

1 **BURSOR & FISHER, P.A.**  
2 L. Timothy Fisher (State Bar No. 191626)  
3 Joel D. Smith (State Bar No. 244902)  
4 Blair E. Reed (State Bar No. 316791)  
5 1990 North California Blvd., Suite 940  
6 Walnut Creek, CA 94596  
7 Telephone: (925) 300-4455  
8 Facsimile: (925) 407-2700  
9 E-Mail: ltfisher@bursor.com  
10 jsmith@bursor.com  
11 breed@bursor.com

12 *Attorneys for Plaintiff*

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15 SHELBY BAKER, on behalf of herself and all  
16 others similarly situated,

17 Plaintiff,

18 v.

19 BEECH-NUT NUTRITION CORPORATION,

20 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Shelby Baker (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, alleges the following against Defendant Beech-Nut Nutrition Corporation (“Beech-Nut”  
3 or “Defendant”) on information and belief, except that Plaintiff’s allegations as to her own actions  
4 are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. This action seeks to recover damages and remedy Defendant’s continuing failure to  
7 warn individuals that Beech-Nut Baby Food (the “Products”) expose consumers to heightened  
8 levels of toxic heavy metals, including lead, arsenic, cadmium, and/or mercury.

9 2. A February 2021 report by the U.S. House of Representatives’ Subcommittee on  
10 Economic and Consumer Policy, Committee on Oversight and Reform (“House Subcommittee”)  
11 reveals that certain brands of commercial baby food – including Defendant’s Products – are tainted  
12 with significant levels of toxic heavy metals.

13 3. Heightened levels of toxic heavy metals in foods can cause cancer and serious and  
14 often irreversible damage to brain development as well as other serious health problems. Although  
15 this action does not allege a claim under California’s Safe Drinking Water and Toxic Enforcement  
16 Act of 1986 (“Proposition 65”), the amount of toxic heavy metals found in the Products violates  
17 that statute too.

18 4. As described more fully below, consumers who purchase the Products are injured  
19 by Defendant’s acts and omissions concerning the presence of heightened levels of toxic heavy  
20 metals. No reasonable consumer would know, or have reason to know, that the Products contain  
21 heightened levels of heavy metals. As such, Plaintiff seeks relief in this action individually and as  
22 a class action on behalf of all purchasers of Beech-Nut Baby Food.

23 **PARTIES**

24 5. Plaintiff Shelby Baker is a resident of Bakersfield, California and a citizen of the  
25 State of California. Ms. Baker has purchased Defendant’s baby food Products for household use  
26 within the last two months. Had Defendant disclosed on the label that those products contained  
27 high levels of toxic heavy metals, Ms. Baker would have been aware of that fact and would not  
28

1 have purchased the products. After learning of the high levels of toxic heavy metals, Ms. Baker  
2 stopped purchasing these products. However, Ms. Baker regularly visits stores where Defendant's  
3 products are sold and remains interested in purchasing healthy, safe baby food for her children.  
4 She would consider purchasing Defendant's Products in the future if Defendant removed the  
5 heightened levels of toxic heavy metals.

6 6. Defendant Beech-Nut Nutrition Corporation is a foreign corporation with its  
7 headquarters in Amsterdam, New York. Beech-Nut manufactures, markets, and sells Beech-Nut  
8 baby food products throughout California and the United States.

### 9 **JURISDICTION AND VENUE**

10 7. This Court has subject matter jurisdiction over this action pursuant to the Class  
11 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 ("CAFA"), which, *inter alia*, amends 28  
12 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as  
13 here: (a) there are 100 or more members in the proposed classes; (b) some members of the  
14 proposed classes have a different citizenship from Defendant; and (c) the claims of the proposed  
15 class members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28  
16 U.S.C. § 1332(d)(2) and (6).

17 8. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant transacts  
18 significant business within this District, Plaintiff resides within this District, and a substantial part  
19 of the events giving rise to Plaintiff's claims took place within this District.

