> (last accessed June 25, 2026).

1 65. Government agencies and other experts acknowledge and agree that there are no  
2 known safe levels of heavy metals. As examples:

- 3 • Conrad Choiniere, Director of the Office of Analytics and Outreach  
4 in the U.S. Food and Drug Administration’s (“FDA”) Center for  
5 Food Safety and Applied Nutrition: “However overall exposure  
6 adds up because many of the foods we eat contain these  
7 contaminants in small amounts. This is not to say that we should not  
8 be concerned. On the contrary, for the contaminants we are  
9 discussing today, we have not identified safe levels of exposure for  
10 developmental outcomes.”<sup>14</sup>
- 11 • Dr. Aparna Bole, pediatrician speaking on behalf of the American  
12 Academy of Pediatrics (“AAP”): “There is no known safe level of  
13 exposure to these metals for children. Exposure to toxic elements  
14 has a disproportionate effect on infants and toddlers because their  
15 brains are rapidly developing, especially during their first 1,000  
16 days.”
- 17 • Dr. Karagas, Professor and Chair of the Department of  
18 Epidemiology at the Geisel School of Medicine at Dartmouth  
19 College: “Arsenic, cadmium, mercury and lead, shown here, circled  
20 in these red circles, they do not have any known physiologic  
21 essential function in the body and there is no known safe level to our  
22 knowledge.”<sup>15</sup>

23 **E. Negative Health Effects of Arsenic**

24 66. There is no health benefit to the inclusion of arsenic in food products.

25 67. Arsenic is toxic to humans, classified as a carcinogen, and is one of the World  
26 Health Organization’s (“WHO”) “10 chemicals of major public concern.”<sup>16</sup>

27 68. Arsenic can cause cancer, as well as diabetes, atherosclerosis, and potentially  
28 cardiovascular disease when ingested chronically.<sup>17</sup>

<sup>14</sup> Closer to Zero Public Meeting Transcript, *supra*, at 32.

<sup>15</sup> *Id.* at 72.

<sup>16</sup> World Health Organization, *Arsenic* (Dec. 7, 2022), <https://www.who.int/news-room/fact-sheets/detail/arsenic> (last accessed June 25, 2026) (“WHO: Arsenic”).

<sup>17</sup> J. Christopher States, et al., *Prenatal Arsenic Exposure Alters Gene Expression in the Adult Liver to a Proinflammatory State Contributing to Accelerated Atherosclerosis*, PLOS ONE (June 15, 2012), 7(6): e38713, <https://doi.org/10.1371/journal.pone.0038713> (last accessed June 25, 2026).

1 69. Arsenic can affect multiple organs and systems, including the endocrine, immune,  
2 nervous, and respiratory system; liver, kidney, and bladder; prostate glands; and skin.<sup>18</sup>

3 70. Chronic or long-term exposure to arsenic can cause skin disease and is also  
4 associated with skin, bladder, and lung cancer, as well as adverse pregnancy outcomes, infant  
5 mortality, diabetes, and cardiovascular disease.<sup>19</sup>

6 71. Even low-level exposure to arsenic can result in severe long-term health effects and  
7 increase the risk of other types of chronic disease.<sup>20</sup> Long-term exposure to lower levels of arsenic  
8 can also cause a shortage of red and white blood cells, which can lead to fatigue and an increased  
9 risk of infections.<sup>21</sup>

10 72. Further, “[t]here is no evidence that the harm caused by arsenic is reversible.”<sup>22</sup>

11 73. Based on the risks associated with exposure to higher levels of arsenic, both the  
12 U.S. Environmental Protection Agency (“EPA”) and FDA have set limits concerning the allowable  
13 limit of arsenic at 10 parts per billion (“ppb”) for human consumption in apple juice (regulated by  
14 the FDA) and drinking water (regulated by the EPA as a maximum contaminant level). The FDA  
15 has set the maximum allowable arsenic levels in bottled water at 10 ppb of inorganic arsenic.<sup>23</sup>

16  
17 <sup>18</sup> National Institute of Environmental Health Sciences, *Arsenic and Your Health*, at 3,  
18 [http://www.niehs.nih.gov/sites/default/files/health/materials/arsenic\\_and\\_your\\_health\\_508.pdf](http://www.niehs.nih.gov/sites/default/files/health/materials/arsenic_and_your_health_508.pdf)  
(last accessed Jan. 15, 2026) (“Arsenic and Your Health”).

19 <sup>19</sup> WHO: Arsenic, *supra*; Stephen J. Genuis, et al., *Toxic Element Contamination of Natural*  
20 *Health Products and Pharmaceutical Preparations*, PLOS ONE (Nov. 21, 2012), 7(11): e49676,  
21 <https://doi.org/10.1371/journal.pone.0049676> (last accessed June 25, 2026) (“Toxic Element  
Contamination of Natural Health Products”) (chronic exposure to arsenic has also been associated  
with dermatological lesions and malignancies).

22 <sup>20</sup> Arsenic and Your Health, *supra*, at 3.

23 <sup>21</sup> American Cancer Society, *Arsenic and Cancer Risk*, [https://www.cancer.org/cancer/risk-  
prevention/chemicals/arsenic.html](https://www.cancer.org/cancer/risk-prevention/chemicals/arsenic.html) (last accessed June 25, 2026).

24 <sup>22</sup> Healthy Babies Bright Futures, *What’s in My Baby’s Food?* at 13, Oct. 2019,  
25 [https://hbbf.org/sites/default/files/2022-12/BabyFoodReport\\_ENGLISH\\_R6\\_0.pdf](https://hbbf.org/sites/default/files/2022-12/BabyFoodReport_ENGLISH_R6_0.pdf) (last accessed  
June 25, 2026).

26 <sup>23</sup> See Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA*  
27 *Failed to Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021),  
28 <https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed  
June 25, 2026); see also 21 C.F.R. § 165.110(b)(4)(iii)(A) (1995).

1 **F. Negative Health Effects of Cadmium**

2 74. There is no known safe level of exposure to cadmium,<sup>24</sup> and cadmium has no known  
3 beneficial function in the human body.<sup>25</sup>

4 75. The U.S. Department of Health and Human Services (“HHS”) and the International  
5 Agency for Research on Cancer (“IARC”) have determined that cadmium and cadmium  
6 compounds are known human carcinogens, and the EPA has likewise determined that cadmium is  
7 a probable human carcinogen.<sup>26</sup>

8 76. Compounding such concerns is the fact that cadmium has a prolonged half-life as  
9 it “sequester[s] in [human] tissue.”<sup>27</sup>

10 77. Cadmium exposure may be associated with prostate, bladder, pancreatic, kidney,  
11 and breast cancers; the development of diseases related to the central nervous system including  
12 Alzheimer’s, Parkinsonism and Parkinson’s disease, Huntington’s disease, amyotrophic lateral  
13 sclerosis, multiple sclerosis, and osteoporosis.<sup>28</sup>

14 78. Cadmium is also suspected to be mutagenic, meaning it can cause genetic mutation  
15 and can inhibit DNA repair and induce DNA strand breaks and chromosomal aberrations.<sup>29</sup>

16  
17 <sup>24</sup> See Closer to Zero Public Meeting, *supra*, at 72.

18 <sup>25</sup> ATSDR, “What Is the Biological Fate of Cadmium in the Body?,” Last Reviewed: May 23,  
19 2023, [https://archive.cdc.gov/www\\_atsdr\\_cdc\\_gov/csem/cadmium/Biological-Fate.html](https://archive.cdc.gov/www_atsdr_cdc_gov/csem/cadmium/Biological-Fate.html) (last  
20 visited June 25, 2026).

21 <sup>26</sup> See Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease  
22 Registry, *Public Health Statement for Cadmium*, <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=46&toxid=15> (last accessed June 25, 2026)  
23 (“Public Health Statement for Cadmium”).

24 <sup>27</sup> Toxic Element Contamination of Natural Health Products, *supra*.

25 <sup>28</sup> Charkiewicz A.E., et al., *Cadmium Toxicity and Health Effects- A Brief Summary*.  
26 *Molecules*, Sept. 14, 2023; 28(18):6620; doi: 10.3390/molecules28186620; PMID: 37764397;  
27 PMCID: PMC10537762. <https://pmc.ncbi.nlm.nih.gov/articles/PMC10537762/> (last accessed  
28 June 25, 2026) (“Cadmium Toxicity and Health Effects”).

29 <sup>29</sup> See, e.g., Cadmium is a mutagen that acts by inhibiting mismatch repair, National Library  
of Medicine, available at:  
<https://pmc.ncbi.nlm.nih.gov/articles/PMC2662193/#:~:text=Cadmium%20is%20a%20mutagen%20that%20acts%20by%20inhibiting%20mismatch%20repair> (last accessed June 25, 2026).

1 79. Chronic exposure to even lower levels of cadmium can damage the kidneys, liver,  
2 and other parts of the body, and cause bones to become fragile and easily break.<sup>30</sup> Long-term  
3 exposure to low levels of cadmium can also cause various diseases, such as cancer, leukemia, and  
4 genetic toxicity.<sup>31</sup>

5 80. Cadmium is particularly harmful to children and exposure in childhood is  
6 associated with decreases in cognitive ability, as well as the development of attention deficit  
7 hyperactivity disorder (“ADHD”). A 2018 study linked cadmium exposure to ADHD, finding that  
8 the disorder was more common among children with the highest levels of cadmium exposure as  
9 compared to a control group.

10 81. Cadmium appears to affect cognitive development of children, particularly of boys,  
11 with studies showing that boys exhibiting higher amounts of cadmium exposure had seven fewer  
12 IQ points than those exhibiting less cadmium exposure.

13 82. Cadmium can also cross the placenta and the barrier to a fetus, resulting in  
14 teratogenic effects.<sup>32</sup> Human and animal epidemiological studies have shown cadmium exposure  
15 in pregnancy to be associated with significant reduction in birthweight and increased occurrence  
16 of stillbirth.<sup>33</sup>

17 83. Like lead, cadmium accumulates in the body with a long half-life of 6 to 38 years  
18 in the kidneys and 4 to 19 years in the liver.<sup>34</sup>

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21 <sup>30</sup> Public Health Statement for Cadmium, *supra*; see also FDA, *Cadmium in Food and*  
22 *Foodwares*, [https://www.fda.gov/food/environmental-contaminants-food/cadmium-food-and-](https://www.fda.gov/food/environmental-contaminants-food/cadmium-food-and-foodwares)  
23 *foodwares* (last accessed June 25, 2026).

24 <sup>31</sup> Cadmium Toxicity and Health Effects.

25 <sup>32</sup> Cadmium Toxicity and Health Effects.

26 <sup>33</sup> California Environmental Protection Agency, *Evidence on Developmental and*  
*Reproductive Toxicity of Cadmium*, Oct. 1996,  
27 <https://oehha.ca.gov/sites/default/files/media/downloads/proposition-65/chemicals/cd-hid.pdf>  
(last accessed June 25, 2026).

28 <sup>34</sup> ATSDR, *What Is the Biological Fate of Cadmium in the Body?*, *supra*.

1 84. The EPA has set a maximum contaminant level for cadmium in drinking water of  
2 5 ppb (*see* 40 C.F.R. §141.62(b) (2004)); the FDA has set a maximum level in bottled water to 5  
3 ppb; and the WHO set a maximum cadmium level in drinking water to 3 ppb.<sup>35</sup>

4 **G. Negative Health Effects of Lead**

5 85. Lead is a highly toxic heavy metal, used in the production of batteries, ammunition,  
6 and metal products such as solder and pipes.<sup>36</sup>

7 86. Lead is highly toxic to humans and has been identified as a carcinogen. The harmful  
8 effects of lead cannot be reversed or remediated due to its accumulation in the body over time.<sup>37</sup>

9 87. There is no health benefit to the inclusion of lead in food products.

10 88. Lead is an element, which means it does not break down.

11 89. Lead is universally identified as a probable human carcinogen by health agencies  
12 in the United States and worldwide. For example:

- 13 • HHS determined that lead was “reasonably anticipated to be a human carcinogen.”
- 14 • The EPA classifies lead as a “probable human carcinogen.”
- 15 • The IARC classifies lead as “probably carcinogenic to humans.”

16  
17 90. Lead is number one on the Agency for Toxic Substances and Disease Registry’s  
18 (“ASTDR”) list of substances present in the environment that pose the most significant potential  
19 threat to human health<sup>38</sup> and the WHO identifies lead as one of ten chemicals of major public  
20 health concern requiring action.<sup>39</sup>

21  
22  
23 <sup>35</sup> *See* Congressional Committee Report, *supra*, at 29.

24 <sup>36</sup> ATSDR, *ToxFAQs for Lead*, Aug. 7, 2020, <https://www.atsdr.cdc.gov/toxfaqs/tfacts13.pdf>  
25 (last accessed June 25, 2026) (“ATSDR ToxFAQs for Lead”).

26 <sup>37</sup> *See* Congressional Committee Report, *supra*, at 11.

27 <sup>38</sup> ATSDR, *Substance Priority List*, April 13, 2026,  
<https://www.atsdr.cdc.gov/programs/substance-priority-list.html> (last accessed June 25, 2026).

28 <sup>39</sup> WHO: Lead Poisoning, *supra*.

1 91. Once lead enters the body, it is distributed to organs, including the brain, kidneys,  
2 and liver, and it accumulates and is stored in teeth and bones.<sup>40</sup>

3 92. Because lead accumulates in the body, even very low-level exposure can be  
4 hazardous over time. Lead is a cumulative toxin in bones and soft tissues, where it continues to  
5 disrupt critical biological functions long after exposure. The risk intensifies with repeated or  
6 prolonged exposure. As the Mayo Clinic warns, “Signs and symptoms usually don’t appear until  
7 the amount of lead detected in the blood has climbed to a dangerous level.”<sup>41</sup> The CDC also states,  
8 “The effects of lead poisoning can be permanent and disabling.”<sup>42</sup>

9 93. Because exposure to lead builds up in the human body over time, it can disrupt  
10 neurological, skeletal, reproductive, hematopoietic, renal, and cardiovascular systems.<sup>43</sup>

11 94. Even “[r]epeated low-level exposure [to lead] over a prolonged period” can result  
12 in clinical symptoms including “[p]ersistent vomiting, encephalopathy, lethargy, delirium and  
13 coma[.]”<sup>44</sup>

14 95. No amount of lead is safe for human consumption or exposure.<sup>45</sup>

15 <sup>40</sup> *Id.*

16 <sup>41</sup> Mayo Clinic, *Lead Poisoning*, Dec. 24, 2025, <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717> (last accessed June 25, 2026).

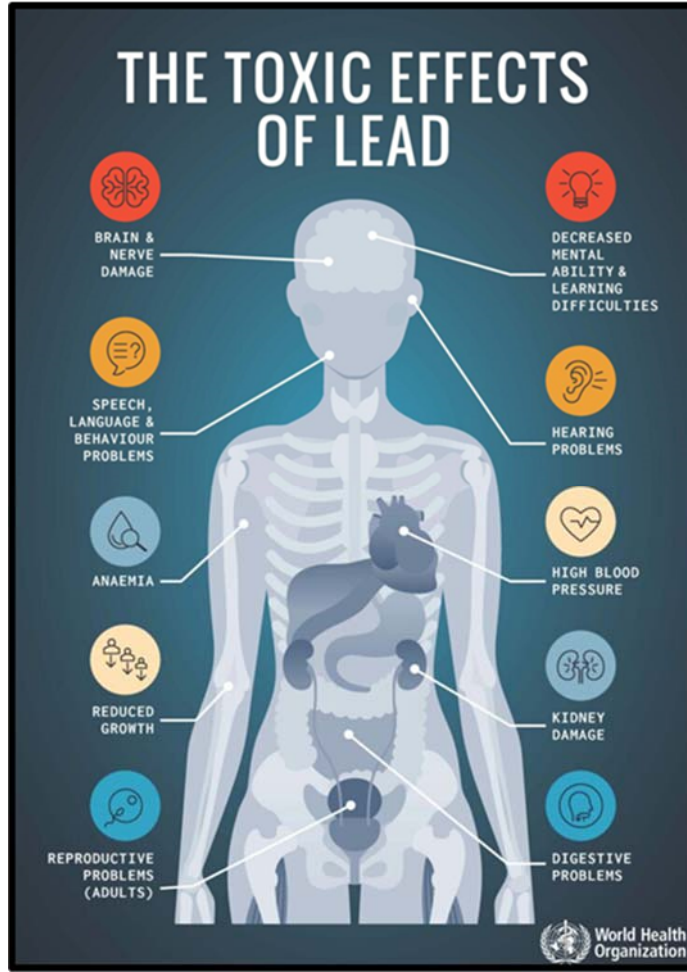
17 <sup>42</sup> CDC, *About Childhood Lead Poisoning Prevention*, Aug. 21, 2025, <https://www.cdc.gov/lead-prevention/about/index.html> (last accessed June 25, 2026).