### 20 **FACTS COMMON TO ALL CAUSES OF ACTION**

#### 21 **I. Lead And Arsenic Are Toxic**

22 9. Lead and arsenic are heavy metals. The harmful effects of heavy metals are well-  
23 documented, particularly on children. Exposure puts children at risk for lowered IQ, behavioral  
24 problems (such as attention deficit hyperactivity disorder), type 2 diabetes, and cancer, among  
25 other health issues. Heavy metals pose risks to adults. Even modest amounts of heavy metals can  
26 increase the risk of cancer, cognitive and reproductive problems, and other adverse conditions.

1 Because the average person comes into contact with heavy metals many times and from many  
2 sources, it is important to limit exposure, particularly with respect to children.

3 10. Lead can affect almost every organ and system in the body. Lead accumulates in  
4 the body over time, and can lead to health risks and toxicity, including inhibiting neurological  
5 function, anemia, kidney damage, seizures, and in extreme cases, comas and death. Lead can also  
6 cross the fetal barrier during pregnancy, exposing the mother and developing fetus to serious risks,  
7 including reduced growth and premature birth.

8 11. “No amount of lead is known to be safe.”<sup>1</sup> The “EPA and the Centers for Disease  
9 Control and Prevention (CDC) agree that there is no known safe level of lead in a child’s blood.  
10 Lead is harmful to health, especially for children.”<sup>2</sup>

11 12. Arsenic is dangerous to humans too. Long term exposure is linked to cardiovascular  
12 disease. Arsenic can also cause bladder, lung, liver, and skin cancer, and strokes and diabetes.  
13 Recent studies have suggested that arsenic may cause IQ deficits in children and may be harmful to  
14 fetal development.

15 13. There is “essentially no safe level” of arsenic.<sup>3</sup>

16 14. The People of the State of California declared by initiative under Proposition 65  
17 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
18 reproductive harm.” Proposition 65, § 1(b). To effectuate this goal, California’s Proposition 65,  
19 Health & Safety Code § 25249.5, et seq., prohibits exposing people to chemicals listed by the State  
20 of California as known to cause cancer, birth defects or other reproductive harm above certain  
21 levels without a “clear and reasonable warning,” unless the business responsible for the exposure  
22 can prove that it fits within a statutory exemption.

23  
24  
25 <sup>1</sup> See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health> (last visited July 2, 2019).

26 <sup>2</sup> See <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> (last visited July 2, 2019).

27 <sup>3</sup> See <https://publicintegrity.org/environment/what-to-do-if-your-drinking-water-contains-arsenic/>  
28 (last visited July 2, 2019).

1           15.     Lead and lead compounds are subject to the clear and reasonable warning  
2 requirement regarding carcinogens under Proposition 65. Specifically, a Proposition 65 warning is  
3 required where a total daily intake of lead exceeds .5 mcg.

4           16.     Arsenic and arsenic compounds are subject to the clear and reasonable warning  
5 requirement regarding carcinogens under Proposition 65. Specifically, a Proposition 65 warning is  
6 required where a total daily intake of lead exceeds 0.5 mcg.

7           17.     This Complaint does not allege a violation of Proposition 65. Proposition 65 is  
8 relevant, however, to the extent it provides information concerning the material omissions in  
9 violation of California’s Consumer Protection laws, and guidance as to a reasonable consumer’s  
10 purchasing decisions. Reasonable consumers purchased the Products believing, among other  
11 things, that they were in compliance with all applicable California regulations and safe according  
12 to California regulatory thresholds. Reasonable consumers would not have purchased the Products  
13 if they had known that they contained heightened levels of lead and arsenic, or they would have  
14 purchased them on different terms. Because the presence of lead and arsenic pertain to safety,  
15 Defendant had a duty to disclose that its products contained heightened levels of lead and arsenic,  
16 independent of any duty imposed by Proposition 65.