18 <sup>43</sup> Collin, M. Samuel, et al., *Bioaccumulation of Lead (Pb) and Its Effects on Human: A Review*, *Journal of Hazardous Material Advances*, Aug. 2022, (7), doi: <https://doi.org/10.1016/j.hazadv.2022.100094> (last accessed June 25, 2026).

19 <sup>44</sup> Taanvi Bhasin, et al., *Unveiling the Health Ramifications of Lead Poisoning: A Narrative Review*, *Cureus*, Oct. 9, 2023, 15(10), doi: 10.7759/cureus.46727; <https://www.cureus.com/articles/184381-unveiling-the-health-ramifications-of-lead-poisoning-a-narrative-review#!/> (last accessed June 25, 2026).

20 <sup>45</sup> *See, e.g.*, FDA, *Lead in Food and Foodwares*, Content current as of Jan. 6, 2025 <https://www.fda.gov/food/environmental-contaminants-food/lead-food-and-foodwares> (last accessed June 15, 2026) (“Because there is no known safe level of exposure to lead, the FDA monitors and regulates levels of lead in foods.”); WHO: *Lead poisoning*, *supra* (“There is no level of exposure to lead that is known to be without harmful effects.”); CDC, *Childhood Lead Poisoning Prevention: CDC Updates Blood Lead Reference Value*, Apr. 2, 2024, <https://www.cdc.gov/lead-prevention/php/news-features/updates-blood-lead-reference-value.html> (last accessed June 25, 2026); AAP, *Lead Exposure in Children*, last updated May 12, 2025, <https://www.aap.org/en/patient-care/lead-exposure/lead-exposure-in->





98. Exposure to high lead levels can severely damage the brain and kidneys, damage male reproductive organs, and even cause death.<sup>49</sup>

99. Exposure to lead contributed to more than 3.5 million deaths globally in 2023.<sup>50</sup>

100. During pregnancy, lead can cause premature birth, lower birth weight, harm to the baby’s brains, kidneys, and nervous system, and learning or behavior problems.<sup>51</sup> It can be

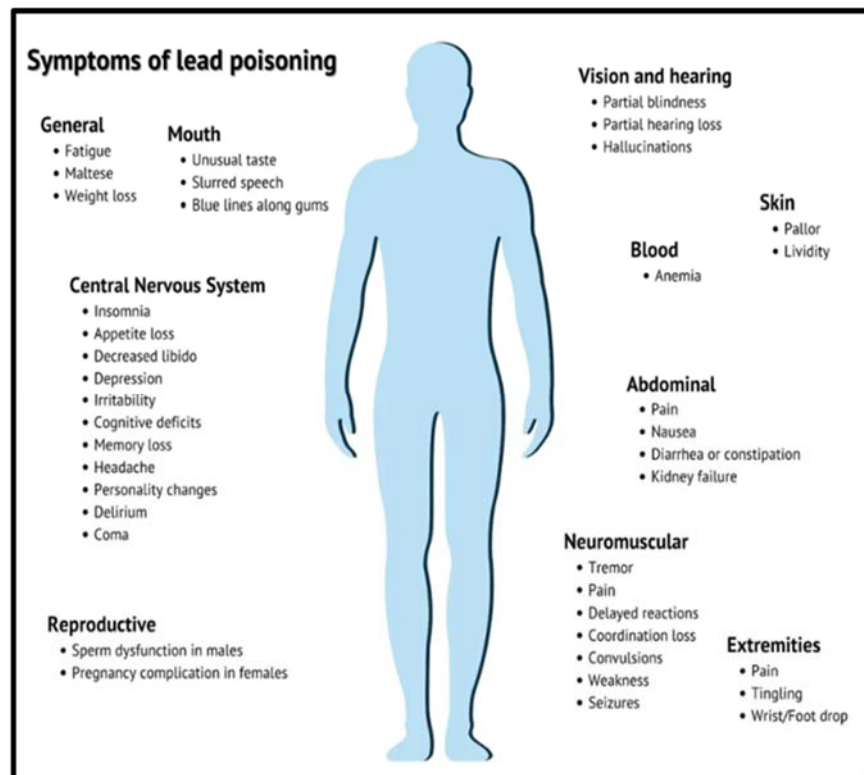
<sup>49</sup> ATSDR ToxFAQs for Lead, *supra*; Geneva Environment Network, *Update: Preventing Lead Poisoning from Geneva: Environmental and Health Impacts of Lead*, last updated May 18, 2026, <https://www.genevaenvironmentnetwork.org/resources/updates/lead-poisoning-prevention/> (last accessed June 25, 2026).

<sup>50</sup> WHO: Lead Poisoning, *supra*).

<sup>51</sup> CDC, *Childhood Lead Poisoning Prevention, Risk Factors and Pregnancy*, March 13, 2025, <https://www.cdc.gov/lead-prevention/risk-factors/pregnancy.html> (last accessed June 25, 2026).

1 transmitted from pregnant women to their babies during pregnancy<sup>52</sup> This can result in  
2 “miscarriage, stillbirth, premature birth, and low birth weight infants.”<sup>53</sup>

3 101. Lead is particularly dangerous to the health and well-being of small children, and  
4 early childhood exposure to lead is known to cause behavioral health problems, decreased  
5 cognitive performance, delayed puberty, and reduced postnatal growth, as well as severe  
6 neurological effects. Lead exposure in children is linked to learning disabilities, behavioral  
7 difficulties, and lowered IQ. Additionally, lead exposure in early childhood is proven to have a  
8 strong inverse relationship with test scores, as well as lower reading and math scores in third-grade  
9 children.



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23 102. While lead levels in protein powders are not regulated, approved, reviewed, or  
24 tested by United States regulatory bodies, lead ingestion by humans has long been subject to

25 <sup>52</sup> *Id.*

26 <sup>53</sup> T. Bhasin, Y. Lamture, M. Kumar, R. Dhamecha, *Unveiling the Health Ramini factions of*  
27 *Lead Poisoning: A Narrative Review*, Cureus, Oct. 9, 2023; 15(1):e46727,  
28 doi: 10.7759/cureus.46727; <https://pmc.ncbi.nlm.nih.gov/articles/PMC10631288/> (last accessed June 25, 2026).

1 regulatory scrutiny. Indeed, the FDA has set a 5 ppb lead standard for bottled water, the WHO has  
2 set 10 ppb lead as a provisional guideline for drinking water, and the EPA has set an action level  
3 of 15 ppb for lead in drinking water, while acknowledging that “there is no known safe level of  
4 lead in a child’s blood.”<sup>54</sup>

5 103. Under the Lead and Copper Rule, if more than 10 percent of tap water samples  
6 from a public water system exceed this level, the system is required to take corrective actions.<sup>55</sup>  
7 The FDA has set interim reference levels of 2.2 micrograms per day for children and 8.8  
8 micrograms per day for women of childbearing age.<sup>56</sup> It has also set action levels ranges for lead  
9 in processed foods intended for infants and young children.<sup>57</sup>

10 104. The FDA has also issued non-binding guidance for lead in certain juices (50 ppb)  
11 and candy (100 ppb). The EU has set the maximum lead level in infant formula to 20 ppb.

12 105. Some public health authorities have adopted more protective standards. For  
13 example, New York State recently lowered the action level for lead in school drinking water from  
14 15 ppb to 5 ppb.<sup>58</sup> When lead levels in school fixtures meet or exceed 5 ppb, schools must remove  
15 the fixture from service, provide free, alternate drinking water, notify the community, and take  
16 steps to remediate the issue.<sup>59</sup>

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19 <sup>54</sup> EPA, *Basic Information About Lead in Drinking Water*, Last updated June 18, 2026,  
20 [https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-](https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water)  
21 [water](https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water) (last accessed June 25, 2026).

22 <sup>55</sup> *Id.*

23 <sup>56</sup> FDA, *Action Levels for Lead in Processed Food Intended for Babies and Young Children: Guidance for Industry*, Jan. 2025, at 5 <https://www.fda.gov/media/164684/download> (last  
24 accessed June 25, 2026).

25 <sup>57</sup> *See, generally, id.*

26 <sup>58</sup> The Product’s tested concentration of lead is 6.3 micrograms per serving. *See above.* To  
27 reach that dose, a school child would need to drink 1.26 liters of water at the action level of 5 ppb  
28 of lead.

<sup>59</sup> New York State Education Department: *Lead Testing of Drinking Water*,  
<https://www.nysed.gov/new-york-state-school-deaf/lead-testing-drinking-water> (last accessed  
June 25, 2026).

1 106. There is a growing consensus among health experts that lead levels in food and  
2 drinks consumed by children should not exceed 1 ppb. The AAP, the Environmental Defense Fund,  
3 and Consumer Reports have all called for this limitation.

4 **H. The Contaminated Products Contain Levels of Heavy Metals that are Unhealthy and**  
5 **Unsafe at Any Level**

6 107. While Defendant’s marketing repeatedly communicates that the Contaminated  
7 Products are carefully and safely manufactured and clean, laboratory tests show that, in fact,  
8 Defendant sold Products containing undisclosed lead levels as high as 67 ppb, cadmium levels as  
9 high as 70.3 ppb, and arsenic levels as high as 18 ppb.

10 108. The Clean Label Project is a national nonprofit “on a mission to bring truth and  
11 transparency to food and consumer product labeling.”<sup>60</sup>

12 109. In January 2025, the Clean Label Project published a report that showed 47% of  
13 160 protein powder products tested exceed California’s Proposition 65 limits for heavy metals.<sup>61</sup>

14 110. The Clean Label Project tested the Contaminated Products, neither of which are  
15 included on its list of “clean sixteen” nor among the sixteen protein powders that are Clean Label  
16 Project Certified.<sup>62</sup>

17 111. The Clean Label Project collaborated with an analytical chemistry laboratory to test  
18 165 of the top-selling protein powders.<sup>63</sup> It found that 79% of organic protein powders and 77%

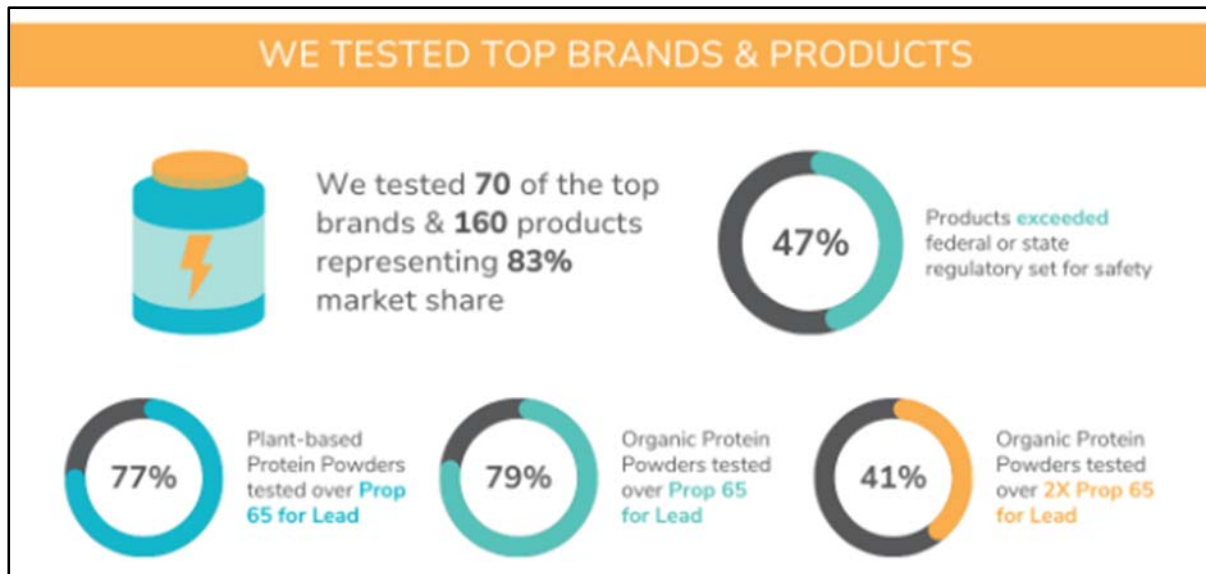
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22 <sup>60</sup> Clean Label Project, <https://cleanlabelproject.org/app/> (last accessed June 25, 2026).

23 <sup>61</sup> Clean Label Project, “Nearly half of top-selling protein powders exceed safety thresholds  
24 for heavy metal contamination,” Jan. 9, 2025, <https://cleanlabelproject.org/protein-study/> (last accessed  
June 25, 2026) (“Clean Label Project Protein Study”).

25 <sup>62</sup> Products are tested for purity and chemicals of concern including heavy metals and compares  
26 the results to California’s Proposition 65 list; if the product is found to comply, it qualifies for  
27 Clean Label Certification. Certification also requires ongoing compliance with unannounced  
sampling and testing. <https://cleanlabelproject.org/clean-label-project-certification/> (last accessed June 24,  
2026).

28 <sup>63</sup> Clean Label Project Protein Study, *supra*.

1 of plant-based protein powders exceeded California’s Proposition 65 limit for lead levels.<sup>64</sup> It also  
 2 found that 47% of the tested products exceeded federal or state regulatory limits set for safety.<sup>65</sup>



13 112. Consumer Reports “is an American nonprofit consumer organization dedicated to  
 14 independent product testing, investigative journalism, consumer-oriented research, public  
 15 education, and consumer advocacy.”<sup>66</sup>

16 113. In October 2025, Consumer Reports published a report that showed more than two-  
 17 thirds of the 23 protein products it tested exceeded its level of concern for lead.<sup>67</sup>

18 114. Consumer Reports further found that plant-based protein powders had lead levels  
 19 nine times higher than dairy-based powders on average.

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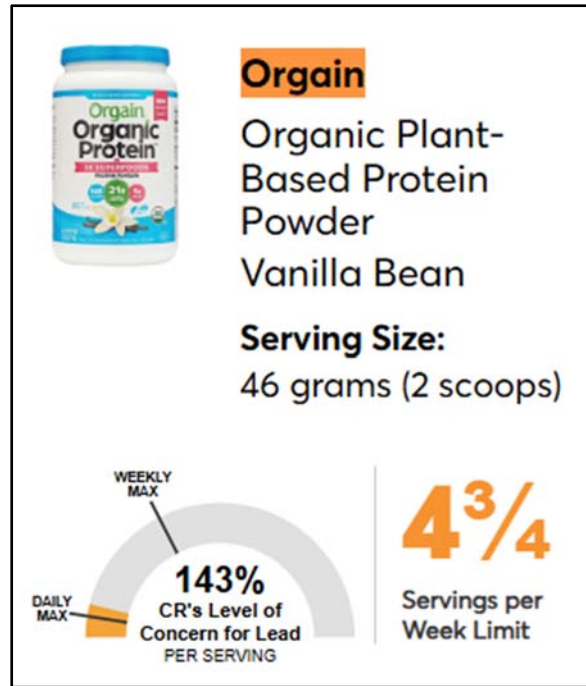
23 <sup>64</sup> *Id.*

24 <sup>65</sup> *Id.*

25 <sup>66</sup> Wikipedia, *Consumer Reports*, [https://en.wikipedia.org/wiki/Consumer\\_Reports](https://en.wikipedia.org/wiki/Consumer_Reports) (last accessed June 25, 2026).

26 <sup>67</sup> P. Martineau, Consumer Reports, “Protein powders and shakes contain high levels of lead,”  
 27 Oct. 14, 2025, Updated Jan. 8, 2026 <https://www.consumerreports.org/lead/protein-powders-and-shakes-contain-high-levels-of-lead-a4206364640/> (last accessed June 14, 2026) (“Consumer Reports: Protein Powders and Shakes Contain High Levels of Lead”).

1 115. Consumer Reports identified the Orgain Organic Plant-Based Protein Powder in  
 2 Vanilla Bean as a product “Okay to eat occasionally” with lead levels at 143% of its level for  
 3 concern and a limit of 4 <sup>3</sup>/<sub>4</sub> servings per week.<sup>68</sup>



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16 116. In introducing Consumer Reports’ test results, the Report described the significant  
 17 health risks for any human consumption of lead, explaining:

18 *While no amount of lead is technically safe, the greatest danger*  
 19 *comes from repeated or continued exposure, particularly at high*  
 20 *doses, says Rose Goldman, MD, an associate professor of medicine*  
 21 *and physician at Cambridge Health Alliance in Medford, Mass. Children and pregnant people are most vulnerable because lead can*  
 22 *damage the developing brain and nervous system, which has the*  
 23 *potential to cause neurological issues, learning delays, and*  
 24 *behavioral problems. But chronic lead exposure has also been*  
 25 *linked to immune suppression, reproductive problems, kidney*  
 26 *damage, and high blood pressure in adults.*<sup>69</sup>

27 117. To conduct its testing, Consumer Reports:

28 *purchased multiple samples of each product, including two to four*  
*distinct lots, over a three-month period beginning [November*  
*2024]. CR bought the Contaminated Products anonymously from a*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

1 variety of sources, including popular online retailers like Amazon  
 2 and Walmart, and at supermarkets and health food stores in New  
 3 York state, such as the Vitamin Shoppe and Whole Foods Market.  
 4 Then CR tested samples from multiple lots of each product for total  
 5 protein, arsenic, cadmium, lead, and other elements.<sup>70</sup>

6 118. To conduct its study, Consumer Reports analyzed two to three unique samples of  
 7 the 23 products it tested, which were blind coded and sent to an independent, accredited laboratory  
 8 for testing in accordance with the Association of Official Analytical Chemists (“AOAC”) Method  
 9 2015.01. According to Consumer Reports, the “testing conformed to the quality control criteria  
 10 and performance requirements set in cited official methods, as well as those in ISO 17025.”<sup>71</sup>

11 119. Consumer Reports based its daily exposure limit for lead on the California  
 12 Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986) maximum allowable  
 13 dose level (“MADL”) for lead, which is 0.5 micrograms per day.<sup>72</sup>

14 120. These findings were later confirmed by additional independent testing: Plaintiffs’  
 15 counsel tested the Contaminated Products and the results confirmed the presence of detectable  
 16 levels of heavy metals in the Contaminated Products:

Product	Lead	Cadmium	Arsenic
Orgain Organic Protein Powder in Vanilla Bean	3.37 µg/serving 67 ppb	1.19 µg/serving 24 ppb	0.735 µg/serving 15 ppb
Orgain Organic Protein Powder in Vanilla Bean	0.823 µg/serving 16 ppb	1.15 µg/serving 23 ppb	0.577 µg/serving 12 ppb

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<sup>70</sup> *Id.*

<sup>71</sup> Consumer Reports, “Heavy Metals in Protein Supplements,” October 2025, at 1  
<https://article.images.consumerreports.org/image/upload/v1761140939/prod/content/dam/CRO-Images-2025/Special%20Projects/Consumer-Reports-Protein-Powders-and-Shakes-Contain-High-Levels-of-Lead-Methodology-Test-Results-v2.pdf> (last accessed June 25, 2026) (“Consumer Reports: Heavy Metals in Protein Supplements”).

<sup>72</sup> *See, generally, id.; see also* California Office of Environmental Health Hazard Assessment (“OEHHA”), *About Proposition 65*, <https://oehha.ca.gov/proposition-65/about-proposition-65#:~:text=Proposition%2065%20requires%20businesses%20to,are%20released%20into%20the%20environment> (last accessed June 25, 2026); California OEHHA, *Proposition 65 No Significant Risk Levels (MSRLs) and Maximum Allowable Dose Levels (MADLs)*, <https://oehha.ca.gov/proposition-65/general-info/proposition-65-no-significant-risk-levels-nrsls-and-maximum-allowable-dose-levels-madls> (last accessed June 25, 2026).

Product	Lead	Cadmium	Arsenic
Orgain Organic Protein Powder in Creamy Chocolate Fudge	1.70 µg/serving 34 ppb	3.45 µg/serving 69 ppb	0.874 µg/serving 17 ppb
Orgain Organic Protein Powder in Creamy Chocolate Fudge	2.30 µg/serving 46 ppb	2.75 µg/serving 55 ppb	0.920 µg/serving 18 ppb
Orgain Organic Protein Powder in Creamy Chocolate Fudge	1.03 µg/serving 20.5 ppb	3.52 µg/serving 70.3 ppb	0.710 µg/serving 14.2 ppb

121. The first sample tested, with a lead level of 3.37 µg/serving, exceeded California’s Proposition 65 MADL of 0.5 µg/day by 674%.

122. The laboratory results demonstrate that heavy metals were repeatedly detected across multiple product lots, multiple Costco locations, and both tested flavors. Cadmium was detected in every tested sample. Lead was detected in multiple samples across different lots and locations.

123. Confirmatory testing by Microbac Laboratories, an independent ISO/IEC 17025 accredited laboratory, corroborated the presence of heavy metals in the Contaminated Products.

124. California Proposition 65 a safe harbor MADL for lead of 0.5 µg/day. Sample B1’s lead level of 3.37 µg/serving exceeds this safe harbor by approximately 674%.

125. The Proposition 65 MADL for cadmium (oral) is 4.1 µg/day, and the No Significant Risk Level (“NSRL”) for inorganic arsenic (oral) is 10 µg/day.

126. The FDA does not review, approve, or test protein powder supplements before they are sold to consumers. Unlike prescription drugs and medical devices, dietary supplements—including protein powders—are not subject to pre-market approval by the FDA. *See* 21 U.S.C. § 342(f)(1) (2005) (placing burden on FDA to prove adulteration after product reaches market). There are no federal regulatory limits for heavy metals in protein supplements or dietary supplements generally. The FDA has not established maximum allowable levels for lead, cadmium, or arsenic in protein powder products, nor has it issued any regulation requiring disclosure of heavy metal content on dietary supplement labels. This regulatory gap means that consumers must rely entirely on the manufacturer’s and retailer’s voluntary representations regarding product safety and purity—representations that Costco made through its claims of “clean nutrition” and “higher standards” while omitting the presence of toxic heavy metals.

1 127. However, states have begun to investigate the presence of heavy metals in protein  
2 powder products and introduce legislation that would require heavy metals testing.

3 128. In February 2026, California introduced Senate Bill 1033, which would require  
4 mandatory testing and public disclosure of heavy metals in protein products sold in the state.<sup>73</sup>

5 129. On June 8, 2026, the Texas Attorney General launched an industry-wide  
6 investigation into protein powder manufacturers, targeting potential violations of the Texas  
7 Deceptive Trade Practices Act related to undisclosed heavy metal contamination.<sup>74</sup>

8 **I. Defendant Actively Concealed the Truth About the Contaminated Products from**  
9 **Consumers**

10 130. Defendant actively and knowingly concealed from and failed to disclose to  
11 consumers, including Plaintiffs and the Classes, that the Contaminated Products it sells to  
12 consumers contain or materially risk containing heavy metals, including lead, cadmium, and  
13 arsenic.

14 131. Defendant actively and knowingly concealed and failed to disclose material facts  
15 to Plaintiffs and other consumers about the negative health effects of the Contaminated Products  
16 it sells.

17 132. Information regarding the presence of heavy metals in the Contaminated Products  
18 is in the exclusive possession of Costco and not readily available to consumers. Defendant chose  
19 to not disclose such information to consumers and thus actively concealed the presence of heavy  
20 metals in the Contaminated Products.

21 133. Defendant knowingly and actively concealed the material facts from consumers  
22 because it knew consumers cared about the Contaminated Products' quality, ingredients,

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23 <sup>73</sup> *California Senate Bill 1033*,  
24 [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202520260SB1033](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB1033) (last accessed June 25,  
25 2026).

26 <sup>74</sup> *Press release: Attorney General Ken Paxton Launches Industry-Wide Investigation into*  
27 *Protein Powder Manufacturers to Protect Texans from Heavy Metals, Including Lead and*  
28 *Cadmium, Found in Popular Protein Powders, June 8, 2026*,  
[https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-industry-wide-](https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-industry-wide-investigation-protein-powder-manufacturers)  
[investigation-protein-powder-manufacturers](https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-industry-wide-investigation-protein-powder-manufacturers) (last accessed June 25, 2026).

standards, and suitability for use, and if consumers were to learn the truth about Costco's claims, it would negatively affect its finances.

134. Defendant knew or should have known of the negative health effects caused by exposure to heavy metals, yet knowingly and actively concealed the presence or material risk of heavy metals in the Contaminated Products.

135. The knowing and active concealment of these material facts render the point-of-sale for the Contaminated Products' deceptive, misleading, and unfair because without full disclosure, reasonable consumers, including Plaintiffs and the Classes, believe the Contaminated Products to be of a certain quality and suitable for use when they are not.

136. Plaintiffs and the Class Members made purchases they would not have made or paid a premium price for the Contaminated Products they would not have paid had they known the truth based on Defendant's active concealment, Omissions, Misrepresentations, and partial representations regarding the presence or material risk of heavy metals in the Contaminated Products.

137. Defendant charged, and Plaintiffs purchased, the Contaminated Products, paying a premium price, despite the availability of comparable, lesser-priced protein powder products sold by other retailers with no detectable levels of heavy metals.

<b>The Contaminated Products</b>	<b>Price/oz</b>	<b>Lead (ppb)</b>	<b>Arsenic (ppb)</b>	<b>Cadmium (ppb)</b>
Orgain Organic Protein Powder in Vanilla Bean	\$0.79/oz	16-67	12-15	23-24
Orgain Organic Protein Powder in Creamy Chocolate Fudge	\$0.80/oz	20.5-46	14.2-18	55-70.3
<b>Competitor Products</b>	<b>Price/oz</b>	<b>Lead (ppb)</b>	<b>Arsenic (ppb)</b>	<b>Cadmium (ppb)</b>
Muscle Tech 100% Mass Gainer Vanilla <sup>75</sup>	\$0.42/oz	ND	5.2	ND
Dymatize Super Mass Gainer, Gourmet Vanilla <sup>76</sup>	\$0.49/oz	0.4	6.1	ND

<sup>75</sup> Consumer Reports: Heavy Metals in Protein Supplements, *supra*.

<sup>76</sup> *Id.*

The Contaminated Products	Price/oz	Lead (ppb)	Arsenic (ppb)	Cadmium (ppb)
Premier Protein 100% Whey, Vanilla Milkshake <sup>77</sup>	\$0.65/oz	ND	ND	ND
Transparent Labs Mass Gainer Vanilla <sup>78</sup>	\$0.78/oz	2.2	2.7	ND

138. The facts misrepresented, concealed, omitted, or not disclosed by Defendant were material such that reasonable consumers, including Plaintiffs and the Classes, would have considered them when deciding whether to purchase the Contaminated Products. Had Plaintiffs known the truth, they would not have purchased the Contaminated Products or paid the premium price.

139. Defendant has been on notice about the problematic presence of heavy metals in organic and plant-based protein powders such as the Contaminated Products. In 2018, the Clean Label Project published a report where it tested 134 of the top-selling protein powder products where it found plant-based products tested worst, 75% of plant-based samples tested positive for lead, and certified organic protein powder products on average tested more than two times the levels of heavy metals compared to non-organic products tested.<sup>79</sup>

**J. Protein Powder Products Sold by Costco Can Be Manufactured Without Heavy Metals**

140. It is possible to manufacture protein powder products with non-detectable levels of heavy metals, including lead, cadmium, and arsenic.

141. Consumer Reports tested MuscleTech's 100% Mass Gainer Vanilla Milkshake product and found no detectable levels of lead or cadmium<sup>80</sup> and the Clean Label Project tested 16

<sup>77</sup> Clean Label Project, *Clean Sixteen*, [https://cleanlabelproject.org/wp-content/uploads/CLPSweet-16OneSheeter\\_061125.pdf](https://cleanlabelproject.org/wp-content/uploads/CLPSweet-16OneSheeter_061125.pdf) (last accessed June 25, 2026) ("Clean Sixteen").

<sup>78</sup> Consumer Reports: Heavy Metals in Protein Supplements, *supra*.

<sup>79</sup> Clean Label Project, "Protein Powder Infographic," <https://cleanlabelproject.org/protein-powder-infographic/> (last accessed June 25, 2026).

<sup>80</sup> Consumer Reports: Protein Powders and Shakes Contain High Levels of Lead, *supra*.

1 protein powders that had no detectable levels of lead, cadmium, or arsenic, including Premier  
2 Protein’s 100% Whey Vanilla Milkshake.<sup>81</sup>

3 142. Seven products tested by Consumer Reports were categorized as “Better Choices  
4 for Daily Consumption,” with six products at less than 88% of Consumer Reports’ concern for  
5 lead per serving and one product with no detectable level of lead.<sup>82</sup>

6 143. Additionally, Lead Safe Mama tested another protein powder with no detectable  
7 levels of heavy metals, including arsenic, cadmium, and lead.<sup>83</sup>

8 144. Finally, the Clean Label Product testing showed sixteen products had non-  
9 detectable levels of heavy metals:<sup>84</sup>

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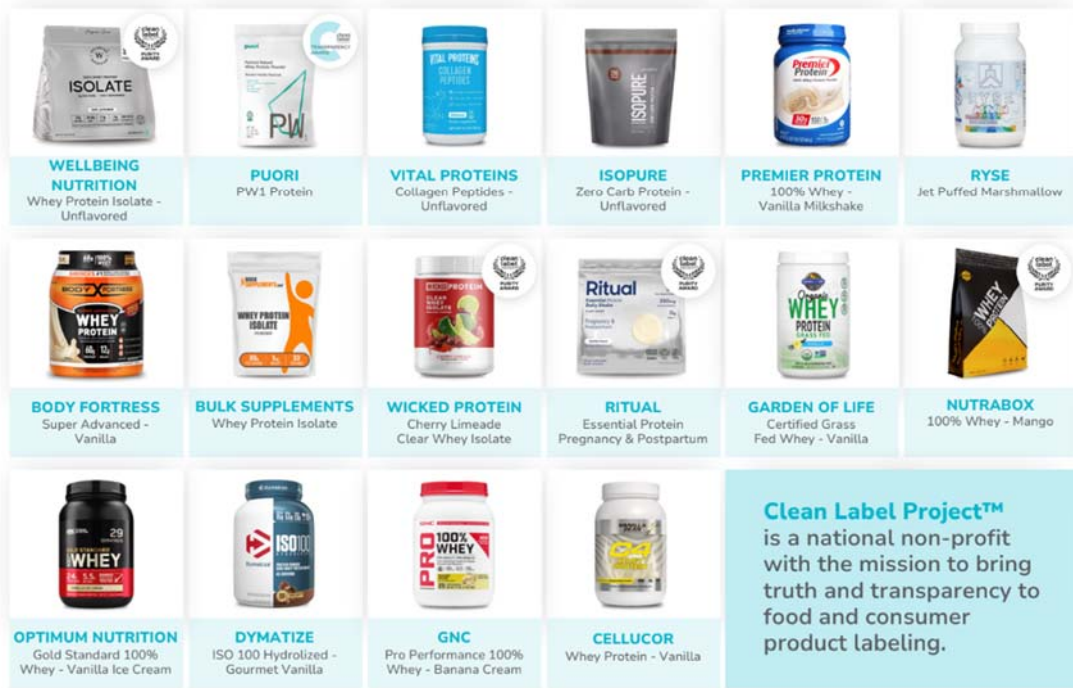
<sup>81</sup> Clean Sixteen, *supra*.

24 <sup>82</sup> Consumer Reports: Protein Powders and Shakes Contain High Levels of Lead, *supra*.

25 <sup>83</sup> Lead Safe Mama, *Testing Simply Tera’s Organic Whey Protein (Plain, Unsweetened) for*  
26 *Lead, Cadmium, Mercury, and Arsenic with Independent, Third-Party Laboratory Analysis* (Oct.  
27 25, 2025, updated Oct. 29, 2025), [https://tamararubin.com/2025/10/simply-teras-organic-whey-](https://tamararubin.com/2025/10/simply-teras-organic-whey-protein/)  
protein/ (last accessed June 25, 2026).