17 **II.     Beech-Nut Baby Food Has Heightened Levels Of Arsenic, Lead, and Cadmium**

18           18.     In February of 2021, the House Subcommittee published a report titled “Baby Foods  
19 Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury.”

20           19.     Among the products tested were Defendant’s baby food Products. With respect to  
21 arsenic, “Beech-Nut used ingredients [in its baby food Products] after they tested as high as 913.4  
22 ppb arsenic; Beech-Nut routinely used high-arsenic additives that tested over 300 ppb arsenic;  
23 Beech-Nut unnecessarily uses high-arsenic additives to address issues like ‘crumb softness.’”

24           20.     With respect to lead, “Beech-Nut used ingredients containing as much as 886.9 ppb  
25 lead; Beech-Nut routinely used ingredients with high lead content, including 483 ingredients that  
26 contained over 5 ppb lead, 89 ingredients that contained over 15 ppb lead, and 57 ingredients that  
27 contained over 20 ppb lead.”

1           21.       With respect to cadmium, “Beech-Nut used ingredients in its baby food containing  
2 up to 344.55 ppb cadmium; 105 Beech-Nut ingredients tested over 20 ppb cadmium.”

3           22.       A copy of the Subcommittee’s heavy metal testing can be accessed at  
4 <http://oversight.house.gov/sites/democrats.oversight.house.gov/files/4.xlsx>.

5           23.       Worse yet, the Subcommittee found that Defendant “did not even test for mercury in  
6 baby food.”

7           24.       Notably, the Subcommittee also found that “Beech-Nut has set an internal  
8 specification limit ... of 3,000 ppb inorganic arsenic for certain ingredients, including vitamin mix.  
9 As a result of adopting this high internal standard, Beech-Nut has used ingredients containing  
10 710.9, 465.2, and 401.4 ppb arsenic. Beech-Nut also set internal guidelines of 3,000 ppb for  
11 cadmium and 5,000 ppb for lead for certain ingredients. These far surpass any existing regulatory  
12 standard in existence and toxic heavy metal levels for any other baby food manufacturer that  
13 responded to the Subcommittee’s inquiry.” (emphasis added).

14           25.       The Subcommittee also found that “Beech-Nut sold eleven products that surpassed  
15 its own internal cadmium limits. By doing so, Beech-Nut accepted dehydrated potato containing  
16 119.6, 143.5, and 148.4 ppb cadmium, far surpassing its own internal limit of 90 ppb for that  
17 ingredient.”

18           26.       As noted in a 2019 Consumer Reports article titled “*Arsenic and Lead Are in Your*  
19 *Fruit Juice: What You Need to Know*”, “[c]hildren are particularly vulnerable to the harmful  
20 effects of heavy metals,” and early exposure can “affect their whole life trajectory.”



1           27. Defendant has chosen to ignore the health of the consuming public in pursuit of  
2 profit.

3 **III. The High Presence of Toxic Heavy Metals In Baby Foods Far Exceeds Consumer**  
4 **Expectations**

5           28. Parents' instinctive desire to protect and ensure the healthy development of their  
6 children is well-known. As such, the safety of baby food is of paramount importance, and is a  
7 material fact, to consumers (such as Plaintiff and Class members).

8           29. More specifically, given the negative effects of toxic heavy metals (such as arsenic,  
9 lead, cadmium, and mercury) on child development, the presence of these substances in baby food  
10 is a material fact to consumers (such as Plaintiff and members of the Class). Indeed, consumers—  
11 such as Plaintiff and members of the Class—are unwilling to purchase baby food that contains  
12 elevated levels of toxic heavy metals.

13           30. Defendant knows that the safety of its brand of baby food (as a general matter) is a  
14 material fact to consumers.

15           31. Defendant also knows that consumers (such as Plaintiff and members of the Class)  
16 are unwilling to purchase their respective brands of baby food that contain elevated levels of toxic  
17 heavy metals.