28 <sup>84</sup> Clean Sixteen, *supra*.

These 16 protein powders stood out as non-detect (ND) for Lead, Cadmium, Mercury & Arsenic



**K. The Material Omissions and Misrepresentations Mislead and Deceive Reasonable Consumers**

145. Defendant does not disclose anywhere on the product pages for the Contaminated Products (or anywhere else) that the Contaminated Products contain heavy metals. Those point-of-sale list the ingredients of the Contaminated Products but omit any mention of heavy metals, including lead, cadmium, or arsenic.

146. The presence of heavy metals in the Contaminated Products is material to consumers.

147. Defendant’s Omissions wrongfully cause reasonable consumers to believe that Products do not contain heavy metals, when in fact the Contaminated Products do contain heavy metals, including lead, cadmium, and/or arsenic.

148. Information regarding the presence of heavy metals in the Contaminated Products is in the exclusive possession of Defendant and not readily available to consumers. Defendant chose to not disclose such information to consumers and thus actively concealed the presence of heavy metals in the Contaminated Products.

1 149. Reasonable consumers must and do rely on Defendant to honestly report what  
2 Products it sells contain.

3 150. Because of Defendant's failure to disclose the presence of heavy metals on the  
4 Contaminated Products' point-of-sale, no reasonable consumer would expect, suspect, or  
5 understand that the Contaminated Products contain heavy metals.

6 151. Defendant had a duty to ensure the Contaminated Products were not deceptively,  
7 misleadingly, unfairly, and falsely marketed and that all material information was properly and  
8 fully disclosed.

9 152. The Omissions are material and reasonably likely to deceive reasonable consumers,  
10 such as Plaintiffs, in their purchasing decisions.

11 153. The Omissions were intended to and did, in fact, cause consumers like Plaintiffs  
12 and the other Class Members, to purchase products they would not have purchased if Defendant  
13 had disclosed that the Contaminated Products contained heavy metals, or for which they would  
14 not have paid a premium price, or any price at all.

15 154. As a result of the Omissions, Defendant generated substantial sales and profited  
16 from Plaintiffs' lack of information about the presence of heavy metals in the Contaminated  
17 Products.

18 155. Plaintiffs and other reasonable consumers would not have purchased the  
19 Contaminated Products or would have paid less for them but for the Misrepresentations, partial  
20 misrepresentations, Omissions, concealment, and other deceptive conduct.

21 156. The Contaminated Products' point-of-sale misled and deceived reasonable  
22 consumers because Defendant omitted that the Contaminated Products contained or had a material  
23 risk of containing heavy metals, while representing the Contaminated Products' health benefits.

24 157. Based on Defendant's Misrepresentations, partial misrepresentations, and  
25 Omissions, and the overall impression given by the point-of-sale, no reasonable consumer could  
26 expect or understand the Contaminated Products contained or had a material risk of containing  
27 heavy metals such as cadmium and lead.

1 158. Defendant’s point-of-sale for the Contaminated Products contradict the presence of  
2 heavy metals such as lead, cadmium, and arsenic; such communications include the following  
3 Misrepresentations, for example:

- 4 a. Orgain Organic Protein Powder in Vanilla Bean; and
- 5 • “Good, clean nutrition”
  - 6 • “Cleaner ingredients”
  - 7 • “Higher standards”
  - 8 • “Our commitment to clean nutrition”
  - 9 • “The power of clean”
  - 10 • “Quality ingredients, higher standards”
  - 11 • “good, clean fuel”
  - 12 • “clean, lean organic machine”
  - 13 • “Delivering clean nutrition”
- 14 b. Orgain Organic Protein Powder in Creamy Chocolate Fudge.
- 15 • “Good, clean nutrition”
  - 16 • “Cleaner ingredients”
  - 17 • “Higher standards”
  - 18 • “Our commitment to clean nutrition”
  - 19 • “The power of clean”
  - 20 • “Quality ingredients, higher standards”
  - 21 • “good, clean fuel”
  - 22 • “clean, lean organic machine”
  - 23 • “Delivering clean nutrition”

24 159. The Misrepresentations and Omissions misleadingly convey to consumers that the  
25 Contaminated Products are of a high quality and have certain characteristics that they do not  
26 actually possess.

1           160. Defendant misleadingly causes consumers to believe the Contaminated Products it  
2 sells do not contain (or have a material risk of containing) heavy metals, including lead, cadmium,  
3 and arsenic, due to the material Omissions, Misrepresentations and partial misrepresentations,  
4 when in fact the Contaminated Products do contain (or have a material risk of containing) lead,  
5 cadmium, and/or arsenic.

6           161. Whether the Contaminated Products contain heavy metals is material information  
7 to reasonable consumers, including Plaintiffs.

8           162. Defendant wrongfully failed to disclose to reasonable consumers material  
9 information regarding the presence of (or material risk of) heavy metals in the Contaminated  
10 Products.

11           163. Due to the point-of-sale, Misrepresentations, partial misrepresentations, and  
12 Omissions, reasonable consumers, like Plaintiffs, would not suspect the presence of heavy metals  
13 in the Contaminated Products.

14           164. Unlike Defendant, reasonable consumers are not able to independently detect the  
15 presence of heavy metals in the Contaminated Products and are generally without the means to  
16 conduct their own scientific tests on the Contaminated Products.

17           165. Moreover, information regarding the presence of heavy metals in the Contaminated  
18 Products is in the exclusive possession of Defendant and not available to consumers. Defendant  
19 chose to not disclose such information to consumers and thus actively concealed the presence and  
20 risk of heavy metals in the Contaminated Products.

21           166. Reasonable consumers must and do rely on Defendant to honestly report what the  
22 Contaminated Products it sells contain.

23           167. Based on the failure to disclose the presence (or material risk) of heavy metals on  
24 the Contaminated Products' point-of-sale, no reasonable consumer would expect, suspect, or  
25 understand that the Contaminated Products contained or had a material risk of containing heavy  
26 metals.

1 168. In light of Defendant's statements regarding the quality of the Contaminated  
2 Products, Defendant knew or should have known the Contaminated Products contained or had a  
3 material risk of containing heavy metals.

4 169. Defendant had a duty to ensure the Contaminated Products it sold were not  
5 deceptively, misleadingly, unfairly, and falsely marketed and that all material information was  
6 properly and fully disclosed.

7 170. Defendant acted negligently, recklessly, unfairly, and/or intentionally with its  
8 deceptive point-of-sale based on the material Misrepresentations, partial misrepresentations, and  
9 Omissions.

10 171. The Misrepresentations, partial misrepresentations, and Omissions on Defendant's  
11 point-of-sale are material and reasonably likely to deceive reasonable consumers, such as  
12 Plaintiffs, in their purchasing decisions.

13 172. The Misrepresentations, partial misrepresentations, and Omissions, make the  
14 Contaminated Products' point-of-sale deceptive based on the presence or risk of significant levels  
15 heavy metals in the Contaminated Products. Reasonable consumers, like Plaintiffs, would consider  
16 the presence or risk of heavy metals in the Contaminated Products a material fact when considering  
17 which protein powder products to purchase.

18 173. Defendant knew, yet failed to disclose, that the Contaminated Products or the  
19 ingredients used in the Contaminated Products were not sufficiently or adequately monitored or  
20 tested for heavy metals.

21 174. The Misrepresentations, partial misrepresentations, and Omissions, were  
22 misleading due to Defendant's failure to ensure the Contaminated Products were sufficiently or  
23 adequately monitored or tested for heavy metals and to disclose the presence (or material risk) of  
24 heavy metals in the Contaminated Products.

25 175. Defendant knew or should have known that the Contaminated Products contained  
26 or may contain levels of heavy metals that were not disclosed on the point-of-sale.

1 176. Defendant knew or should have known that reasonable consumers, including  
 2 Plaintiffs, expected it to ensure the Contaminated Products it sold were sufficiently monitored and  
 3 tested for heavy metals and to disclose the presence or risk of heavy metals in the Contaminated  
 4 Products.

5 177. Further, Defendant knew or should have known that reasonable consumers paid  
 6 higher prices, or paid any price at all, for the Contaminated Products and expected the  
 7 Contaminated Products sold by Defendant were sufficiently tested and monitored for the presence  
 8 of heavy metals.

9 178. The Misrepresentations, partial misrepresentations, and Omissions are material and  
 10 render the Contaminated Products' point-of-sale deceptive because without full disclosure,  
 11 reasonable consumers, such as Plaintiffs, believe the Contaminated Products do not contain or  
 12 have a material risk of containing heavy metals.

13 179. Defendant charged, and Plaintiffs purchased, the Contaminated Products, paying a  
 14 premium price, despite the availability of comparable, lesser-priced protein powder products sold  
 15 by other retailers with no detectable levels of heavy metals.

<b>The Contaminated Products</b>	<b>Price/oz</b>	<b>Lead (ppb)</b>	<b>Arsenic (ppb)</b>	<b>Cadmium (ppb)</b>
Orgain Organic Protein Powder in Vanilla Bean	\$0.79/oz	16-67	12-15	23-24
Orgain Organic Protein Powder in Creamy Chocolate Fudge	\$0.80/oz	20.5-46	14.2-18	55-70.3
<b>Competitor Products</b>	<b>Price/oz</b>	<b>Lead (ppb)</b>	<b>Arsenic (ppb)</b>	<b>Cadmium (ppb)</b>
Muscle Tech 100% Mass Gainer Vanilla <sup>85</sup>	\$0.42/oz	ND	5.2	ND
Dymatize Super Mass Gainer, Gourmet Vanilla <sup>86</sup>	\$0.49/oz	0.4	6.1	ND
Premier Protein 100% Whey, Vanilla Milkshake <sup>87</sup>	\$0.65/oz	ND	ND	ND
Transparent Labs Mass Gainer Vanilla <sup>88</sup>	\$0.78/oz	2.2	2.7	ND

25 <sup>85</sup> Consumer Reports: Heavy Metals In Protein Supplements, *supra*.

26 <sup>86</sup> *Id.*

27 <sup>87</sup> *Clean Sixteen, supra*.

28 <sup>88</sup> Consumer Reports: Heavy Metals In Protein Supplements, *supra*.

1 180. As a result of Defendant's deceptive, unfair, and misleading Misrepresentations,  
2 partial misrepresentations, and Omissions, it was able to generate substantial sales, which allowed  
3 it to reap enormous profits from Plaintiffs and similarly situated consumers who paid the purchase  
4 price or premium for the Contaminated Products that were not as advertised.

5 181. Plaintiffs and other reasonable consumers would not have purchased the  
6 Contaminated Products or would have paid less for them but for the misrepresentations and partial  
7 misrepresentations, including the Misrepresentations and Omissions.

8 **L. Costco's Knowledge and Failure to Disclose**

9 182. As a major national retailer with sophisticated supply-chain management and  
10 quality control processes, Costco knew or should have known about the heavy metals in the  
11 Contaminated Products it sells, including the Contaminated Products.

12 183. Despite this knowledge, or constructive knowledge, Costco continued to sell the  
13 Contaminated Products without any warning or disclosure to consumers regarding the presence or  
14 material risk of heavy metals in the Contaminated Products.

15 184. Reasonable consumers, like Plaintiffs, could not learn of the inclusion of heavy  
16 metals in the Contaminated Products unless Costco included a proper disclosure, because  
17 identifying the presence of heavy metals requires expensive and sophisticated laboratory testing.  
18 But Costco failed to perform or require any heavy metal testing, or to disclose the presence of  
19 heavy metals.

20 185. Based on the messaging and overall impression communicated by Costco's point-  
21 of-sale, including the material Misrepresentations, partial misrepresentations, Omissions, active  
22 concealment, and other deceptive conduct, no reasonable consumer purchasing protein powder  
23 products would expect the Contaminated Products to contain heavy metals, especially since the  
24 Contaminated Products are marketed as high quality, clean, and nutritious, and intended to be  
25 ingested.

26 186. The "Organic" labeling on the Contaminated Products creates a misleading  
27 impression of purity and safety. USDA Organic certification addresses the use of synthetic  
28

1 pesticides, fertilizers, and genetically modified organisms, but does not test for or certify the  
2 absence of heavy metals such as lead, cadmium, and arsenic.

3 187. A reasonable consumer would not expect “Organic” protein powder to contain lead  
4 at levels exceeding recognized safety thresholds by more than 600%. The absence of any warning  
5 or disclosure regarding heavy metal content, combined with the prominent “Organic” labeling,  
6 creates a deceptive net impression regarding product safety.

7 188. Defendant had a duty to ensure the Contaminated Products were not deceptively,  
8 misleadingly, unfairly, and falsely marketed and that all material information was properly and  
9 fully disclosed.

10 189. Costco’s failure to disclose was not the result of ignorance or inability. As one of  
11 the largest retailers in the world, with annual revenues exceeding \$240 billion, Costco has the  
12 resources and capability to test products for heavy metal contamination and to require disclosure  
13 from its suppliers.

14 190. Plaintiffs’ claims are not preempted by federal law. Plaintiffs do not allege that  
15 Costco violated the Federal Food, Drug, and Cosmetic Act (“FDCA”) or the Nutrition Labeling  
16 and Education Act (“NLEA”), nor do they seek to enforce any federal labeling requirement.  
17 Rather, Plaintiffs bring their claims exclusively under the Washington Consumer Protection Act,  
18 which independently prohibits unfair or deceptive acts or practices in trade or commerce.  
19 Plaintiffs’ claims exist independently of any federal labeling requirement because they are based  
20 on Costco’s affirmative misrepresentations that the Contaminated Products are “clean,”  
21 “nutritious,” and held to “higher standards”—claims that are deceptive under state law regardless  
22 of any federal labeling obligation. Plaintiffs do not seek to impose labeling requirements that are  
23 “in addition to” or “different from” those required by federal law. *See* 21 U.S.C. § 343-1(a) (2010).  
24 Instead, Plaintiffs challenge Costco’s voluntary affirmative representations and omissions that  
25 deceive consumers about the actual quality and safety of the Contaminated Products.

26 191. The NLEA contains a “savings clause” that expressly disavows implied  
27 preemption: “The [NLEA] shall not be construed to preempt any provision of State law, unless  
28

1 such provision is expressly preempted under [21 U.S.C. § 343–1(a)].” Pub. L. No. 101–535, §  
2 6(c)(1). Moreover, the FDCA does not occupy the field of food safety and consumer protection; it  
3 establishes a regulatory “floor,” not a “ceiling.” States retain the historic police power to protect  
4 their citizens from deceptive trade practices, and private enforcement of state consumer protection  
5 laws coexists with—and is complementary to—FDA regulation. *See Wyeth v. Levine*, 555 U.S.  
6 555, 579 (2009) (state law provides “an additional, and important, layer of consumer protection  
7 that complements FDA regulation”). Critically, the FDA does not review, approve, or test dietary  
8 supplements—including protein powders—before they are sold to consumers, and has established  
9 no regulatory limits for heavy metals in protein supplements or dietary supplements. Where the  
10 FDA has neither established standards nor exercised its enforcement authority, preemption is  
11 particularly inappropriate.

12 192. Furthermore, the implied preemption doctrine applies only where a plaintiff’s  
13 claims “exist ‘solely by virtue’” of an alleged FDCA infraction. *See DiCroce v. McNeil*  
14 *Nutritionals, LLC*, 82 F.4th 35, 41 (1st Cir. 2023) (citation omitted). That doctrine has no  
15 application here. Plaintiffs do not allege that Costco’s labels violate any FDA regulation; they  
16 allege that Costco’s affirmative marketing claims—“good, clean nutrition,” “cleaner ingredients,”  
17 “higher standards”—are misleading because those voluntary representations are contradicted by  
18 the undisclosed presence of toxic heavy metals in the Contaminated Products. These claims would  
19 be actionable under the Washington CPA whether or not the FDCA existed, because they are  
20 grounded in Costco’s own deceptive marketing practices, not any federal requirement.

## 21 V. CLASS ACTION ALLEGATIONS

22 193. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to  
23 Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Classes:

24 **Nationwide Class:** All persons who, from the beginning of the  
25 applicable statute of limitations period to the present, purchased the  
26 Contaminated Products from a Costco Wholesale Corporation retail  
warehouse location or Costco.com for household use and not for  
resale (the “Class”).

27 **Washington Subclass:** All persons who, from the beginning of the  
28 applicable statute of limitations period to the present, purchased the

1 Contaminated Products from a Costco Wholesale Corporation retail  
2 warehouse location or Costco.com in the State of Washington for  
household use and not for resale (the “Washington Subclass”).

3 **California Subclass:** All persons who, from the beginning of the  
4 applicable statute of limitations period to the present, purchased the  
5 Contaminated Products from a Costco Wholesale Corporation retail  
warehouse location or Costco.com in the State of California for  
household use and not for resale (the “California Subclass”).

6 **Illinois Subclass:** All persons who, from the beginning of the  
7 applicable statute of limitations period to the present, purchased the  
8 Contaminated Products from a Costco Wholesale Corporation retail  
warehouse location or Costco.com in the State of Illinois for  
household use and not for resale (the “Illinois Subclass”).

9 **Minnesota Subclass:** All persons who, from the beginning of the  
10 applicable statute of limitations period to the present, purchased the  
11 Contaminated Products from a Costco Wholesale Corporation retail  
warehouse location or Costco.com in the State of Minnesota for  
household use and not for resale (the “Minnesota Subclass”).

12 **Ohio Subclass:** All persons who, from the beginning of the  
13 applicable statute of limitations period to the present, purchased the  
14 Contaminated Products from a Costco Wholesale Corporation retail  
warehouse location or Costco.com in the State of Ohio for  
household use and not for resale (the “Ohio Subclass”).

15 **Texas Subclass:** All persons who, from the beginning of the  
16 applicable statute of limitations period to the present, purchased the  
17 Contaminated Products from a Costco Wholesale Corporation retail  
warehouse location or Costco.com in the State of Texas for  
household use and not for resale (the “Texas Subclass”).

18 194. Members of the Class, Washington Subclass, California Subclass, Illinois Subclass,  
19 Minnesota Subclass, Ohio Subclass, and Texas Subclass are sometimes, where appropriate,  
20 referred to herein collectively as “Class Members” or the “Classes.”

21 195. Excluded from the Classes are: (a) Defendant, its officers, directors, employees,  
22 agents, and affiliates; (b) the Judge(s) assigned to this case and their immediate family members;  
23 (c) any member of the Classes who timely and validly opts out of the Class; and (d) any entity in  
24 which Defendant has a controlling interest.

25 196. **Numerosity (FRCP 23(a)(1)):** The Classes consist of thousands, if not tens of  
26 thousands, of consumers. The Contaminated Products are regularly stocked items at Costco’s  
27 approximately 600 U.S. warehouse locations and are sold through Costco.com. Costco is one of  
28

1 the largest retailers in the United States, with more than 130 million cardholders. Given that the  
2 Contaminated Products are among Costco's regularly stocked dietary supplement items, sold  
3 continuously throughout the Class Period at warehouse locations nationwide and online, the  
4 number of Class Members is necessarily large. The exact number of Class Members is readily  
5 ascertainable from Costco's sales records, membership transaction data, and point-of-sale systems,  
6 which track every purchase by member number. Joinder of all Class Members is impracticable due  
7 to the large number of geographically dispersed Class Members.

8       **197. Commonality (FRCP 23(a)(2)):** There are questions of law and fact common to  
9 the Classes that predominate over any questions affecting only individual Class Members. These  
10 common questions are capable of generating common answers that will drive the resolution of the  
11 litigation. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The deceptive conduct  
12 at issue—Costco's uniform failure to disclose heavy metals in the Contaminated Products while  
13 making uniform affirmative representations of “clean nutrition” and “higher standards”—was  
14 identical as to all Class Members. Whether such conduct constitutes an unfair or deceptive practice  
15 is answerable on a class-wide basis without reference to individual circumstances. Common  
16 questions include:

- 17       a. Whether Costco engaged in unfair or deceptive acts or practices;
- 18       b. whether the Misrepresentations, partial misrepresentations, and Omissions  
19       were material to a reasonable consumer;
- 20       c. whether Costco had knowledge that the Misrepresentations, partial  
21       misrepresentations, and Omissions were material, false, deceptive, and  
22       misleading;
- 23       d. whether Costco owed a duty to disclose;
- 24       e. whether Costco knew or should have known that the Contaminated Products  
25       contained or may contain detectable levels of heavy metals, including lead,  
26       cadmium, and/or arsenic;
- 27       f. whether Costco failed to disclose that the Contaminated Products contained  
28       or may contain detectable levels of heavy metals, including lead, cadmium,  
and/or arsenic;
- g. whether Costco had exclusive knowledge of the Omissions;

- 1 h. whether Plaintiffs could have reasonably discovered the Omissions;
- 2 i. whether Costco violated Washington state law;
- 3 j. Whether Costco violated California state law;
- 4 k. Whether Costco violated Illinois state law;
- 5 l. Whether Costco violated Minnesota state law;
- 6 m. Whether Costco violated Ohio state law;
- 7 n. Whether Costco violated Texas state law;
- 8 o. Whether Costco’s conduct occurred in trade or commerce within the  
9 meaning of RCW 19.86.010(2);
- 10 p. Whether Costco’s conduct affects the public interest;
- 11 q. Whether Class Members suffered injury to their business or property;
- 12 r. Whether Costco’s conduct caused Class Members’ injuries; and
- 13 s. whether Plaintiffs and the Class Members are entitled to actual, statutory,  
14 and punitive damages; and
- 15 t. whether Plaintiffs and the Class Members are entitled to declaratory and  
16 injunctive relief.

17 198. These common questions are capable of generating common answers that will drive  
18 the resolution of the litigation. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

19 199. **Typicality (FRCP 23(a)(3)):** Plaintiffs’ claims are typical of the claims of the  
20 Classes because they arise from the same course of conduct by Costco—namely, the sale of Orgain  
21 Organic Protein Powder products containing undisclosed heavy metals without any warning or  
22 disclosure. Plaintiffs and all Class Members were exposed to the same packaging, the same product  
23 webpage representations, and the same material omissions regarding heavy metal content.  
24 Plaintiffs and all Class Members were subject to the same deceptive Misrepresentations and  
25 Omissions and suffered the same type of injury: economic loss from purchasing products they  
26 would not have purchased, or would have paid less for, had the contamination been disclosed. The  
27 claims do not require any individualized proof unique to the named Plaintiffs—the same  
28 representations, the same omissions, and the same laboratory test results establish liability as to all

1 Class Members. No defense unique to the named Plaintiffs exists that would render their claims  
2 atypical.

3       200. **Adequacy (FRCP 23(a)(4)):** Plaintiffs will fairly and adequately protect the  
4 interests of the Classes. Plaintiffs' interests do not conflict with, and are not antagonistic to, the  
5 interests of other Class Members. Plaintiffs have retained counsel experienced in consumer  
6 protection and class action litigation who will adequately represent the interests of the Classes.

7       201. **Predominance (FRCP 23(b)(3)):** Common questions of law and fact predominate  
8 over any questions affecting only individual Class Members. The central issues in this case—  
9 whether Costco's sale of products with undisclosed heavy metals constitutes an unfair, misleading,  
10 and/or deceptive practice under the Washington, California, Illinois, Minnesota, Ohio and/or Texas  
11 law, whether such conduct affects the public interest, and the appropriate measure of damages—  
12 are common to all Class Members and can be resolved on a class-wide basis.

13       202. Individual issues, if any, do not predominate. Costco's failure to disclose was  
14 uniform across all sales of the Contaminated Products. The materiality of the omitted  
15 information—including the presence of lead at levels exceeding recognized safety thresholds by  
16 more than 600%—can be assessed on a class-wide basis under an objective "reasonable consumer"  
17 standard.

18       203. **Superiority (FRCP 23(b)(3)):** A class action is the superior method for the fair  
19 and efficient adjudication of this controversy. Individual Class Members' damages may be  
20 relatively small compared to the expense and burden of individual litigation, making it impractical  
21 for individual Class Members to seek redress on their own. A class action efficiently adjudicates  
22 the claims of all members in a single proceeding, avoids inconsistent adjudications, and conserves  
23 judicial resources.

24       204. Class treatment is manageable because Costco's sales records, membership  
25 transaction data, and point-of-sale systems will identify Class Members and their purchases, and  
26 the legal and factual issues are common to the Class.

1 205. Plaintiffs know of no difficulty that will be encountered in the management of this  
2 litigation that would preclude its maintenance as a class action.

3 **VI. CLAIMS FOR RELIEF**

4 **COUNT I**

5 **Violation of the Washington Consumer Protection Act, Wash. Rev. Code Ann. §19.86.010,**  
6 ***et seq.* Against Defendant on Behalf of the Class, or Alternatively, on Behalf of Plaintiff**  
7 **Barton and the Washington Subclass**

8 206. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth  
9 herein.

10 207. Plaintiffs bring this Count on behalf of all Class Members.

11 208. Washington’s Consumer Protection Act (“Washington CPA”) declares unlawful  
12 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any  
13 trade or commerce[.]” Wash. Rev. Code Ann. §19.86.020.

14 209. Costco’s acts complained of herein are deceptive and unfair within the meaning of  
15 the Washington CPA. Wash. Rev. Code Ann. §19.96.010.

16 210. Costco committed the acts complained of herein in the course of “trade” or  
17 “commerce” within the meaning of the Washington CPA. Wash. Rev. Code Ann. §19.86.010.  
18 Costco’s decision to offer the Contaminated Products for sale was made from its offices in  
19 Washington as was its approval of the material on Costco’s website that describe the Contaminated  
20 Products.

21 211. To establish a claim under the Washington CPA, a plaintiff must prove five  
22 elements: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that  
23 impacts the public interest; (4) injury to the plaintiff in his or her business or property; and (5)  
24 causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780,  
25 719 P.2d 531 (1986).

26 212. Costco’s deceptive and unfair practices, as alleged herein, are injurious to the public  
27 interest as they have the capacity to injure other persons, including the millions of consumers who  
28 shop at its stores and on its website.

1 213. Costco's misrepresentations and partial misrepresentations, including the  
2 Misrepresentations, Omissions, active concealment, and other deceptive conduct described herein  
3 were directed at the consumer public at-large as they repeatedly occurred in the course of Costco's  
4 business and were capable of deceiving a substantial portion of the consuming public.

5 214. The facts concealed or not disclosed or misrepresented by Costco were material  
6 facts in that Plaintiffs and the Class, and other reasonable consumers, would have considered them  
7 in deciding whether to purchase the Contaminated Products. Had Plaintiffs and the Class Members  
8 known the Contaminated Products did not have the quality, ingredients, standards, and suitability  
9 for use as advertised by Costco and contained (or had a material risk of containing) heavy metals,  
10 including lead, cadmium, and arsenic, they would not have purchased the Contaminated Products  
11 or paid a premium price.

12 215. Costco alone possessed the information that was material to Plaintiffs and the Class  
13 and failed to disclose such material information to consumers.

14 216. Costco intended for Plaintiffs and the Class Members to rely on its  
15 Misrepresentations and partial misrepresentations, Omissions, active concealment, and other  
16 deceptive conduct regarding the Contaminated Products' quality, ingredients, standards, and  
17 suitability for use when purchasing the Contaminated Products, unaware of the undisclosed  
18 material facts.

19 217. Plaintiffs and the Class Members did in fact rely on the material misrepresentations  
20 and partial misrepresentations, including the Misrepresentations, and Omissions and purchased the  
21 Contaminated Products to their detriment. Given the materiality of the Omissions, Plaintiffs and  
22 the Class's reliance on the misrepresentations, partial misrepresentations, and Omissions were  
23 justifiable.

24 218. Plaintiffs and the Class Members purchased the Contaminated Products that contain  
25 undisclosed levels of heavy metals, including lead, cadmium, and arsenic, despite the availability  
26 of other protein powder products with non-detectable levels of heavy metals.

1 219. Costco charged, and Plaintiffs and the Class Members paid, a premium price for  
2 the Contaminated Products despite the availability of other protein powder products with non-  
3 detectable levels of heavy metals.

4 220. The misrepresentations and partial misrepresentations, including the  
5 Misrepresentations, Omissions, active concealment, and other deceptive conduct caused Plaintiffs  
6 and the Class Members to suffer injury in the form of actual damages when they purchased the  
7 Contaminated Products that were worth less than the price paid and that they would not have  
8 purchased at all had they known the Contaminated Products contained (or had a material risk of  
9 containing) heavy metals, including lead, cadmium, and arsenic.

10 221. Plaintiffs and the Class Members have been harmed, and that harm will continue  
11 unless Costco is enjoined from further omitting the true quality, ingredients, standards, and  
12 suitability for use of the Contaminated Products.

13 222. As a direct and proximate result of Costco's conduct, Plaintiffs and the Class  
14 suffered quantifiable economic injury to their business or property by: (1) paying a premium price  
15 for Products they reasonably believed did not contain (or have a material risk of containing) heavy  
16 metals, including lead, cadmium, and/or arsenic; (2) purchasing Products they would not have  
17 purchased without Defendant's Misrepresentations and partial misrepresentations, Omissions,  
18 active concealment, and other deceptive conduct at the prices they paid; and/or (3) receiving  
19 Products that were worth less than the price paid because they contained heavy metals, rendering  
20 the Contaminated Products less valuable than represented. This injury constitutes a tangible,  
21 quantifiable economic loss—not merely “dashed expectations”—sufficient to satisfy the  
22 Washington CPA's requirement of injury to “business or property” under RCW §19.86.090.

23 223. The price premium paid by Plaintiffs and the Class is quantifiable and measurable.  
24 As set forth above, the Contaminated Products were sold at \$0.79-\$0.80/oz, while comparable  
25 protein powder products with non-detectable levels of heavy metals were available at prices as low  
26 as \$0.42/oz. The difference between the price paid and the value received—given the undisclosed  
27  
28

1 presence of toxic heavy metals—constitutes a concrete, measurable financial loss that can be  
2 calculated on a per-unit and per-Class-Member basis using Costco’s sales records.

3 224. Costco is liable to Plaintiffs and the Class for damages in amounts to be proven at  
4 trial, including attorneys’ fees, costs, and treble damages, as well as any other remedies the Court  
5 may deem appropriate under RCW §19.86.090.

6 **COUNT II**

7 **Violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200, et seq.**  
8 **(On behalf of Plaintiff Levine, Plaintiff Morgan and the California Subclass)**

9 225. Plaintiff Levine and Plaintiff Morgan (“Plaintiffs”) incorporate by reference all  
10 preceding paragraphs as though fully set forth herein.

11 226. Plaintiffs bring this Count on behalf of all California Subclass Members.

12 227. California’s Unfair Competition Law (“UCL”) prohibits any “unlawful, unfair or  
13 fraudulent business act or practice,” as well as any “unfair, deceptive, untrue or misleading”  
14 advertising. Cal. Bus. & Prof. Code § 17200.

15 Fraudulent

16 228. A statement or practice is fraudulent under the UCL if it is likely to deceive a  
17 significant portion of the public, applying an objective reasonable consumer test.

18 229. As set forth herein, Defendant’s material misrepresentations and partial  
19 misrepresentations, including the Misrepresentations, Omissions, active concealment, and other  
20 deceptive conduct as described herein related to the Contaminated Products are likely to deceive  
21 reasonable consumers and a significant portion of the public. Specifically, Defendant’s material  
22 Misrepresentations, partial misrepresentations, Omissions, active concealment, and other  
23 deceptive conduct as described herein misleadingly marketed to reasonable consumers that the  
24 Contaminated Products were high quality, clean, and nutritious and did not contain or risk  
25 containing heavy metals, including lead, cadmium, and arsenic.

26 Unlawful

27 230. A business act or practice is “unlawful under the UCL if it violates any other law  
28 or regulation.

1           231. As alleged herein, Defendant advertised and marketed the Contaminated Products  
2 with material misrepresentations and partial misrepresentations, including the Misrepresentations,  
3 Omissions, active concealment, and other deceptive conduct, such that Defendant's acts violate  
4 at least the CLRA, California Business and Professions Code sections 1750, *et seq.*; California's  
5 False Advertising Law, California Business and Professions Code sections 17500, *et seq.*; and any  
6 other applicable laws described herein.

7 Unfair

8           232. A business act or practice is "unfair" under the UCL if the reasons, justifications,  
9 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged  
10 victims.