18           32. As such, Defendant also know that the presence of toxic heavy metals in its brand of  
19 baby food is a material fact to consumers (such as Plaintiff and Class members).

20           33. Baby food manufacturers (such as Defendant) hold a special position of public trust.  
21 Consumers believe that they would not sell products that are unsafe. *See*, Subcommittee Report, p.  
22 6.

23           34. Defendant knew that if the elevated levels of toxic heavy metals in its baby food  
24 was disclosed to Plaintiff and Class members, then Plaintiff and Class members would be  
25 unwilling to purchase it.

26           35. In light of Defendant's respective knowledge that Plaintiff and Class members  
27 would be unwilling to purchase its baby food Products if they knew that those brands of baby food  
28

1 contained elevated levels of toxic heavy metals, Defendant intentionally and knowingly concealed  
2 this fact from Plaintiff and Class members, and did not disclose the presence of these toxic heavy  
3 metals on the labels of the Products.

4 36. Defendant knew that Plaintiff and Class members would rely upon the  
5 representations and omissions contained on the packages of the Products, and intended for them to  
6 do so.

7 37. Defendant knew that in relying upon the representations and omissions contained on  
8 the packages of the Product (respectively), Plaintiff and Class members would view those products  
9 as being safe for consumption, given their represented lack of certain deleterious substances (*e.g.*,  
10 BPA, GMOs), and Defendant's concealment of the fact that those brands of baby food contained  
11 elevated levels of toxic heavy metals.

12 38. Prior to purchasing the Product Plaintiff and Class members were exposed to, saw,  
13 read, and understood Defendant's representations and omissions regarding the safety of their baby  
14 food, and relied upon them.

15 39. As a result of Defendant's respective representations regarding the safety of their  
16 baby food, and Defendant's concealment of the fact that its baby food contained elevated levels of  
17 toxic heavy metals, Plaintiff and Class members reasonably believed that Defendant's Products  
18 were free from substances that would negatively affect children's development.

19 40. In reliance upon Defendant's respective representations and omissions, Plaintiff and  
20 Class members purchased Defendant's baby food Products.

21 41. Had Plaintiff and Class members known the truth—*i.e.*, that Defendant's respective  
22 brands of baby food contained elevated levels of toxic heavy metals, rendering them unsafe for  
23 consumption by children—they would not have been willing to purchase them at all.

24 42. Therefore, as a direct and proximate result of Defendant's misrepresentations and  
25 omissions concerning their respective brands of baby food, Plaintiff and Class members purchased  
26 the Products.



1 43. Plaintiff and Class members were harmed in the form of the monies they paid for  
2 the Products which they would not otherwise have paid had they known the truth. Since the  
3 presence of elevated levels of toxic heavy metals in baby food renders it unsafe for human  
4 consumption, the Products that Plaintiff and Class members purchased are worthless.

5 **CLASS ACTION ALLEGATIONS**

6 44. Plaintiff seeks to represent a class defined as all persons in the United States who  
7 purchased the Products (the "Class"). Excluded from the Class are persons who made such  
8 purchases for purpose of resale. Plaintiff reserves the right amend the above class definition as  
9 appropriate after further investigation and discovery, including by seeking to certify a narrower  
10 multi-state class (or classes) in lieu of a nationwide class if appropriate.

11 45. Plaintiff also seeks to represent a Subclass of all Class Members who purchased the  
12 Products in California (the "California Subclass").

13 46. At this time, Plaintiff does not know the exact number of members of the Class;  
14 however, given the nature of the claims and the number of retail stores in the United States selling  
15 the Products, Plaintiff believes that class members are so numerous that joinder of all members is  
16 impracticable.