11           233. Defendant's conduct with respect to the advertising, marketing, and sale of the  
12 Contaminated Products was unfair because Defendant's conduct was immoral, unethical,  
13 unscrupulous, or substantially injurious to consumers, and the utility of its conduct, if any, does  
14 not outweigh the gravity of the harm to its victims.

15           234. Defendant's conduct with respect to the advertising, marketing, and sale of the  
16 Contaminated Products is also unfair because the consumer injury is substantial, not outweighed  
17 by benefits to consumers or competition, and not one that consumers themselves can reasonably  
18 avoid. Specifically, the increase in profits obtained by Defendant through the misleading  
19 advertising, marketing, and sale of the Contaminated Products does not outweigh the harm to the  
20 Plaintiffs and members of the California Subclass who were deceived into purchasing the  
21 Contaminated Products unaware that they contain heavy metals and are of the type that can  
22 increase the risk of detriment to their health. Consumers could not have reasonably avoided the  
23 harm because this would have required that they conduct their own research into the heavy metal  
24 content of the Contaminated Products, which could only feasibly be revealed by laboratory testing,  
25 which is not a reasonable expectation. Further, the harm could have easily been avoided by  
26 Defendant as the costs would be minimal to indicate to consumers that the Contaminated Products

1 contain heavy metals or that these toxins can accumulate over time in the body to the point where  
2 detrimental health effects can occur.

3 235. Defendant profited from the sale of the falsely, deceptively, and unlawfully  
4 advertised Contaminated Products to unsuspecting consumers.

5 236. Plaintiffs and other members of the California Subclass are likely to continue to be  
6 damaged by Defendant’s unlawful, unfair, and/or fraudulent acts or practices because Defendant  
7 continues to disseminate misleading information. Thus, injunctive relief enjoining Defendant’s  
8 deceptive practices is proper.

9 237. Defendant’s conduct caused and continues to cause substantial injury to Plaintiffs  
10 and the other members of the California Subclass, who suffered injury in fact as a result of  
11 Defendant’s unlawful conduct.

12 238. Defendant charged, and Plaintiffs and California Subclass Members paid, a  
13 premium price for the Contaminated Products despite the availability of comparable, lesser-priced  
14 protein powder products from other manufacturers.

15 239. In accordance with California Business & Professions Code section 17203,  
16 Plaintiffs seek an order enjoining Defendant from continuing to conduct business through  
17 unlawful, unfair, and/or fraudulent acts and practices.

18 240. Plaintiffs also seek an order for the restitution of all monies from the sale of the  
19 Contaminated Products that were unjustly acquired by Defendant through its acts of unlawful  
20 competition.

21 241. Because Plaintiffs’ and the California Subclass Members’ claims under the “unfair”  
22 prong of the UCL sweep more broadly than their claims under the CLRA or UCL’s “fraudulent”  
23 prong, their legal remedies are inadequate to fully compensate them for all of Defendant’s  
24 behavior.

COUNT III

**Violations of California’s False Advertising Law, Cal. Bus. & Prof. Code §17500, et seq.  
(On behalf of Plaintiff Levine, Plaintiff Morgan and the California Subclass)**

242. Plaintiff Levine and Plaintiff Morgan (“Plaintiffs”) incorporate by reference all preceding paragraphs as though fully set forth herein.

243. California’s False Advertising Law (“FAL”) provides that “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services ... to make or disseminate or cause to be made or disseminated ... any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

244. As alleged herein, Defendant misleadingly marketed to reasonable consumers that the Contaminated Products were high quality, clean, and nutritious, and did not contain heavy metals. Plaintiffs and members of the California Subclass suffered injury in fact as a result of Defendant’s actions as set forth herein because they purchased the Contaminated Products in reliance on Defendant’s false and misleading marketing claims stating or suggesting that the Contaminated Products were high quality, clean, and nutritious and do not contain heavy metals.

245. Defendant’s business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Defendant advertised the Contaminated Products in a manner that is untrue and misleading, which Defendant knew or reasonably should have known.

246. Defendant profited from the sale of the falsely and deceptively advertised Contaminated Products to unsuspecting consumers, including Plaintiffs and the California Subclass.

247. Defendant’s acts and practices deceived Plaintiffs and members of the California Subclass at large. Plaintiffs and members of the California Subclass relied on Defendant’s misleading and deceptive representations.

1 248. Through its unfair acts and practices, Defendant unlawfully obtained money from  
2 Plaintiffs and the California Subclass. As such, Plaintiffs request that this Court order Defendant  
3 to restore this money to them and all members of the California Subclass. Plaintiffs further seek  
4 an award of attorneys' fees and costs under California Code of Civil Procedure section 1021.5.

5 249. Pursuant to California Business and Professions Code section 17535, Plaintiffs, on  
6 behalf of themselves and members of the California Subclass, seek an order enjoining Defendant  
7 from continuing to engage in deceptive business practices, false advertising, and any other act  
8 prohibited by law, including those set forth herein.

9 250. Because the Court has broad discretion to award restitution under the FAL and  
10 could, when assessing restitution under the FAL, apply a standard different than that applied to  
11 assessing damages under the CLRA, and restitution is not limited to returning to Plaintiffs and  
12 members of the California Subclass monies in which they have an interest, but more broadly serves  
13 to deter the offender and others from future violations, the legal remedies under the CLRA and  
14 commercial code are more limited than the equitable remedies under the FAL, and are therefore  
15 inadequate.

#### 16 COUNT IV

#### 17 **Violations of California's Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.** 18 **(On behalf of Plaintiff Levine, Plaintiff Morgan, and the California Subclass)**

19 251. Plaintiff Levine and Plaintiff Morgan ("Plaintiffs") incorporate by reference all  
20 preceding paragraphs as though fully set forth herein.

21 252. Plaintiffs and each member of the California Subclass are consumers within the  
22 meaning of California Civil Code section 1761(d) and have engaged in transactions within the  
23 meaning of California Civil Code sections 1761(e) and 1770.

24 253. Defendant is a "person" within the meaning of California Civil Code  
25 section 1761(c).

26 254. The Contaminated Products are "goods" within the meaning of California Civil  
27 Code sections 1761(a).

1 255. Plaintiffs and each California Subclass Member’s purchases of the Products  
2 constituted a “transaction” as that term is defined in California Civil Code section 1761(e).

3 256. Defendant’s conduct alleged herein violates the following provisions of the CLRA:

- 4 a) California Civil Code section 1770(a)(5), by failing to make any mention of the  
5 presence (or risk) of heavy metals in the Contaminated Products;
- 6 b) California Civil Code section 1770(a)(7), by knowingly, recklessly, and/or  
7 intentionally representing that the Contaminated Products were of a particular  
8 standard, quality, or grade, when they were of another;
- 9 c) California Civil Code section 1770(a)(9), by knowingly, recklessly, and/or  
10 intentionally advertising the Contaminated Products with intent not to sell them  
11 as advertised; and
- 12 d) California Civil Code section 1770(a)(16), by representing that the  
13 Contaminated Products have been supplied in accordance with previous  
14 statements when they have not.

15 257. Defendant profited from the sale of the misleadingly, falsely, deceptively, and  
16 unlawfully advertised Products to unsuspecting consumers. Specifically, Defendant’s  
17 misrepresentations and partial misrepresentations, including the Misrepresentations, Omissions,  
18 active concealment, and other deceptive, unfair, and misleading conduct described herein  
19 misleadingly marketed to reasonable consumers that the Contaminated Products were high quality,  
20 clean, and nutritious, and did not contain or risk containing heavy metals, including lead, cadmium,  
21 and arsenic.

22 258. Defendant made both misrepresentations and partial misrepresentations, including  
23 the Misrepresentations, that required it to fully disclose the presence and material risk of heavy  
24 metals in the Contaminated Products.

25 259. Defendant’s wrongful business practices constituted, and constitute, a continuing  
26 course of conduct in violation of the CLRA.

1 260. Plaintiffs sent notice of the violations herein to Defendant pursuant to the CLRA  
2 on July 2, 2026.

3 261. Plaintiffs and members of the California Subclass have suffered harm and seek  
4 injunctive relief under the CLRA.

5 **COUNT V**

6 **Violations of the Illinois Consumer Fraud and Deceptive Practices Act,**  
7 **815 Ill. Comp. Stat. §505/1, et seq.**  
8 **(On behalf of Plaintiff Jaroll and the Illinois Subclass)**

9 262. Plaintiff Jaroll incorporates by reference all preceding paragraphs as though fully  
10 set forth herein.

11 263. Defendant’s misrepresentations, partial misrepresentations, omissions,  
12 concealment, and other deceptive conduct as described herein constitute a violation of the Illinois  
13 Consumer Fraud and Deceptive Practices Act (“ICFA”). 815 Ill. Comp. Stat. § 505/1, et seq.

14 264. Plaintiff Jaroll and the Illinois Subclass and Defendant are “persons” within the  
15 meaning of ICFA. 815 Ill. Comp. Stat. § 505/1(c).

16 265. The Contaminated Products are “merchandise.” 815 Ill. Comp. Stat. § 505/1(b).

17 266. There was a sale of merchandise. 815 Ill. Comp. Stat. § 505/1(d).

18 267. The conduct described herein constitutes a violation of ICFA. 815 Illinois  
19 Compiled Statute §505/1, et seq.

20 268. Defendant engaged in a deceptive act or practice in violation of ICFA by knowingly  
21 misrepresenting, concealing, omitting, or failing to disclose the Contaminated Products’ true  
22 quality, ingredients, standards, and suitability for use.

23 269. Defendant’s deceptive acts and practices are continuing.

24 270. Defendant knew the Contaminated Products did not have the quality, or standards  
25 as described above because they contained heavy metals.

26 271. Defendant intended that Plaintiff Jaroll and the Illinois Subclass would rely on the  
27 overall impression of the packaging, along with the Misrepresentations, partial misrepresentations,  
28 Omissions, active concealment, and other deceptive conduct regarding the Contaminated

1 Products' quality and standards when deciding to purchase the Contaminated Products, unaware  
2 of the undisclosed and misleading material facts.

3 272. Defendant's misrepresentations and partial misrepresentations, including the  
4 Misrepresentations, Omissions, active concealment, and other deceptive conduct occurred before  
5 Plaintiff Jaroll and members of the Illinois Subclass decided to purchase the Contaminated  
6 Products.

7 273. Plaintiff Jaroll and the Illinois Subclass relied on, and were in fact deceived by,  
8 Misrepresentations, partial misrepresentations, Omissions, active concealment, and other  
9 deceptive conduct with respect to the Contaminated Products' quality and standards.

10 274. The facts misrepresented, concealed, and/or not disclosed by Defendant were  
11 material facts in that Plaintiff Jaroll, the Illinois Subclass, and other reasonable consumers would  
12 have considered them in deciding whether to purchase the Contaminated Products. Had Plaintiff  
13 Jaroll and members of the Illinois Subclass known the Contaminated Products contained heavy  
14 metals, they would not have purchased the Contaminated Products or paid the premium price.

15 275. Defendant's misrepresentations and partial misrepresentations, including the  
16 Misrepresentations, Omissions, active concealment, and other deceptive conduct as described  
17 herein repeatedly occurred in the course of Defendant's trade or commerce and were capable of  
18 deceiving a substantial portion of the consuming public.

19 276. Defendant's misrepresentations, partial misrepresentations, omissions and other  
20 deceptive acts or practices caused Plaintiff Jaroll and the Illinois Subclass to suffer injury in the  
21 form of actual damages when they purchased the Contaminated Products that were worth less than  
22 the price they paid and that they would not have purchased had they known the Contaminated  
23 Products contained heavy metals, including lead, cadmium, and arsenic.

24 277. As a direct and proximate result of Defendant's conduct, Plaintiff Jaroll and the  
25 Illinois Subclass suffered quantifiable economic injury to their business or property by: (1) paying  
26 a premium price for Products they reasonably believed did not contain (or have a material risk of  
27 containing) heavy metals, including lead, cadmium, and/or arsenic; (2) purchasing Products they  
28

1 would not have purchased without Defendant’s Misrepresentations and partial misrepresentations,  
2 Omissions, active concealment, and other deceptive conduct at the prices they paid; and/or (3)  
3 receiving Products that were worth less than the price paid because they contained heavy metals,  
4 rendering the Contaminated Products less valuable than represented

5 278. Plaintiff Jaroll is entitled to pursue a claim on behalf of the Illinois Subclass against  
6 Defendant for actual damages, punitive damages, injunctive relief, other equitable relief, and  
7 attorneys’ fees and costs to remedy Defendant’s violations of the ICFA pursuant to 815 ILCS  
8 505/10a.

9 **COUNT VI**

10 **Violations of Minnesota’s Unlawful Trade Practices Act,**  
11 **Minn. Stat. §325D.13, *et seq.***  
12 **(On behalf of Plaintiff Schmitt and the Minnesota Subclass)**

13 279. Plaintiff Schmitt incorporates by reference all preceding paragraphs as though fully  
14 set forth herein.

15 280. Defendant is a “person” within the meaning of the Minnesota Unlawful Trade  
16 Practices Act (“MUTPA”).

17 281. Defendant violated the MUTPA by knowingly misleading and deceiving Plaintiff  
18 Schmitt and the Minnesota Subclass through its Misrepresentations, partial misrepresentations,  
19 Omissions, active concealment, and other deceptive conduct regarding the presence of heavy  
20 metals in the Contaminated Products.

21 282. Defendant knew or should have known the Contaminated Products and their  
22 ingredients were not of the true quality advertised because they contained (or had a material risk  
23 of containing) heavy metals, including lead, cadmium, and arsenic.

24 283. Defendant’s misrepresentations and partial misrepresentations, including the  
25 Misrepresentations, Omissions, active concealment, and other deceptive conduct described herein  
26 were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff Schmitt and the  
27 Minnesota Subclass with respect to the Contaminated Products’ true quality, ingredients,  
28 standards, and suitability for use.

1 284. Defendant intended for Plaintiff Schmitt and the Minnesota Subclass to rely on its  
2 Misrepresentations, partial misrepresentations, Omissions, active concealment, and other  
3 deceptive conduct regarding the Contaminated Products' true quality, ingredients, standards, and  
4 suitability for use.

5 285. Defendant's Misrepresentations, partial misrepresentations, Omissions, active  
6 concealment, and other deceptive conduct described herein occurred repeatedly in its trade or  
7 business and were capable of deceiving a substantial portion of the consuming public.

8 286. Defendant was under a duty to disclose the Omissions because it actively concealed  
9 material information from consumers regarding the presence or risk of heavy metals in the  
10 Contaminated Products and undertook the disclosure of information about the Contaminated  
11 Products on the Contaminated Products' point-of-sale.

12 287. Defendant failed to discharge its duty to disclose the Omissions.

13 288. The facts misrepresented, partially misrepresented, actively concealed, omitted, or  
14 not disclosed by Defendant were material in that Plaintiff Schmitt, the Minnesota Subclass, and  
15 any reasonable consumer would have considered them in deciding whether to purchase the  
16 Contaminated Products. Had Plaintiff Schmitt and the Minnesota Subclass known the  
17 Contaminated Products did not have the quality advertised by Defendant, they would not have  
18 purchased the Contaminated Products or paid the premium price.

19 289. Defendant charged, and Plaintiff Schmitt and the Minnesota Subclass Members  
20 purchased the Contaminated Products and paid, a premium for the Contaminated Products despite  
21 the availability of comparable, lesser-priced protein powdered products from other manufacturers.

22 290. Defendant's unlawful conduct is continuing with no indication that it intends to  
23 cease this fraudulent course of conduct.

24 291. As a direct and proximate result of Defendant's conduct, Plaintiff Schmitt and the  
25 Minnesota Subclass suffered actual damages by: (1) paying a premium price for the Contaminated  
26 Products they reasonably believed did not contain (or have a material risk of containing) heavy  
27 metals, including lead, cadmium, and arsenic; (2) purchasing the Contaminated Products they  
28

1 would not have purchased without Defendant’s Misrepresentations and partial misrepresentations,  
2 Omissions, active concealment, and other deceptive conduct at the prices they paid; and/or (3)  
3 receiving Products that were worth less than the price paid because they contained heavy metals,  
4 rendering the Contaminated Products less valuable than represented.

5 292. Plaintiff Schmitt and the members of the Minnesota Subclass would not have  
6 purchased the Contaminated Products at all had they known that Contaminated Products do not  
7 conform to the advertising or marketing contained on Defendant’s point-of-sale.