17 47. There is a well-defined community of interest in the questions of law and fact  
18 involved in this case. Questions of law and fact common to the members of the class and subclass  
19 that predominate over questions that may affect individual class members include:

- 20 a. whether the Products contain toxic heavy metals;
- 21 b. whether Defendant's conduct is unethical, oppressive, unscrupulous, and/or
- 22 substantially injurious to consumers;
- 23 c. whether the amount of toxic heavy metals in the Products is material to a reasonable
- 24 consumer;
- 25 d. whether Defendant had a duty to disclose that its Products had heightened levels of
- 26 toxic heavy metals;
- 27
- 28

- 1 e. whether Plaintiff and members of the Class are entitled to injunctive and other
- 2 equitable relief;
- 3 f. whether Defendant failed to disclose material facts concerning the Products;
- 4 g. whether Defendant's conduct was unfair and/or deceptive;
- 5 h. whether Defendant has been unjustly enriched as a result of the unlawful,
- 6 fraudulent, and unfair conduct alleged in this Complaint such that it would be
- 7 inequitable for Defendant to retain the benefits conferred upon Defendant by
- 8 Plaintiff and class members;
- 9 i. whether Defendant breached implied warranties to Plaintiff and class members;
- 10 j. whether Plaintiff and class members have sustained damages with respect to the
- 11 common-law claims asserted, and if so, the proper measure of their damages.

12 48. Plaintiff's claims are typical of those of the class members because Plaintiff, like  
13 other class members, purchased, in a typical consumer setting, a Product and Plaintiff sustained  
14 damages from Defendant's wrongful conduct.

15 49. Plaintiff will fairly and adequately protect the interests of the class members and  
16 have retained counsel that is experienced in litigating complex class actions. Plaintiff has no  
17 interests which conflict with those of the Class or the Subclass.

18 50. A class action is superior to other available methods for the fair and efficient  
19 adjudication of this controversy.

20 51. The prerequisites to maintaining a class action for equitable relief are met as  
21 Defendant has acted or refused to act on grounds generally applicable to the Class and the  
22 Subclass, thereby making appropriate equitable relief with respect to the Class and the Subclass as  
23 a whole.

24 52. The prosecution of separate actions by members of the Class and the Subclass  
25 would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct  
26 for Defendant. For example, one court might enjoin Defendant from performing the challenged  
27 acts, whereas another might not. Additionally, individual actions could be dispositive of the  
28

1 interests of the Class and the Subclass even where certain Class members are not parties to such  
2 actions.

3 **CAUSES OF ACTION**

4 **FIRST COUNT**

5 **(Violation of California Business & Professions Code § 17200 *et seq.*,  
6 Based on Fraudulent Acts and Practices)**

7 53. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if  
8 fully stated herein.

9 54. Plaintiff brings this claim individually and on behalf of the Subclass members.

10 55. Under California Business & Professions Code §17200, any business act or practice  
11 that is likely to deceive members of the public constitutes a fraudulent business act or practice.

12 56. Defendant has engaged, and continues to engage, in conduct that is likely to deceive  
13 members of the public. This conduct includes, but is not limited to, failing to disclose that the  
14 Products contain heightened levels of toxic heavy metals.

15 57. After reviewing the packaging for the Product, Plaintiff purchased the Product in  
16 reliance on Defendant's omissions. Plaintiff would not have purchased the Products at all if she had  
17 known of Defendant's material omission that the Products contain heightened levels of toxic heavy  
18 metals. Plaintiff and class members have all paid money for the Products. However, Plaintiff and  
19 class members did not obtain the full value or any value of the advertised products due to  
20 Defendant's omissions regarding the heightened levels of toxic heavy metals. Accordingly, Plaintiff  
21 and class members have suffered injury in fact and lost money or property as a direct result of  
22 Defendant's material omissions.

23 58. By committing the acts alleged above, Defendant has engaged in fraudulent  
24 business acts and practices, which constitute unfair competition within the meaning of California  
25 Business & Professions Code §17200.

26 59. In accordance with California Business & Professions Code §17203, Plaintiff seek  
27 an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent  
28 conduct; and (2) requiring Defendant to conduct a corrective advertising campaign.