8 293. Pursuant to Minnesota Statute sections 8.31, subdivision 3a, and 325D.15, Plaintiff  
9 Schmitt and the Minnesota Subclass seek actual damages, injunctive and declaratory relief,  
10 attorneys’ fees, costs, and any other just and proper relief available thereunder for Defendant’s  
11 violations of the MUTPA.

12 **COUNT VII**

13 **Violations of Minnesota’s Uniform Deceptive Trade Practices Act,**  
14 **Minn. Stat. §325D.44, et seq.**  
15 **(On behalf of Plaintiff Schmitt and the Minnesota Subclass)**

16 294. Plaintiff Schmitt incorporates by reference all preceding paragraphs as though fully  
17 set forth herein.

18 295. Defendant is a “person” within the meaning of the Minnesota Uniform Deceptive  
19 Trade Practices Act (“MUDTPA”).

20 296. Defendant willingly engaged in deceptive trade practices, in violation of the  
21 MUDTPA, by knowingly misleading and deceiving Plaintiff Schmitt and the Minnesota Subclass  
22 through its Misrepresentations, partial misrepresentations, Omissions, active concealment, and  
23 other deceptive conduct regarding the presence of heavy metals in the Contaminated Products.

24 297. Defendant knew or should have known the Contaminated Products contained (or  
25 had a material risk of containing) heavy metals, including lead, cadmium, and arsenic.

26 298. Defendant’s misrepresentations and partial misrepresentations, including the  
27 Misrepresentations, Omissions, active concealment, and other deceptive conduct described herein  
28 were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff Schmitt and the

1 Minnesota Subclass with respect to the Contaminated Products' quality, ingredients, standards,  
2 and suitability for use.

3 299. Defendant intended that Plaintiff Schmitt and the Minnesota Subclass would rely  
4 on its Misrepresentations, partial misrepresentations, Omissions, active concealment, and other  
5 deceptive conduct regarding the Contaminated Products' quality, ingredients, standards, and  
6 suitability for use.

7 300. Defendant's Misrepresentations, partial misrepresentations, Omissions, active  
8 concealment, and other deceptive conduct described herein occurred repeatedly in its trade or  
9 business and were capable of deceiving a substantial portion of the consuming public.

10 301. The facts concealed or not disclosed by Defendant were material facts in that  
11 Plaintiff Schmitt, the Minnesota Subclass, and any reasonable consumer would have considered  
12 them in deciding whether to purchase the Contaminated Products. Had Plaintiff Schmitt and the  
13 Minnesota Subclass known the Contaminated Products did not have the quality advertised by  
14 Defendant, they would not have purchased the Contaminated Products or paid a premium price.

15 302. Defendant charged, and Plaintiff Schmitt and the Minnesota Subclass Members  
16 purchased the Contaminated Products and paid, a premium price for the Contaminated Products  
17 despite the availability of comparable, lesser-priced powdered protein products from other  
18 manufacturers.

19 303. Defendant intended that Plaintiff Schmitt and the Minnesota Subclass would rely  
20 on its misrepresentations and partial misrepresentations, including the Misrepresentations,  
21 Omissions, active concealment, and other deceptive conduct described herein when purchasing the  
22 Contaminated Products, unaware of the undisclosed material facts. This conduct constitutes  
23 consumer fraud.

24 304. Defendant's unlawful conduct is continuing, with no indication it intends to cease  
25 this fraudulent course of conduct.

26 305. Defendant was under a duty to disclose the Omissions because it actively concealed  
27 material information from consumers regarding the presence or risk of heavy metals in the  
28

1 Contaminated Products and undertook the disclosure of information about the Contaminated  
2 Products on the Contaminated Products’ point-of-sale.

3 306. Defendant failed to discharge its duty to disclose the Omissions about the  
4 Contaminated Products.

5 307. As a direct and proximate result of Defendant’s conduct, Plaintiff Schmitt and the  
6 Minnesota Subclass suffered actual damages by: (1) paying a premium price for Contaminated  
7 Products they reasonably believed did not contain (or have a material risk of containing) heavy  
8 metals, including lead, cadmium, and arsenic; (2) purchasing Contaminated Products they would  
9 not have purchased without Defendant’s Misrepresentations and partial misrepresentations,  
10 Omissions, active concealment, and other deceptive conduct at the prices they paid; and/or (3)  
11 receiving Products that were worth less than the price paid because they contained heavy metals,  
12 rendering the Contaminated Products less valuable than represented.

13 308. Plaintiff Schmitt and the members of the Minnesota Subclass would not have  
14 purchased the Contaminated Products at all had they known the truth about the Contaminated  
15 Products’ true quality, ingredients, standards, and suitability for use.

16 309. Pursuant to Minnesota Statute sections 8.31, subdivision 3a, and 325D.45, Plaintiff  
17 Schmitt and the Minnesota Subclass seek actual damages, injunctive and declaratory relief,  
18 attorneys’ fees, costs, and any other just and proper relief available thereunder for Defendant’s  
19 violations of the MUDTPA.

20 **COUNT VIII**

21 **Violations of Minnesota’s False Statement in Advertising Act,**  
22 **Minn. Stat. §325F.67, et seq.**  
23 **(On behalf of Plaintiff Schmitt and the Minnesota Subclass)**

24 310. Plaintiff Schmitt incorporates by reference all preceding paragraphs as though fully  
25 set forth herein.

26 311. Plaintiff Schmitt and the Minnesota Subclass purchased “goods,” specifically the  
27 Contaminated Products discussed herein, and are a “person” within the meaning of the False  
28 Statement in Advertising Act (“FSAA”).

1 312. Plaintiff Schmitt and the Minnesota Subclass purchased the Contaminated Products  
2 because of the misrepresentations and partial misrepresentations, including the  
3 Misrepresentations, Omissions, active concealment, and other deceptive conduct, asserted on the  
4 Contaminated Products' point-of-sale that were made, published, disseminated, circulated, and  
5 placed before the public by Defendant.

6 313. By engaging in the conduct as described herein, Defendant continues to violate  
7 Minnesota Statute section 325F.67.

8 314. Defendant's Misrepresentations, partial misrepresentations, Omissions, active  
9 concealment, and other deceptive business practices described herein, include, by way of example,  
10 representations regarding the Contaminated Products' quality, ingredients, standards, and  
11 suitability for use.

12 315. Defendant knew or should have known the Contaminated Products did not have the  
13 quality, ingredients, standards, and suitability for use described above because they contained (or  
14 materially risked) undisclosed heavy metals, including lead, cadmium, and arsenic.

15 316. The Misrepresentations, partial misrepresentations, Omissions, active  
16 concealment, and other deceptive conduct, were likely to deceive or cause misunderstanding and  
17 did in fact deceive Plaintiff Schmitt and the Minnesota Subclass with respect to the Contaminated  
18 Products' quality, ingredients, standards, and suitability for use.

19 317. Defendant's conduct, such as the Misrepresentations, partial misrepresentations,  
20 Omissions, active concealment, and other deceptive conduct described herein occurred repeatedly  
21 in Defendant's trade or business and were capable of deceiving a substantial portion of the  
22 consuming public.

23 318. The Misrepresentations, partial misrepresentations, Omissions, active  
24 concealment, and other deceptive conduct, were made to customers in Minnesota, including  
25 Plaintiff Schmitt and the Minnesota Subclass, thus the cause of action serves the public benefit of  
26 informing Minnesota consumers that the Contaminated Products contained (or had a material risk  
27 of containing) heavy metals, including lead, cadmium, and arsenic.

1 319. The facts concealed, omitted, or not disclosed by Defendant were material in that  
2 Plaintiff Schmitt, the Minnesota Subclass, and any reasonable consumer would have considered  
3 them in deciding whether to purchase the Contaminated Products. Had Plaintiff Schmitt and the  
4 Minnesota Subclass known the Contaminated Products did not have the quality as advertised by  
5 Defendant, they would not have purchased the Contaminated Products or paid the premium price.

6 320. Defendant charged, and Plaintiff Schmitt and the Minnesota Subclass Members  
7 purchased the Contaminated Products and paid, a premium price for the Contaminated Products  
8 despite the availability of comparable, lesser-priced powdered protein products from other  
9 manufacturers.

10 321. Defendant intended that Plaintiff Schmitt and the Minnesota Subclass would rely  
11 on the deception by purchasing the Contaminated Products, unaware of the Misrepresentations,  
12 partial misrepresentations, Omissions, active concealment, and other undisclosed material facts.  
13 This conduct constitutes consumer fraud.

14 322. Defendant's unlawful conduct is continuing, with no indication that it intends to  
15 cease this fraudulent course of conduct.

16 323. As a direct and proximate result of Defendant's conduct, Plaintiff Schmitt and the  
17 Minnesota Subclass suffered actual damages by: (1) paying a premium price for the Contaminated  
18 Products they reasonably believed did not contain (or have a material risk of containing) heavy  
19 metals, including lead, cadmium, and arsenic; (2) purchasing Contaminated Products they would  
20 not have purchased without Defendant's Misrepresentations and partial misrepresentations,  
21 Omissions, active concealment, and other deceptive conduct at the prices they paid; and/or (3)  
22 receiving Contaminated Products that were worth less than the price paid because they contained  
23 heavy metals, rendering the Contaminated Products less valuable than represented.

24 324. Plaintiff Schmitt and the members of the Minnesota Subclass would not have  
25 purchased the Contaminated Products at all had they known of the presence or material risk of  
26 heavy metals, including lead, cadmium, and arsenic.

1 325. Pursuant to Minnesota Statute sections 8.31, subdivision 3a, and 325F.67, Plaintiff  
2 Schmitt and the Minnesota Subclass seek actual damages, injunctive and declaratory relief,  
3 attorneys' fees, costs, and any other just and proper relief available thereunder for Defendant's  
4 violations of the FSAA.

5 **COUNT IX**

6 **Violations of Minnesota's Prevention of Consumer Fraud Act,**  
7 **Minn. Stat. §325F.69, et seq.**  
8 **(On behalf of Plaintiff Schmitt and the Minnesota Subclass)**

9 326. Plaintiff Schmitt incorporates by reference all preceding paragraphs as though fully  
10 set forth herein.

11 327. Plaintiff Schmitt, at all times relevant hereto, was a citizen of the State of  
12 Minnesota.

13 328. Defendant is a "person" within the meaning of the Minnesota Prevention of  
14 Consumer Fraud Act ("MPCFA").

15 329. The misrepresentations and partial misrepresentations, including the  
16 Misrepresentations, Omissions, active concealment, and other deceptive conduct described herein  
17 were made in connection with the sale of the Contaminated Products to Plaintiff Schmitt and the  
18 Minnesota Subclass.

19 330. Defendant knowingly acted, used, and employed fraud, false pretenses, and  
20 deceptive practices in connection with the sale of the Contaminated Products to Plaintiff Schmitt  
21 and the Minnesota Subclass. Specifically, Defendant failed to disclose the Contaminated Products  
22 contained levels or material risk of heavy metals, including lead, cadmium, and arsenic.

23 331. Defendant knew or should have known the Contaminated Products did not have the  
24 quality reasonable consumers expected because they included undisclosed (or the material risk of)  
25 significant levels of heavy metals, that do not conform to the Contaminated Products' point-of-  
26 sale. Defendant intended for Plaintiff Schmitt and the Minnesota Subclass to rely on the  
27 Contaminated Products' point-of-sale in deciding whether to purchase the Contaminated Products.

1 332. Defendant's unfair or deceptive acts or practices were likely to deceive reasonable  
2 consumers about the Contaminated Products' quality, ingredients, standards, and suitability for  
3 use, and, by extension, the true value of the Contaminated Products.

4 333. Plaintiff Schmitt and the Minnesota Subclass relied on, and were in fact deceived  
5 by, Defendant's misrepresentations and partial misrepresentations, including the  
6 Misrepresentations, Omissions, active concealment, and other deceptive conduct described herein  
7 with respect to the Contaminated Products' quality, ingredients, standards, and suitability for use  
8 in deciding to purchase them over competitors' powdered protein products.

9 334. The facts concealed, omitted, or not disclosed by Defendant were material in that  
10 Plaintiff Schmitt, the Minnesota Subclass, and any reasonable consumer would have considered  
11 them in deciding whether to purchase the Contaminated Products. Had Plaintiff Schmitt and the  
12 Minnesota Subclass known the Contaminated Products did not have the quality advertised by  
13 Defendant, they would not have purchased the Contaminated Products or paid the premium price.

14 335. Defendant charged, and Plaintiff Schmitt and the Minnesota Subclass Members  
15 purchased the Contaminated Products and paid, a premium price for the Contaminated Products  
16 despite the availability of comparable, lesser-priced powdered protein products from other  
17 manufacturers.

18 336. Defendant's misrepresentations and partial misrepresentations, including the  
19 Misrepresentations and Omissions, were made to customers in Minnesota, including Plaintiff  
20 Schmitt and the Minnesota Subclass, thus the cause of action serves the public benefit of informing  
21 Minnesota consumers that the Contaminated Products contained (or had a material risk of  
22 containing) significant levels of heavy metals, including lead, cadmium, and arsenic.

23 337. Defendant's unlawful conduct is continuing, with no indication that it intends to  
24 cease this fraudulent course of conduct.

25 338. As a direct and proximate result of Defendant's conduct, Plaintiff Schmitt and the  
26 Minnesota Subclass suffered actual damages by: (1) paying a premium price for the Contaminated  
27 Products they reasonably believed did not contain (or have a material risk of containing) heavy  
28

1 metals, including lead, cadmium, and arsenic; (2) purchasing Contaminated Products they would  
2 not have purchased without Defendant's Misrepresentations and partial misrepresentations,  
3 Omissions, active concealment, and other deceptive conduct at the prices they paid; and/or (3)  
4 receiving Products that were worth less than the price paid because they contained heavy metals,  
5 rendering the Contaminated Products less valuable than represented.

6 339. Plaintiff Schmitt and the members of the Minnesota Subclass would not have  
7 purchased the Contaminated Products at all had they known of the presence of heavy metals,  
8 including lead, cadmium, and arsenic.

9 340. Pursuant to Minnesota Statute sections 8.31, subdivision 3a, and 325F.69, Plaintiff  
10 Schmitt and the Minnesota Subclass seek actual damages, injunctive and declaratory relief,  
11 attorneys' fees, costs, and any other just and proper relief available thereunder for Defendant's  
12 violations of the MPCFA.

13 **COUNT X**

14 **Violations of the Ohio Consumer Sales Practices Act,**  
15 **Ohio Rev. Code Ann. §1345.01, et seq.**  
16 **(On behalf of Plaintiff Baltzer and the Ohio Subclass)**

17 341. Plaintiff Baltzer incorporates by reference all preceding paragraphs as though fully  
18 set forth herein.

19 342. The Ohio Consumer Sales Practices Act ("Ohio CSPA") broadly prohibits unfair  
20 or deceptive acts or practices in connection with a consumer transaction. Specifically, and without  
21 limitation of the broad prohibition, the Ohio CSPA prohibits suppliers from representing that "a  
22 specific price advantage exists, if it does not." Ohio Rev. Code Ann. § 1345.02.

23 343. Defendant is a "supplier" as that term is defined in the Ohio CSPA, as it sold and  
24 placed the Contaminated Products into trade which Plaintiff Baltzer and members of the Ohio  
25 Subclass purchased. Ohio Rev. Code Ann. § 1345.01(C).

26 344. Plaintiff Baltzer and the Ohio Subclass Members purchased the Contaminated  
27 Products for personal, family, or household use and are therefore "consumers" as that term is  
28 defined in the Ohio CSPA. Ohio Rev. Code Ann. § 1345.01(D).

1 345. The purchases of the Contaminated Products by Plaintiff Baltzer and the Ohio  
2 Subclass Members are “consumer transactions” within the meaning of the Ohio CSPA. Ohio Rev.  
3 Code Ann. § 1345.01(A).

4 346. Defendant’s actions, as set forth above, occurred in the conduct of trade and  
5 commerce.

6 347. In the course of its business and consumer transactions, Defendant’s  
7 Misrepresentations, partial misrepresentations, Omissions, active concealment, and other  
8 deceptive conduct described herein constituted unfair or deceptive acts or practices.