1 60. As a result of Defendant's conduct, Plaintiff seeks restitution, disgorgement, and  
2 injunctive under California Business & Professions Code §17203

3 **SECOND COUNT**  
4 **(Violations of California Business & Professions Code §17200, *et seq.*,**  
5 **Based on Commission of Unlawful Acts)**

6 61. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if  
7 fully stated herein.

8 62. Plaintiff brings this claim individually and on behalf of the Subclass members.

9 63. The violation of any law constitutes an unlawful business practice under California  
10 Business & Professions Code §17200.

11 64. Defendant has violated §17200's prohibition against engaging in unlawful acts and  
12 practices by, inter alia, making omissions of material facts, as set forth more fully herein, and  
13 violating California Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, California Business &  
14 Professions Code §17200 et seq., California Health & Safety Code §110660, 21 U.S.C. §321, and  
15 by violating the common law. Proposition 65 is not a predicate violation for the claim under the  
16 unlawful prong of the UCL.

17 65. By violating these laws, Defendant has engaged in unlawful business acts and  
18 practices, which constitute unfair competition within the meaning of Business & Professions Code  
19 §17200.

20 66. Plaintiff purchased the Products in reliance on Defendant's representations that the  
21 Products were fit for consumption and based on the omissions as to the amount of toxic heavy  
22 metals contained therein. Plaintiff would not have purchased the Products at all had she known  
23 Defendant's omissions. Plaintiff and class members paid money for the Products. However,  
24 Plaintiff and class members did not obtain the full value, or any value, of the advertised products  
25 due to Defendant's omissions regarding the Products. Accordingly, Plaintiff and class members  
26 have suffered injury in fact and lost money or property as a direct result of Defendant's material  
27 omissions.  
28



1 metals contained in the Products. Such injury is not outweighed by any countervailing benefits to  
2 consumers or competition. Indeed, no benefit to consumers or competition results from  
3 Defendant's conduct. Since consumers reasonably rely on Defendant's representations, and thus  
4 also their omissions, and injury results from ordinary use of the Products, consumers could not  
5 have reasonably avoided such injury. *Davis v. Ford Motor Credit Co.*, 179 Cal. App. 4th 581, 597-  
6 98 (2009); *see also Drum v. San Fernando Valley Bar Ass'n*, 182 Cal. App. 4th 247, 257 (2010)  
7 (outlining the third test based on the definition of "unfair" in Section 5 of the FTC Act).

8 75. By committing the acts alleged above, Defendant has engaged in unfair business  
9 acts and practices which constitute unfair competition within the meaning of Business &  
10 Professions Code §17200.

11 76. Plaintiff purchased the Products believing them to be fit for consumption due to its  
12 omissions regarding the heightened levels of toxic heavy metals in the Products. Plaintiff would  
13 not have purchased the Product at all but for Defendant failing to disclose that they contained toxic  
14 heavy metals in high quantities. Plaintiff and class members paid money for the Products.  
15 However, Plaintiff and class members did not obtain the full value of the advertised products due  
16 to Defendant's omissions regarding the nature of said Products. Accordingly, Plaintiff and class  
17 members suffered an injury in fact and lost money or property as a direct result of Defendant's  
18 material omissions.

19 77. In accordance with California Business & Professions Code §17203, Plaintiff seeks  
20 an order enjoining Defendant from continuing to conduct business through its fraudulent conduct  
21 and further seeks an order requiring Defendant to conduct a corrective advertising campaign.

22 78. As a result of Defendant's conduct, Plaintiff seeks restitution, disgorgement, and  
23 injunctive relief under California Business & Professions Code §17203.

24 **FOURTH COUNT**  
25 **(Violations of the California Consumer Legal Remedies Act)**  
26 **(Injunctive Relief Only)**

27 79. Plaintiff incorporates by reference the foregoing paragraphs of Complaint as if fully  
28 stated herein.

1 80. Plaintiff brings this claim individually and on behalf of the Subclass members.

2 81. Plaintiff purchased Defendant's Products for household use.

3 82. The acts and practices of Defendant as described above were intended to deceive  
4 Plaintiff and class members as described herein, and have resulted, and will result, in damages to  
5 Plaintiff and member of the Subclass. These actions violated, and continue to violate, the  
6 California Consumers Legal Remedies Act ("CLRA") in at least the following respects:

- 7 a. In violation of California Civil Code §1770(a)(5) of the CLRA, Defendant's acts  
8 and practices constitute representations or omissions deceiving that the Products  
9 have characteristics, uses, and/or benefits, which they do not;
- 10 b. in violation of California Civil Code §1770(a)(7) of the CLRA, Defendant's acts  
11 and practices constitute representations that the Products are of a particular quality,  
12 which they are not; and
- 13 c. in violation of California Civil Code §1770(a)(9) of the CLRA, Defendant's acts  
14 and practices constitute the advertisement of the goods in question without the intent  
15 to sell them as advertised.

16 83. By committing the acts alleged above, Defendant has violated the CLRA.

17 84. Plaintiff and Subclass members suffered injuries caused by Defendant's  
18 misrepresentations and/or omissions because they were induced to purchase the Products they  
19 would not have otherwise purchased if they had known that they contained heightened levels of  
20 toxic heavy metals.

21 85. In compliance with the provisions of California Civil Code §1782, Plaintiff sent  
22 written notice to Defendant on February 24, 2021, informing Defendant of her intention to seek  
23 damages under California Civil Code §1750, *et seq.* The letter expressly stated that it was sent on  
24 behalf of Plaintiff and "all other persons similarly situated." Accordingly, Plaintiff seeks damages  
25 from Defendant for its violations of the CLRA.

1 86. Plaintiff and class members are entitled to, pursuant to California Civil Code §1780,  
2 an order enjoining the above-described wrongful acts and practices of Defendant, and any other  
3 relief deemed appropriate and proper by the Court under California Civil Code §1780.

4 **FIFTH COUNT**  
5 **(Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code**  
6 **§ 1790 *et seq.* and California Commercial Code § 2314)**

7 87. Plaintiff incorporates by reference the foregoing paragraphs of Complaint as if fully  
8 stated herein.

9 88. Plaintiff brings this claim individually and on behalf of the members of the  
10 proposed Class and Subclass against Defendant.

11 89. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*,  
12 and California Commercial Code § 2314, every sale of consumer goods in this State is  
13 accompanied by both a manufacturer's and retail seller's implied warranty that the goods are  
14 merchantable, as defined in that Act. In addition, every sale of consumer goods in this State is  
15 accompanied by both a manufacturer's and retail seller's implied warranty of fitness when the  
16 manufacturer or retailer has reason to know that the goods as represented have a particular purpose  
17 (here, to be used as chainsaws) and that the buyer is relying on the manufacturer's or retailer's skill  
18 or judgment to furnish suitable goods consistent with that represented purpose.

19 90. The Products at issue here are "consumer goods" within the meaning of Cal. Civ.  
20 Code § 1791(a).

21 91. Plaintiff and the Class members who purchased one or more of the Products are  
22 "retail buyers" within the meaning of Cal. Civ. Code § 1791.

23 92. Defendant is in the business of manufacturing, assembling, producing and/or selling  
24 the Products to retail buyers, and therefore are a "manufacturer" and "seller" within the meaning of  
25 Cal. Civ. Code § 1791.

26 93. Defendant impliedly warranted to retail buyers that the Products were merchantable  
27 in that they would: (a) pass without objection in the trade or industry under the contract  
28 description, and (b) were fit for the ordinary purposes for which the Products are used. In order for



1 a consumer good to be “merchantable” under the Act, it must satisfy both of these elements.  
2 Defendant breached these implied warranties because the Products were unsafe and defective.  
3 Therefore, the Products would not pass without objection in the trade or industry and were not fit  
4 for the ordinary purpose for which they are used.