9 348. Defendant also engaged in unlawful trade practices by employing deception,  
10 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of  
11 material facts with the intent that Plaintiff Baltzer and the Ohio Subclass Members rely upon such  
12 concealment, suppression or omission, in connection with the sale of the Contaminated Products.

13 349. It is an unfair or deceptive act or practice for Defendant to state that the  
14 Contaminated Products have “sponsorship, approval, performance characteristics, accessories,  
15 uses or benefits that [they] do not have.” Ohio Rev. Code Ann. § 1345.02(B)(1).

16 350. It is also an unfair or deceptive act or practice for Defendant to represent that the  
17 Contaminated Products are “of a particular standard, quality, grade, [or] style[.]” Ohio Rev. Code  
18 Ann. § 1345.02(B)(2).

19 351. But for Defendant’s Misrepresentations, partial misrepresentations, Omissions,  
20 active concealment, and other deceptive conduct, Plaintiff Baltzer and the Ohio Subclass Members  
21 would not have purchased Contaminated Products or would have paid substantially less for them.

22 352. Plaintiff Baltzer and the Ohio Subclass Members were uniformly exposed to  
23 Defendant’s Misrepresentations, partial misrepresentations, Omissions, active concealment, and  
24 other deceptive conduct because Defendant marketed and advertised the Contaminated Products  
25 at the point-of-sale. These Misrepresentations, partial misrepresentations, Omissions, active  
26 concealment, and other deceptive conduct are misleading and deceptive for the reasons described  
27 herein.

1 353. Defendant's Misrepresentations, partial misrepresentations, Omissions, active  
2 concealment, and other deceptive conduct regarding the Contaminated Products are material to  
3 reasonable consumers, including Plaintiff Baltzer and the Ohio Subclass, for the reasons described  
4 herein and were designed to affect consumer decisions and conduct.

5 354. Defendant understood and intended, or should have understood and intended, that  
6 the Misrepresentations, partial misrepresentations, Omissions, active concealment, and other  
7 deceptive conduct would influence consumer behavior. Defendant also understood that its failure  
8 to include the necessary explanatory information regarding these statements was material to  
9 consumers' decisions regarding what powdered protein product to purchase.

10 355. Defendant also understands, or should have understood, it has an obligation to  
11 avoid misleading the public regarding the Contaminated Products.

12 356. Because the information underlying the Misrepresentations, partial  
13 misrepresentations, Omissions, active concealment, and other deceptive conduct could not be  
14 found in a location to which consumers had reasonable access, consumers could not have  
15 reasonably avoided the losses caused by the Misrepresentations, partial misrepresentations,  
16 Omissions, active concealment, and other deceptive conduct forming the basis for the price of the  
17 Contaminated Products.

18 357. Defendant's Misrepresentations, partial misrepresentations, Omissions, active  
19 concealment, and other deceptive conduct communicated at the point-of-sale constitute unfair  
20 methods of competition and unfair and/or deceptive acts or practices in the conduct of trade or  
21 commerce for sales of the Contaminated Products to consumers.

22 358. Defendant's acts and practices directly, foreseeably, and proximately caused  
23 Plaintiff Baltzer and the Ohio Subclass Members to suffer an injury-in-fact and/or actual damages,  
24 as described above. As a result, Plaintiff Baltzer and the Ohio Subclass Members suffered an  
25 ascertainable loss when they paid a premium for the Contaminated Products above and beyond  
26 what they should have paid, and provided Defendant more in revenues from the sale of the  
27 Contaminated Products than it should have received absent its false and misleading  
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1 representations, Omissions, active concealment, and other deceptive conduct. Plaintiff Baltzer and  
2 the Ohio Subclass Members were also deprived of the benefit of their bargain since the  
3 Contaminated Products are worth less than they would have been absent Defendant's deceptive  
4 and unfair practices.

5 359. Defendant's acts and practices offend public policy as established by statute and  
6 case law.

7 360. Defendant's acts and practices are immoral, unethical, oppressive, and  
8 unscrupulous.

9 361. Defendant's conduct materially affected material information regarding its  
10 products to consumers nationwide and in each state where the Contaminated Products were sold.  
11 Defendant's conduct thus improperly distorted the information available to the public, including  
12 Plaintiff Baltzer and the Ohio Subclass, regarding the Contaminated Products.

13 362. The facts concealed or not disclosed or misrepresented by Defendant were material  
14 facts in that Plaintiff Baltzer and the Ohio Subclass, and other reasonable consumers, would have  
15 considered them in deciding whether to purchase the Contaminated Products. Had Plaintiff Baltzer  
16 and the Ohio Subclass Members known the Contaminated Products did not have the quality,  
17 ingredients, standards, and suitability for use as advertised by Defendant and contained (or had a  
18 material risk of containing) heavy metals, including lead, cadmium, and arsenic, they would not  
19 have purchased the Contaminated Products or paid a premium price.

20 363. Defendant's actions caused consumers, Plaintiff Baltzer, and the Ohio Subclass  
21 Members to overpay for the Contaminated Products. These injuries are not outweighed by any  
22 countervailing benefits, or any other legally cognizable benefit, to consumers or competition.

23 364. Defendant's conduct substantially injured actual and potential consumers,  
24 including Plaintiff Baltzer and the Ohio Subclass in connection with the sale of the Contaminated  
25 Products.

26 365. Plaintiff Baltzer specifically does not allege herein a claim for violation of Ohio  
27 Revised Code section 1345.72.



1 369. Plaintiff Hartwright provided written notice to Defendant in accordance with Texas  
2 Business and Commerce Code section 17.505 by letter dated February 17, 2026 and July 2, 2026.

3 370. Defendant’s misrepresentations, partial misrepresentations, omissions,  
4 concealment, and other deceptive conduct as described herein constitute a violation of the Texas  
5 Deceptive Trade Practices and Consumer Protection Act (“TDTPCPA”), which makes it unlawful  
6 to commit “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or  
7 commerce.” Tex. Bus. & Com. Code §17.46.

8 371. Plaintiff Hartwright, the Texas Subclass, and Defendant are “persons” within the  
9 meaning of the TDTPCPA. Tex. Bus. & Com. Code §17.45(3).

10 372. Plaintiff Hartwright and the Texas Subclass are “consumers” within the meaning  
11 of the TDTPCPA. Tex. Bus. & Com. Code §17.45(4).

12 373. The Contaminated Products are “goods” within the meaning of the TDTPCPA. Tex.  
13 Bus. & Com. Code §17.45(1).

14 374. Defendant engaged in “trade” or “commerce” as defined by the TDTPCPA. Tex.  
15 Bus. & Com. Code §17.45(6).

16 375. Defendant engaged in false, misleading, or deceptive acts or practices, including by  
17 knowingly misrepresenting, concealing, omitting, or failing to disclose the Contaminated  
18 Products’ true quality, ingredients, standards, and suitability for use.

19 376. Defendant’s conduct alleged herein violates the following provisions of the CLRA:

20 (a) Texas Business and Commerce Code section 17.46(b)(5) by knowingly,  
21 recklessly, and/or intentionally representing that the Contaminated Products  
22 have characteristics, ingredients, benefits they do not have;

23 (b) Texas Business and Commerce Code section 17.46(b)(7) by knowingly,  
24 recklessly, and/or intentionally representing that the Contaminated Products  
25 were of a particular standard, quality, or grade, when they were of another;  
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1 (c) Texas Business and Commerce Code section 17.46(b)(9) by knowingly,  
2 recklessly, and/or intentionally advertising the Contaminated Products with  
3 intent not to sell them as advertised; and

4 (d) Texas Business and Commerce Code section 17.46(b)(24) by knowingly,  
5 recklessly, and/or intentionally failing to discuss material information  
6 regarding the Contaminated Products, which was known by Defendant at  
7 the time Plaintiff Hartwright and the Texas Subclass purchased the  
8 Contaminated Products, and for which they would not have purchased or  
9 paid the price they did for had the information been disclosed.

10 377. Defendant knew the Contaminated Products did not have the quality, or standards  
11 as described above because they contained heavy metals, including lead, cadmium, and arsenic.

12 378. Defendant intended that Plaintiff Hartwright and the Texas Subclass would rely on  
13 the overall impression of the packaging, along with the Misrepresentations, partial  
14 misrepresentations, Omissions, active concealment, and other deceptive conduct regarding the  
15 Contaminated Products' quality and standards when deciding to purchase the Contaminated  
16 Products, unaware of the undisclosed and misleading material facts.

17 379. Plaintiff Hartwright and the Texas Subclass did rely on, and were in fact deceived  
18 by, Defendant's Misrepresentations, partial misrepresentations, Omissions, active concealment,  
19 and other deceptive conduct with respect to the Contaminated Products' quality and standards.

20 380. Defendant failed to disclose the material information that the Contaminated  
21 Products contained (or had a material risk of containing) heavy metals.

22 381. The facts misrepresented, concealed, and/or not disclosed by Defendant were  
23 material facts in that Plaintiff Hartwright, the Texas Subclass, and other reasonable consumers  
24 would have considered them in deciding whether to purchase the Contaminated Products. Had  
25 Plaintiff Hartwright and members of the Texas Subclass known the Contaminated Products  
26 contained heavy metals, they would not have purchased the Contaminated Products or paid the  
27 premium price.

1 382. Defendant’s false, misleading, or deceptive acts or practices occurred repeatedly in  
2 the course of Defendant’s trade or commerce and were capable of deceiving a substantial portion  
3 of the consuming public.

4 383. Defendant’s misrepresentations, partial misrepresentations, omissions and other  
5 deceptive acts or practices caused Plaintiff Hartwright and the Texas Subclass to suffer injury in  
6 the form of actual damages when they purchased the Contaminated Products that were worth less  
7 than the price they paid and that they would not have purchased had they known the Contaminated  
8 Products contained heavy metals, including lead, cadmium, and arsenic.

9 384. As a direct and proximate result of Defendant’s conduct, Plaintiff Hartwright and  
10 the Texas Subclass suffered quantifiable economic injury to their business or property by: (1)  
11 paying a premium price for Products they reasonably believed did not contain (or have a material  
12 risk of containing) heavy metals, including lead, cadmium, and/or arsenic; (2) purchasing Products  
13 they would not have purchased without Defendant’s Misrepresentations and partial  
14 misrepresentations, Omissions, active concealment, and other deceptive conduct at the prices they  
15 paid; and/or (3) receiving Products that were worth less than the price paid because they contained  
16 heavy metals, rendering the Contaminated Products less valuable than represented.

17 385. Defendant’s conduct is ongoing and continuing, such that prospective injunctive  
18 relief is necessary, especially given Plaintiff Hartwright’s desire to purchase the Contaminated  
19 Products in the future if he can be assured that the Contaminated Products are as advertised and  
20 do not contain heavy metals.

21 386. Plaintiff Hartwright and the Texas Subclass seek relief for the injuries they suffered  
22 as a result of Defendant’s false, misleading, or deceptive acts or practices, as provided by the  
23 TPTPCPA and applicable law.

COUNT XII

**Fraudulent Concealment  
(Based on Washington Law)  
Against Defendant on Behalf of the Class**

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387. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

388. Plaintiffs bring this Count on behalf of all Class Members as a Nationwide class under Washington law.

389. Defendant, as a seller of the Contaminated Products to Plaintiffs and the Class, had a duty to disclose to consumers that the Contaminated Products contained heavy metals, including lead, cadmium, and arsenic.

390. The facts concealed or not disclosed by Defendant were material facts in that Plaintiffs and the Class, and other reasonable consumers, would have considered them in deciding whether to purchase the Contaminated Products. Had Plaintiffs and the Class Members known the Contaminated Products did not have the quality, ingredients, standards, and suitability for use as advertised by Costco and contained (or had a material risk of containing) heavy metals, including lead, cadmium, and arsenic, they would not have purchased the Contaminated Products or paid a premium price.

391. Defendant alone possessed the information that was material to Plaintiffs and the Class and failed to disclose such material information to consumers.

392. Because identifying the presence of heavy metals requires expensive and sophisticated laboratory testing, reasonable consumers, such as Plaintiffs, could not learn of the inclusion of heavy metals in the Contaminated Products unless Defendant included a proper disclosure.

393. Defendant misrepresented, partially misrepresented, omitted, suppressed, and concealed material facts regarding the Contaminated Products, namely the fact that the Contaminated Products contained heavy metals, including lead, cadmium, and arsenic.

1           394. As a result of Defendant’s Misrepresentations and partial misrepresentations, with  
2 no disclosures as to the presence or risk of heavy metals in the Contaminated Products on at the  
3 point-of-sale, Plaintiffs did not expect the Contaminated Products to contain heavy metals.

4           395. Defendant intended for Plaintiffs and the Class to rely on its Misrepresentations  
5 and partial misrepresentations, Omissions, active concealment, and other deceptive conduct  
6 regarding the Contaminated Products’ quality, ingredients, standards, and suitability for use when  
7 purchasing the Contaminated Products, unaware of the undisclosed material facts.

8           396. Plaintiffs and the Class Members did in fact rely on the material Misrepresentations,  
9 partial misrepresentations, and Omissions and purchased the Contaminated Products to their  
10 detriment. Given the materiality of the Omissions, Plaintiffs’ and the Class’s reliance on the  
11 Misrepresentations, partial misrepresentations, and Omissions were justifiable.

12           397. Plaintiffs and the Class Members purchased the Contaminated Products that contain  
13 undisclosed levels of heavy metals despite the availability of other protein powder products with  
14 non-detectable levels of heavy metals.

15           398. Defendant charged, and Plaintiffs and the Class Members paid, a premium price for  
16 the Contaminated Products despite the availability of other protein powder products with non-  
17 detectable levels of heavy metals.

18           399. Defendant’s Misrepresentations and partial misrepresentations, Omissions, active  
19 concealment, and other deceptive conduct alleged herein caused Plaintiffs and the Class Members  
20 to make their purchases of the Contaminated Products. Plaintiffs were unaware of these material  
21 facts, and had Defendant communicated these material facts to consumers, Plaintiffs and the Class  
22 Members would not have purchased the Contaminated Products, or would not have purchased the  
23 Contaminated Products at the prices they paid. Accordingly, Plaintiffs and the Class Members  
24 have suffered injury in fact, including lost money or property, as a result of Defendant’s  
25 Misrepresentations, partial misrepresentations, Omissions, and other deceptive conduct.

1 400. Accordingly, Defendant is liable to Plaintiffs and the Class Members for damages  
2 in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages,  
3 restitution and/or diminution of value.

4 401. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with  
5 intent to defraud, and in reckless disregard of Plaintiffs' and other Class Members' rights, in order  
6 to enrich itself. Defendant's conduct warrants an assessment of punitive damages in an amount  
7 sufficient to deter such conduct in the future, which amount is to be determined according to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, individually and on behalf of the Classes, respectfully request  
10 that this Court enter judgment against Defendant and grant the following relief:

11 A. Certify this action as a class action pursuant to Federal Rule of Civil Procedure  
12 23(b)(3), appoint Plaintiffs as Class Representatives, and appoint Plaintiffs' counsel as Class  
13 Counsel;

14 B. Enter judgment against Defendant Costco Wholesale Corporation on Plaintiffs'  
15 claims for violation of the laws of Washington, California, Illinois, Minnesota, Ohio, and Texas,  
16 and judgment under the law of fraudulent concealment;

17 C. Award Plaintiffs and all Class Members their actual damages and judgment under  
18 the law of fraudulent concealment;

19 D. Award treble damages up to the maximum amount permitted under RCW  
20 § 19.86.090;

21 E. Award Plaintiffs and the Classes reasonable attorneys' fees and costs of suit  
22 pursuant to RCW §19.86.090;

23 F. Enter injunctive relief requiring Defendant to: (i) disclose the presence and levels  
24 of heavy metals, including lead, cadmium, and arsenic, in the Contaminated Products sold in its  
25 stores and on Costco.com; and (ii) cease selling such products without adequate disclosure of  
26 heavy metal contamination;

1 G. Award pre-judgment and post-judgment interest at the maximum rate permitted by  
2 law; and

3 H. Award such other and further relief as the Court deems just and proper.

4 **JURY DEMAND**

5 Plaintiffs hereby demand a trial by jury on all issues so triable in this action.

6 DATED: July 7, 2026

Respectfully submitted,

7 **HAGENS BERMAN SOBOL SHAPIRO LLP**

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