5 94. Plaintiff and Class members purchased the Products in reliance upon Defendant’s  
6 skill and judgment in properly packaging and labeling the Products.

7 95. The Products were not altered by Plaintiff or Class members.

8 96. The Products were defective at the time of sale when they left the exclusive control  
9 of Defendant. The defect described in this complaint was latent in the product and not  
10 discoverable at the time of sale.

11 97. Defendant knew that the Product would be purchased and used without additional  
12 testing by Plaintiffs and Class members.

13 98. As a direct and proximate cause of Defendant’s breach of the implied warranty,  
14 Plaintiff and Class members have been injured and harmed because they would not have purchased  
15 the Products if they knew the truth about the products, namely, that they contained high levels of  
16 toxic heavy metals.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and all members  
19 of the proposed classes the following relief against Defendant:

- 20 a. That the Court certify the Class and Subclass under Rule 23 of the Federal Rules of  
21 Civil Procedure and appoint Plaintiff as Class Representative and her attorneys as  
22 Class Counsel to represent the members of the Class and Subclass;
- 23 b. That the Court declare that Defendant’s conduct violates the statutes referenced  
24 herein;
- 25 c. That the Court preliminarily and permanently enjoin Defendant’s from conducting  
26 business through the unlawful, unfair, or fraudulent business acts or practices,  
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1 untrue, and misleading labeling and marketing and other violations of law described  
2 in this Complaint;

- 3 d. That the Court order preliminary and injunctive relief requiring Defendant to  
4 disclose that its products contain heightened levels of toxic heavy metals;
- 5 e. That the Court order Defendant to implement whatever measures are necessary to  
6 remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and  
7 misleading advertising, and other violations of law described in this Complaint;
- 8 f. That the Court order Defendant to notify each and every individual and/or business  
9 who purchased the Products of the pendency of the claims in this action in order to  
10 give such individuals and businesses an opportunity to obtain restitution from  
11 Defendant;
- 12 g. That the Court grant Plaintiff's reasonable attorneys' fees and costs of suit pursuant  
13 to California Code of Civil Procedure §1021.5, California Civil Code §1780(d), the  
14 common fund doctrine, and/or any other appropriate legal theory; and
- 15 h. That the Court grant such other and further relief as may be just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any  
18 and all issues in this action so triable of right.

19 Dated: February 25, 2021

Respectfully submitted,

20 **BURSOR & FISHER, P.A.**

21 By: /s/ Joel D. Smith  
22 Joel D. Smith

23 L. Timothy Fisher (State Bar No. 191626)  
24 Joel D. Smith (State Bar No. 244902)  
25 Blair E. Reed (State Bar No. 316791)  
26 1990 North California Blvd., Suite 940  
27 Walnut Creek, CA 94596  
28 Telephone: (925) 300-4455  
Email: ltfisher@bursor.com  
jsmith@bursor.com  
breed@bursor.com

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Joel Smith, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiff Shelby Baker in this action. Shelby Baker is a resident of Bakersfield, California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Central District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Walnut Creek, California this 24th day of February 2021.

/s/ Joel D. Smith

Joel D. Smith

CIVIL COVER SHEET

Case 1:21-cv-00266-NONE-SKO Document 1-1 Filed 02/25/21 Page 1 of 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SHELBY BAKER, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Kern (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Joel D. Smith, Bursor & Fisher, P.A. 1990 N. California Blvd., Suite 940 Walnut Creek, CA 94596 Tel.: (925) 300-4455

DEFENDANTS

BEECH-NUT NUTRITION CORPORATION,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d) Brief description of cause: Defendant failed to disclose their products contain heightened levels of lead and arsenic.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

02/25/2021 /s/ Joel D. Smith

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE