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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

KELLY MCKEON and JOSH CRAWFORD,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

PLUM, PBC; and PLUM, INC., d/b/a PLUM  
ORGANICS,

Defendants.

Civil Action No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. Plaintiffs Kelly McKeon and Josh Crawford, individually and on behalf of all others similarly situated, by and through their undersigned attorneys, bring this Class Action Complaint against Defendants Plum, PBC and Plum, Inc., d/b/a Plum Organics (together “Defendants” or “Plum”) for their negligent, reckless, and/or intentional practice of misrepresenting and failing to fully disclose the presence or risk of arsenic, lead, mercury, cadmium (collectively “heavy metals”) and/or perchlorate or other ingredients in Plum’s Baby Foods that do not conform to the labels, packaging, advertising, and statements of these products sold throughout the United States, including this District. Plaintiffs seek both injunctive and monetary relief on behalf of the proposed

1 Class and Sub-Classes (as defined below) including: (i) requiring full disclosure of all such  
2 substances and ingredients in Defendants’ marketing, advertising, and labeling; (ii) requiring  
3 testing of all ingredients and final products for such substances; and (iii) restoring monies to the  
4 members of the proposed Class. Plaintiffs allege the following based upon personal knowledge as  
5 well as investigation by their counsel and, as to all other matters, upon information and belief.  
6 Plaintiffs believe that a reasonable opportunity for discovery will reveal substantial evidentiary  
7 support for the allegations set forth herein.

8 **DEFENDANTS MARKET THEMSELVES AS SELLING ONLY PREMIUM BABY**  
9 **FOOD THAT IS SAFE FOR HUMAN CONSUMPTION**

10 2. Plum manufactures, markets, advertises, labels, distributes, and sells baby food  
11 products under the brand name Plum Organics throughout the United States, including in this  
12 District.

13 3. Plum states that it uses “organic, non-GMO, whole and simple ingredients” and its  
14 products are “always made without genetically modified ingredients.”<sup>1</sup> Plum’s mission is “to  
15 nourish little ones with the very best food from the very first bite.”<sup>2</sup>

16 4. Plum’s packaging and labels further emphasize quality and safe ingredients,  
17 organic, and provides a recipe free of any unnatural ingredients.

18 5. Plum’s packaging and labels further emphasize that its Baby Food products are  
19 organic and safe for human infant consumption.

20 6. Yet nowhere in the labeling, advertising, statements, warranties, and/or packaging  
21 does Plum disclose that the Baby Foods (as identified below) include and/or have a high risk of  
22 containing heavy metals or other ingredients that do not conform to the labels, packaging,  
23 advertising, and statements.

24 7. Indeed, the Baby Foods have been shown to contain significant levels of arsenic,  
25 mercury, lead, cadmium, mercury, and/or perchlorate—all known to pose health risks to humans  
26 and particularly infants. *See* Ex. 1 (Healthy Babies Bright Futures, *What’s In My Baby’s Food?*);  
27 Ex. 2.

28 <sup>1</sup> <https://www.plumorganics.com/food-philosophy/> (last accessed Feb. 10, 2021).

<sup>2</sup> <https://www.plumorganics.com/faqs/> (last accessed Feb. 10, 2021).

1 8. Despite this, Plum warrants, promises, represents, misleads, labels, and/or  
2 advertises that the Baby Foods are free of any heavy metals, perchlorate, and/or unnatural  
3 ingredients by making assurances that the foods are high-quality and safe for infant consumption.

4 9. Plum asserts that it places the safety of its consumers above all else<sup>3</sup> and that its  
5 Baby Foods are organic, in direct contradiction to the true nature of their contents, which include,  
6 but are not limited to, heavy metals and/or perchlorate.

7 10. Plum also asserts that the Baby Foods are safe and appropriate for consumption by  
8 babies through its “Stage” representations, which identify the appropriate age range of children  
9 who should consume the Baby Foods; for example, “Stage 1, 4 months+,” “Stage 2, 6 months+,”  
10 etc. Each of the Baby Foods contain this “Stage” designation, identifying that they are suitable and  
11 appropriate for consumption by a baby or child.

12 11. It was recently revealed on information and belief that Plum was knowingly,  
13 recklessly, and/or negligently selling the Baby Foods containing arsenic, mercury, cadmium, lead,  
14 and/or perchlorate.

15 12. A recent report by the U.S. House of Representatives’ Subcommittee on Economic  
16 and Consumer Policy, Committee on Oversight and Reform (“Subcommittee”) reveals that  
17 parents’ trust has been violated. *See* Ex. 3. The Subcommittee’s investigation of the seven largest  
18 baby food manufacturers in the United States, including Defendants, was spurred by “reports  
19 alleging high levels of toxic heavy metals in baby foods” and the fact that “[e]ven low levels of  
20 exposure can cause serious and often irreversible damage to brain development.” Ex. 3 at 2.

21 13. The Subcommittee’s report revealed that “[i]nternal company standards permit  
22 dangerously high levels of toxic heavy metals and... that the manufacturers have often sold foods  
23 that exceeded these levels.” Ex. 3 at 4. Defendants were among the three companies that refused  
24 to cooperate with the Subcommittee’s investigation, causing “great[] concern that their lack of  
25 cooperation might obscure the presence of even higher levels of toxic heavy metals in their baby  
26 food products, compared to their competitors’ products.” Ex. 3 at 5. “[E]ven limited independent  
27 testing has revealed the presence of toxic heavy metals in [Defendant’s] baby food.” Ex. 3 at 45.

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<sup>3</sup> <https://www.plumorganics.com/faqs/> (last accessed Feb. 10, 2021).

1 14. Plaintiffs bring this action individually and on behalf of all consumers who  
2 purchased the Baby Foods, to cause the disclosure of the presence and/or risk of the presence of  
3 heavy metals, perchlorate, and/or unnatural or other ingredients that do not conform to the labels,  
4 packaging, advertising, and statements in the Baby Foods; to correct the false and misleading  
5 perception Plum has created in the minds of consumers that the Baby Foods are high quality,  
6 healthy, and safe for infant consumption; and to obtain redress for those who have purchased the  
7 Baby Foods.

8 **JURISDICTION AND VENUE**

9 15. This Court has original jurisdiction over all causes of action asserted herein under  
10 the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds  
11 the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the  
12 Class reside in states other than the states in which Defendants are citizens and in which this case  
13 is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

14 16. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiffs have  
15 suffered injury as a result of Plum’s acts in this district, many of the acts and transactions giving  
16 rise to this action occurred in this District, Plum conducts substantial business in this district, Plum  
17 has intentionally availed itself of the laws and markets of this district, and Plum is subject to  
18 personal jurisdiction in this district.

19 **PARTIES**

20 17. Plaintiff Kelly McKeon is a resident of Plymouth, Minnesota, and purchased  
21 Plum’s Baby Foods for her child. Plaintiff McKeon purchased Plum’s Baby Foods, including Just  
22 Sweet Potato pouches, butternut squash carrot chickpea and corn pouches, apple and spinach Super  
23 Puffs, mango and sweet potato super puffs, blueberry Little Teethers multigrain wafers, blueberry  
24 Mighty snack bars, strawberry Mighty snack bars, apple and cinnamon Mighty Morning bars,  
25 blueberry lemon Mighty Morning bars, and berry Teensy snacks. Plaintiff McKeon purchased the  
26 Baby Foods from a Target in Plymouth, Minnesota and a Whole Foods in Minnetonka, Minnesota  
27 from approximately 2018 until the present. Prior to purchasing the Baby Foods, Plaintiff McKeon  
28 saw Plum’s nutritional claims on the packaging, including “organic” and the “Stage”

1 representations, which she relied on in deciding to purchase the Baby Foods. During that time,  
2 based on Plum’s material omissions and the false and misleading claims, warranties,  
3 representations, advertisements and other marketing by Plum, Plaintiff McKeon was unaware that  
4 the Baby Foods contained any level of heavy metals, chemicals, or toxins, and would not have  
5 purchased the food if that was fully disclosed, or she would not have paid as much for the Baby  
6 Foods if that information was fully disclosed. Plaintiff McKeon was injured by paying a premium  
7 for the Baby Foods that have no or *de minimis* value—or whose value was at least less than what  
8 she paid for the Baby Food—based on the presence of the alleged heavy metals, chemicals, and  
9 toxins.

10 18. Plaintiff Josh Crawford is a resident of Harvey’s Lake, Pennsylvania, and  
11 purchased Plum’s Baby Foods for his child. Plaintiff Bryan purchased Plum’s Baby Foods,  
12 including Just Prunes Organic Baby Food. Plaintiff Bryan purchased the Baby Foods from Target  
13 in Wilkes-Barre, Pennsylvania, Weis in Dallas, Pennsylvania, and Amazon.com from 2018 until  
14 2020. Prior to purchasing the Baby Foods, Plaintiff Crawford saw Plum’s nutritional claims on the  
15 packaging, including “organic” and the “Stage” representations, which he relied on in deciding to  
16 purchase the Baby Foods. During that time, based on Plum’s omissions and the false and  
17 misleading claims, warranties, representations, advertisements and other marketing by Plum,  
18 Plaintiff Crawford was unaware that the Baby Foods contained any level of heavy metals,  
19 chemicals or toxins, and would not have purchased the food if that was fully disclosed, or he would  
20 not have paid as much for the Baby Foods if that information was fully disclosed. Plaintiff  
21 Crawford was injured by paying a premium for the Baby Foods that have no or *de minimis* value—  
22 or whose value was at least less than what he paid for the Baby Food—based on the presence of  
23 the alleged heavy metals, chemicals, and toxins.

24 19. As the result of Plum’s negligent, reckless, and/or knowingly deceptive conduct as  
25 alleged herein, Plaintiffs were injured when they paid the purchase price or a price premium for  
26 the Baby Foods that did not deliver what was promised. They paid the premium price on the  
27 assumption and understanding that the labeling of the Baby Foods was accurate and that it was  
28 healthy, superior quality, and safe for babies and children to ingest. Plaintiffs would not have paid

1 this money had they known that the Baby Foods contained any levels of the heavy metals,  
2 chemicals and/or toxins. Plaintiffs were further injured because the Baby Foods that they  
3 purchased have no or *de minimis* value—or a value that was at least less than what they paid for  
4 the Baby Food—based on the presence of the alleged heavy metals, chemicals and toxins.  
5 Damages can be calculated through expert testimony at trial. Further, should Plaintiffs encounter  
6 the Baby Foods in the future, they could not rely on the truthfulness of the packaging, absent  
7 corrective changes to the packaging and advertising of the Baby Foods.

8 20. Defendant Plum, PBC was founded in 2007 and is incorporated in Delaware. Its  
9 headquarters are located at 1485 Park Avenue, Suite 200, Emeryville, California.

10 21. Defendant Plum, Inc., d/b/a Plum Organics, is a Delaware corporation with its  
11 headquarters located at 1485 Park Avenue, Suite 200, Emeryville, California.

12 22. Plum formulates, develops, manufactures, labels, distributes, markets, advertises,  
13 and sells the Baby Foods under the baby food brand name Plum Organics throughout the United  
14 States, including in this District, during the Class Period (defined below). The advertising,  
15 labeling, and packaging for the Baby Foods, relied upon by Plaintiffs were prepared, reviewed,  
16 and/or approved by Plum and its agents in California, and were disseminated from California by  
17 Defendant and its agents through marketing, advertising, packaging, and labeling that contained  
18 the misrepresentations alleged herein. The marketing, advertising, packaging, and labeling for the  
19 Baby Foods were designed to encourage consumers to purchase the Baby Foods and reasonably  
20 misled the reasonable consumer, *i.e.*, Plaintiffs and the Class, into purchasing the Baby Foods.  
21 Plum owns, manufactures, and distributes the Baby Foods, and created, allowed, negligently  
22 oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling  
23 and advertising for the Baby Foods. Plum is responsible for sourcing ingredients, manufacturing  
24 the products, and conducting all relevant quality assurance protocols, including testing, for the  
25 ingredients and finished Baby Foods.

## 26 **FACTUAL ALLEGATIONS**

### 27 **I. THE BABY FOODS**

28 23. The Baby Foods include the following:

1 (a) Just Sweet Potato Organic Baby Food (Stage 1: 4 months+)  
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15 (b) Just Peaches Organic Baby Food (Stage 1: 4 months+)  
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1 (c) Just Prunes Organic Baby Food (Stage 1: 4 months+)



15 (d) Pumpkin Banana Papaya Cardamom (Stage 2: 6 months+)





1 (e) Apple, Raisin & Quinoa Organic Baby Food (Stage 2: 6 months+)



15 (f) Little Teethers Organic Multigrain Teething Wafers - Banana with Pumpkin - Baby  
16 Crawler



(g) Mighty Morning Bar - Blueberry Lemon - Tots: 15 months & up



**II. MISLEADING CLAIMS AND OMISSIONS**

**A. Organic**

24. The following images are some representative examples of Defendant’s “organic” claim on the Baby Foods’ packaging:



1                    **B. “Stage” Representations**

2                    25.        The following images are some representative examples of Defendant’s “Stage”  
3 claim on the Baby Foods’ packaging:



17                    **C. Omissions**

18                    26.        As discussed above, Plum’s Baby Food packaging also misleadingly omitted the  
19 presence, or risk of, heavy metals and perchlorate. Plum intentionally omitted disclosure of the  
20 presence or risk of these substances in order to induce and mislead reasonable consumers like  
21 Plaintiffs to purchase the Baby Food at premium prices.

22  
23                    **III. THE PRESENCE OF HEAVY METALS AND/OR PERCHLORATE AT ANY**  
24                    **LEVEL WOULD BE MATERIAL TO A REASONABLE CONSUMER DUE TO**  
25                    **THE INHERENT AND KNOWN RISKS OF CONSUMPTION AND/OR**  
26                    **EXPOSURE.**

27                    **A. A Congressional Investigation Found the Presence of Heavy Metals in Baby**  
28                    **Foods**

27                    27.        On February 4, 2021, the U.S. House of Representatives’ Subcommittee on  
28 Economic and Consumer Policy, Committee on Oversight and Reform, published a report

1 detailing its findings that Heavy Metals—including arsenic, cadmium, lead, and mercury—were  
2 present in “significant levels” in numerous commercial baby food products. Ex. 3.

3 28. The Subcommittee requested internal documents and test results from Plum but  
4 Plum “refused to cooperate with the Subcommittee’s investigation.” Ex. 3 at 2. Plum refused to  
5 produce its testing standards and specific test results but instead produced a spreadsheet that “self-  
6 declared” that every product met criteria for each of the Heavy Metals, while declining to state  
7 what the criteria were.<sup>4</sup>

8 29. Plum marked on every product that it “meets criteria” without identifying what that  
9 criteria is. The Subcommittee found Plum’s “grading” concerning and misleading as it “raises  
10 questions about what [Plum’s] other thresholds actually are, and whether they exist.” Ex. 3 at 45.

11 30. The investigation found that, when baby food manufacturers were left to self-  
12 regulate and establish their own Heavy Metals standards, they routinely failed to abide by their  
13 own standards.

14 31. In its conclusion, the Subcommittee stressed the danger associated with the  
15 presence of Heavy Metals in baby food: “These toxic heavy metals pose serious health risks to  
16 babies and toddlers. Manufacturers knowingly sell these products to unsuspecting parents, in spite  
17 of internal company standards and test results, and without any warning labeling whatsoever.” Ex.  
18 3 at 59.

19 32. In Plum’s published response to the Subcommittee’s Report, it stated, “We are  
20 confident in the safety and quality of our products. Our top priority is to serve children healthy,  
21 nutritious food made from the best ingredients. We want to assure you that Plum’s products are  
22 safe (and delicious) to eat!”<sup>5</sup>

23 33. However, Plum fails to describe its “protocol for evaluating heavy metals in  
24 products” and simply claims that it looks to guidance from leading health and regulatory bodies,  
25 while also failing to identify the “healthy and regulatory bodies.”<sup>6</sup>

26 <sup>4</sup> Campbell, *Product Heavy Metal Test Results* (Dec. 11, 2019) (online at  
27 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf>) (last accessed Feb.  
10, 2021).

28 <sup>5</sup> <https://www.plumorganics.com/faqs/> (last accessed Feb. 10, 2021).

<sup>6</sup> *Id.*

1                   **B. Heavy Metals**

2           34.     At all times during the Class Period, Plum knew or should have known that the  
3 Baby Foods contained heavy metals, had a risk of containing heavy metals, and/or were not  
4 sufficiently tested for heavy metals. During this time, Plum omitted any reference to the presence,  
5 or the risk of the presence, of heavy metals from the Baby Foods’ packaging.

6           35.     Plum knew or should have known that heavy metals were a potentially dangerous  
7 contaminant that pose health risks to babies and children. Plum knew or should have known that  
8 the standards for the presence of heavy metals in baby food have become increasingly stringent in  
9 recent years.

10          36.     Plum knew or should have known that it owed consumers a duty of care to prevent,  
11 or at the very least, minimize, the presence, or risk of, of heavy metals in the Baby Foods.

12          37.     Plum knew or should have known that it owed consumers a duty of care to  
13 adequately test for heavy metals in the Baby Foods.

14          38.     Plum knew or should have known that consumers purchased the Baby Foods based  
15 on the reasonable expectation that Defendant manufactured the Baby Foods to the highest  
16 standards to be safe and healthy for consumption by babies. Plum knew or should have known that  
17 consumers reasonably inferred that Plum would hold the Baby Foods to the highest standards for  
18 preventing the presence, or risk, of heavy metals and for testing for heavy metals.

19          39.     A recent Congressional report from the Subcommittee on Economic and Consumer  
20 Policy found that many of the products produced by the country’s largest commercial baby food  
21 manufacturers “contain significant levels of toxic heavy metals, including arsenic, lead, cadmium  
22 and mercury, which can endanger infant neurological development.”<sup>7</sup>

23          40.     The Food and Drug Administration (“FDA”) and the World Health Organization  
24 (“WHO”) have declared arsenic, lead, cadmium, and mercury “dangerous to human health,  
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27 <sup>7</sup> Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to*  
28 *Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021), available at  
<https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed  
Feb. 10, 2021).



1 particularly to babies and children, who are most vulnerable to their neurotoxic effects.” Ex. 3 at  
2 2.

3 41. Arsenic, lead, mercury, and cadmium-- four heavy metals found in the Baby Foods  
4 --are neurotoxins, or poisons which affect the nervous system. Exposures to these four heavy  
5 metals “diminish quality of life, reduce academic achievement, and disturb behavior, with  
6 profound consequences for the welfare and productivity of entire societies.” Ex. 1 at 13.

7 42. The four heavy metals “can harm a baby’s developing brain and nervous system”  
8 and cause negative impacts such as “the permanent loss of intellectual capacity and behavioral  
9 problems like attention-deficit hyperactivity disorder (ADHD).” Ex. 1 at 6. Even in trace amounts  
10 found in food, these heavy metals can alter the developing brain and erode a child’s IQ. Ex. 1 at  
11 1.

12 43. Research continues to confirm that exposures to food containing arsenic, lead,  
13 mercury, and cadmium causes “troubling risks for babies, including cancer and lifelong deficits in  
14 intelligence[.]” Ex. 1 at 1.

15 ***Arsenic***

16 44. The Baby Foods may contain arsenic which, when children are exposed to it early  
17 in life, causes “cognitive deficits among school-age children exposed early in life, and neurological  
18 problems in adults who were exposed to arsenic-poisoned milk as infants.” Ex. 1 at 13. “There is  
19 no evidence that the harm caused by arsenic is reversible.” Ex. 1 at 13. Arsenic exposure also  
20 creates a risk of “respiratory, gastrointestinal, haematological, hepatic, renal, skin, neurological  
21 and immunological effects, as well as damaging effects on the central nervous system[.]” Ex. 3 at  
22 10.

23 45. Based on the risks associated with exposure to higher levels of arsenic, both the  
24 FDA and U.S. Environmental Protection Agency (“EPA”) have set standards for the allowable  
25 limit of arsenic at 10 parts per billion (“ppb”) for human consumption in apple juice (regulated by  
26 the FDA) and drinking water (regulated by the EPA as a maximum contaminant level).

1 46. Moreover, the FDA has set the maximum allowable arsenic levels in bottled water  
2 at 10 ppb of inorganic arsenic.<sup>8</sup> The FDA is also considering limiting the action level for arsenic  
3 in rice cereals for infants to 100 ppb.<sup>9</sup>

4 47. Again, Plum did not cooperate with the Subcommittee's investigation and refused  
5 to produce its testing standards and specific test results. Ex. 3 at 2. Plum instead produced a  
6 spreadsheet that "self-declared" that every product met criteria for each of the Heavy Metals, while  
7 declining to state what the criteria were.<sup>10</sup>

8 48. Other reports indicate Plum sold products containing levels as high as 49.9 ppb  
9 arsenic. Ex. 1 at 27.

### 10 **Lead**

11 49. The Baby Foods also may contain lead, which is another carcinogen and  
12 developmental toxin known to cause health problems.

13 50. Lead exposure can seriously harm children's brain and nervous systems and is  
14 associated with a range of negative health outcomes including "behavioral problems, decreased  
15 cognitive performance, delayed puberty, and reduced postnatal growth." Ex. 3 at 11.

16 51. Exposure to lead in food builds up over time. Buildup can and has been  
17 scientifically demonstrated to lead to the development of chronic poisoning, cancer,  
18 developmental, and reproductive disorders, as well as serious injuries to the nervous system, and  
19 other organs and body systems.

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23 <sup>8</sup> Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to*  
24 *Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021), available at  
25 <https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed  
Feb. 10, 2021).

26 <sup>9</sup> FDA, Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants: Action Level  
27 (Apr. 2016), [https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocuments](https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM493152.pdf)  
RegulatoryInformation/UCM493152.pdf (last accessed Feb. 10, 2021).

28 <sup>10</sup> Campbell, *Product Heavy Metal Test Results* (Dec. 11, 2019) (online at  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf>) (last accessed Feb.  
10, 2021).



1 52. Even very low exposure levels to lead “cause lower academic achievement,  
2 attention deficits and behavior problems. No safe level of exposure has been identified.” Ex. 1 at  
3 13.

4 53. One study found that “children age 0 to 24 months lose more than 11 million IQ  
5 points from exposure to arsenic and lead in food. Ex. 1 at 7. Additionally, studies have established  
6 a link between lead exposure and ADHD. Ex. 3 at 12.

7 <sup>54.</sup> Although there is no federal standard for lead in baby food, health experts,  
8 including the American Academy for Pediatrics, the Environmental Defense Fund, and Consumer  
9 Reports, have agreed that lead in baby foods should not exceed 1 ppb.<sup>11</sup> “The European Union has  
10 set the maximum lead level in infant formula to 20 ppb.”<sup>12</sup>

11 55. On January 15, 2021, EPA issued Lead and Copper Rule Revisions, with a new  
12 “trigger level” for treatment of 10 ppb lead in drinking water, effective March 16, 2021. 86 F.R.  
13 28691 (Jan. 15, 2021). Previously, EPA had required treatment for water exceeding lead  
14 concentrations of 15 ppb. 40 C.F.R. 141, Subpart I.

15 56. Again, Plum did not cooperate with the Subcommittee’s investigation and instead  
16 produced a spreadsheet that “self-declared” that every product met criteria for each of the Heavy  
17 Metals, while declining to state what the criteria were.<sup>13</sup>

18 57. Other reports, however, indicate Plum sold products containing levels as high as 14  
19 ppb lead. Ex. 1 at 22.

## 20 **Mercury**

21 58. The Baby Foods also may contain mercury, which increases the risk for  
22 cardiovascular disease and can cause vision, intelligence, and memory problems for children  
23 exposed in utero. Exposure to mercury has been linked to higher risk of lower IQ scores and

24 <sup>11</sup> Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to*  
25 *Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021), available at  
26 <https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed  
Feb. 10, 2021).

27 <sup>12</sup> *Id.*

28 <sup>13</sup> Campbell, *Product Heavy Metal Test Results* (Dec. 11, 2019) (online at  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf>) (last accessed Feb.  
10, 2021).

1 intellectual disability. Ex. 1 at 14. Mercury exposure at two and three years of age has been  
2 positively associated with autistic behaviors among pre-school age children. Ex. 3 at 12-13.

3 59. The EPA has set a maximum contaminant level for mercury in drinking water of 2  
4 ppb. Ex. 3 at 32.

5 ***Cadmium***

6 60. Finally, the Baby Foods may contain cadmium which has been observed to cause  
7 anemia, liver disease, and nerve or brain damage in animals eating or drinking cadmium.

8 61. Cadmium is linked to neurotoxicity, cancer, and kidney, bone, and heart damage.  
9 Scientists have reported a “tripling of risk for learning disabilities and special education among  
10 children with higher cadmium exposures, at levels common among U.S. children[.]” Ex. 1 at 14.  
11 Cadmium, like lead, “displays a troubling ability to cause harm at low levels of exposure.” Ex. 1  
12 at 14. The U.S. Department of Health and Human Services has determined that cadmium and  
13 cadmium compounds are known human carcinogens and the EPA has likewise determined that  
14 cadmium is a probable human carcinogen.<sup>14</sup>

15 62. The EPA has set a maximum contaminant level for cadmium in drinking water of  
16 5 ppb, 40 C.F.R. § 141.62; the FDA has set a maximum level in bottled water to 5 ppb, and the  
17 WHO set a maximum cadmium level in drinking water to 3 ppb. Ex. 3 at 29.

18 63. Despite Plum’s assertion that all of its Baby Foods met criteria for each of the  
19 Heavy Metals, reports indicate that Defendants sold products containing levels as high as 6.3 ppb  
20 cadmium. Ex. 1 at 27.

21 64. Indeed, the FDA has acknowledged that “exposure to [these four heavy] metals are  
22 likely to have the most significant impact on public health” and has prioritized them in connection  
23 with its heavy metals workgroup looking to reduce the risks associated with human consumption  
24 of heavy metals.<sup>15</sup>

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27 <sup>14</sup> ATSDR, Public Health Statement: Cadmium (Sept. 2012),  
<https://www.atsdr.cdc.gov/phs/phs.asp?id=46&tid=15> (last accessed Feb. 10, 2021).

28 <sup>15</sup> FDA, Metals, <https://www.fda.gov/Food/FoodbornellnessContaminants/Metals/default.htm>  
(last accessed Feb. 10, 2021).

1           65.     Despite the known risks of exposure to these heavy metals, Plum has negligently,  
2 recklessly, and/or knowingly sold the Baby Foods without disclosing they may contain levels of  
3 arsenic, mercury, cadmium and lead to consumers like Plaintiffs.

4           66.     Additionally, Plum knew or should have been aware that a consumer would be  
5 feeding the Baby Foods multiple times each day to his or her child, making it the primary source  
6 of food for the child. This leads to repeated exposure of the heavy metals to the child.

7           67.     Plum has wrongfully and misleadingly advertised and sold the Baby Foods without  
8 any label or warning indicating to consumers that these products contain heavy metals, or that  
9 these toxins can over time accumulate in the baby's body to the point where poisoning, injury,  
10 and/or disease can occur.

11           68.     Plum's omissions are material, false, misleading, and reasonably likely to deceive  
12 the public. This is true especially considering the long-standing campaign by Plum to market the  
13 Baby Foods as healthy, safe, and high-quality to induce consumers, such as Plaintiffs, to purchase  
14 the products. For instance, Plum markets the Baby Foods as "organic" and appropriate for certain  
15 "Stage[s]" (i.e. 4+ months, 6+ months etc.), both on the products' packaging and on Defendant's  
16 websites.

17           69.     Using such descriptions and promises makes Plum's advertising campaign  
18 deceptive based on presence, or risk of, of heavy metals in the Baby Foods. Reasonable consumers,  
19 like Plaintiffs, would consider the mere presence or risk of heavy metals in the Baby Foods as a  
20 material fact in considering what baby food products to purchase. Plum's above-referenced  
21 statements, representations, partial disclosures, and omissions are false, misleading, and crafted to  
22 deceive the public as they create an image that the Baby Foods are healthy, safe, high-quality and  
23 free of contaminants such as arsenic and lead. Moreover, Plum knew or should have reasonably  
24 expected that the presence, or risk, of heavy metals in its Baby Foods is something an average  
25 consumer would consider in purchasing baby food. Plum's representations and omissions are false,  
26 misleading, and reasonably likely to deceive the public.

27           70.     Moreover, reasonable consumers, such as Plaintiffs and other members of the Class  
28 (as defined herein), would have no reason to believe and/or anticipate that the Baby Foods are not

1 “organic” or appropriate for consumption by a baby in the stated “Stage.” Non-disclosure and/or  
2 concealment of the presence, or risk of, heavy metals in the Baby Foods coupled with the  
3 misrepresentations alleged herein by Plum suggesting that the food is appropriate for consumption  
4 by babies is intended to and does, in fact, cause consumers to purchase a product Plaintiffs and  
5 members of the class would not have bought if the true quality was disclosed. As a result of these  
6 false or misleading statements and omissions, Plum has generated substantial sales of the Baby  
7 Foods.

8 71. Plaintiffs bring this action individually and on behalf of all other similarly situated  
9 consumers who purchased the Baby Foods, in order to cause the disclosure of the presence, or risk,  
10 of heavy metals that pose a known risk to infants in the Baby Foods, to correct the false and  
11 misleading perception Plum has created in the minds of consumers that the Baby Foods are high  
12 quality, safe, and healthy, and to obtain redress for those who have purchased the Baby Foods.

### 13 C. Perchlorate

14 72. At all times during the Class Period, Plum knew or should have known that the  
15 Baby Foods contained perchlorate, were at risk of containing perchlorate, and/or were not  
16 sufficiently tested for perchlorate. During this time, Plum omitted any reference to the presence or  
17 risk of perchlorate from the Baby Foods’ packaging.

18 73. Plum knew or should have known that perchlorate is a potentially dangerous  
19 contaminant that poses health risks to babies and children.

20 74. Plum knew or should have known that it owed consumers a duty of care to prevent,  
21 or at the very least, minimize, the presence of perchlorate in the Baby Foods.

22 75. Plum knew or should have known that it owed consumers a duty of care to  
23 adequately test for perchlorate in the Baby Foods.

24 76. Plum knew that consumers purchased the Baby Foods based on the reasonable  
25 expectation that Defendant manufactured the Baby Foods to the highest standards to be safe and  
26 healthy for consumption by babies. Plum knew or should have known that consumers reasonably  
27 inferred that Plum would hold the Baby Foods to the highest standards for preventing the presence  
28 or risk of perchlorate and for testing for perchlorate.

1 77. Perchlorate disrupts thyroid functions that are crucial to brain development.  
2 Perchlorate has been “linked to IQ loss among children born to mothers with thyroid dysfunction.”  
3 Ex. 1 at 8.

4 78. The levels of perchlorate in children’s food has increased significantly from 2005.  
5 Perchlorate—which is both a naturally occurring and manmade chemical—was approved by the  
6 FDA in 2005 for use as an antistatic in plastic food packaging. In 2016, the FDA expanded the  
7 approval to cover dry food handling equipment. Hypochlorite bleach, which is used to disinfect  
8 food processing equipment, can also create perchlorate as a product of degradation.

9 79. The dangers of perchlorate in human food are recognized by the FDA.<sup>16</sup> The EPA  
10 has also recognized the dangers of perchlorate in drinking water and has set the maximum  
11 contaminant level goal for perchlorate in drinking water of 56 µg/L. 85 F.R. 43990 (July 21, 2020).

12 80. Still, certain Baby Foods are sold by Plum that may contain levels of perchlorate.

13 81. Despite the risk and/or actual presence of these unnatural and potentially harmful  
14 chemicals, Plum prominently warrants, claims, features, represents, advertises, or otherwise  
15 markets the Baby Foods as “organic” and appropriate for consumption by a baby in the stated  
16 “Stage” and fails to disclose the presence, or risk of, heavy metals and perchlorate.

17 **IV. PLUM FALSELY ADVERTISES THE BABY FOODS AS NUTRITIOUS AND**  
18 **HEALTHY WHILE OMITTING ANY MENTION OF THE RISK AND/OR**  
19 **ACTUAL PRESENCE OF HEAVY METALS AND PERCHLORATE.**

20 82. Plum formulates, develops, manufactures, labels, packages, distributes, markets,  
21 advertises, and sells its extensive lines of baby food products across the United States, including the  
22 Baby Foods.

23 83. Plum positions the Baby Foods as “organic” products that are free from unnatural  
24 ingredients to place them within the premium category of baby food.

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25  
26 <sup>16</sup> FDA, Exploratory Survey Data on Perchlorate in Food 2004-2005,  
27 <https://www.fda.gov/food/chemicals/exploratory-survey-data-perchlorate-food-2004-2005> (last  
28 accessed Feb. 10, 2021). (“Human exposure to sufficient doses of perchlorate can interfere with  
iodide uptake into the thyroid gland, disrupting its functions and potentially leading to a  
reduction in the production of thyroid hormones.”).

1 84. Plum had a duty to ensure that the Baby Foods lived up to these representations and  
2 marketing positioning the Baby Foods as high-quality and premium. As such, Plum knew or should  
3 have known that the Baby Foods had a high risk and/or actually included heavy metals,  
4 perchlorate, and/or unnatural or other ingredients that do not conform to the products' labels,  
5 packaging, advertising, and statements, including only organic ingredients.

6 85. Plum specifically promises on its website that it is "confident in the safety and quality  
7 of [its] products" and that it looks to guidance from leading health and regulatory bodies.

8 86. Based on these false representations, Plum charges a premium, knowing that the  
9 claimed make-up of the Baby Foods (as well as all of the other alleged false and/or misleading  
10 representations discussed herein) is something an average consumer would consider as a reason in  
11 picking a more expensive baby food product. By negligently and/or deceptively representing,  
12 marketing, and advertising the Baby Foods as high-quality and safe for babies' consumption,  
13 Defendant wrongfully capitalized on, and reaped enormous profits from, consumers' strong  
14 preference for premium and organic baby food products.

15 87. Additionally, Plum knew or should have known that its ingredients, and the final  
16 products, could contain materials such as toxins, heavy metals, and perchlorate, and yet they did  
17 not test all ingredients and finished products, including the Baby Foods, for such materials.

18 88. The Baby Foods are available at numerous retail and online outlets throughout the  
19 United States, including in California, Minnesota, and Pennsylvania.

20 89. Third-party testing has made clear that the Baby Foods may in fact contain levels  
21 of both heavy metals and/or perchlorate.

22 90. As a result of Plum's omissions, a reasonable consumer would have no reason to  
23 suspect the risk and/or presence of heavy metals and/or unnatural or other ingredients that do not  
24 conform to the labels, packaging, advertising, and statements in the Baby Foods without  
25 conducting his or her own scientific tests or reviewing third-party scientific testing of these  
26 products.

27 91. Plum has wrongfully and misleadingly advertised and sold the Baby Foods without  
28 any label or warning indicating to consumers that these products may contain heavy metals,

1 perchlorate, and/or unnatural or other ingredients that do not conform to the labels, packaging,  
2 advertising, and statements, or that these toxins can accumulate over time in the baby's body to  
3 the point where poisoning, injury, and/or disease can occur.

4 **V. PLUM HAD KNOWLEDGE AND NOTICE OF THEIR BREACHES OF THEIR**  
5 **EXPRESS AND IMPLIED WARRANTIES.**

6 92. Defendants had sufficient notice of their breaches of express warranties. Plum has,  
7 and had, knowledge of the physical and chemical makeup of the Baby Foods. Plum also had  
8 exclusive knowledge of its suppliers and whether any of them supplied ingredients at risk for  
9 containing perchlorate.

10 93. Additionally, Plum received notice of the contaminants in their baby food products,  
11 including the Baby Foods, through the Healthy Babies Bright Futures nonprofit organization,  
12 which found levels of heavy metals and perchlorate in their baby food products.

13 94. Plum did not change its packaging or labeling to include a disclaimer that the Baby  
14 Foods contained, or may contain, any levels of heavy metals.

15 **VI. PRIVACY EXISTS WITH THE PLAINTIFFS AND THE PROPOSED CLASS.**

16 95. Plum knew that consumers such as Plaintiffs and the proposed Class would be the  
17 end purchasers of the Baby Foods and the target of their advertising and statements.

18 96. Plum intended that the warranties, advertising, labeling, statements, and  
19 representations would be considered by the end purchasers of the Baby Foods, including Plaintiffs  
20 and the proposed Class.

21 97. Plum directly marketed to Plaintiffs and the proposed Class through statements on  
22 their website, labeling, advertising, and packaging.

23 98. Plaintiffs and the proposed Class are the intended beneficiaries of the expressed  
24 and implied warranties.

25 **CLASS ACTION ALLEGATIONS**

26 99. Plaintiffs bring this action individually and on behalf of the following Class  
27 pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:  
28



1 All persons in the United States who, from October 1, 2015, to the present,  
2 purchased the Baby Foods for household or business use, and not for resale (the  
"Class").

3 100. Plaintiff McKeon brings this action individually and on behalf of the following  
4 Minnesota Sub-Class:

5  
6 All persons who are citizens of the State of Minnesota who, from October 1, 2015, to the  
7 present, purchased the Baby Foods for household or business use, and not for resale (the  
"Minnesota Sub-Class").

8  
9 101. Plaintiff Crawford brings this action individually and on behalf of the following  
10 Pennsylvania Sub-Class:

11 All persons who are citizens of the State of Pennsylvania who, from October 1, 2015, to  
12 the present, purchased the Baby Foods for household or business use, and not for resale  
13 (the "Pennsylvania Sub-Class").

14 102. Excluded from the Class and Sub-Classes are the Defendants, any parent  
15 companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-  
16 conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over  
17 this matter.

18 103. This action is brought and may be properly maintained as a class action. There is  
19 a well-defined community of interests in this litigation and the members of the Class are easily  
20 ascertainable. Purchasers of the Baby Foods can identify their purchases through receipts, store  
21 rewards programs, and their own testimony.

22 104. The members in the proposed Class are so numerous that individual joinder of all  
23 members is impracticable, and the disposition of the claims of the members of all Class members  
24 in a single action will provide substantial benefits to the parties and Court.

25 105. Questions of law and fact common to Plaintiffs and the Class include, but are not  
26 limited to, the following:

- 27 a. whether Plum owed a duty of care to Plaintiffs and the Class;
- 28

- 1 b. whether Plum knew or should have known that the Baby Foods contained, or may  
2 contain, heavy metals;
- 3 c. whether Plum knew or should have known that the Baby Foods contained, or may  
4 contain, perchlorate;
- 5 d. whether Plum wrongfully represented and continues to represent that the Baby  
6 Foods are organic and safe for human infant consumption;
- 7 e. whether Plum wrongfully represented and continues to represent that the Baby  
8 Foods are healthy, superior quality, nutritious and safe for consumption;
- 9 f. whether Plum wrongfully represented and continues to represent that the Baby  
10 Foods are “organic”;
- 11 g. whether Plum wrongfully represented and continues to represent that the Baby  
12 Foods are appropriate for consumption by various “Stage[s]” of babies;
- 13 h. whether Plum wrongfully represented and continues to represent that the  
14 manufacturing of the Baby Foods are subjected to rigorous standards, including  
15 testing for heavy metals;
- 16 i. whether Plum wrongfully failed to disclose that the Baby Foods contained, or may  
17 contain, heavy metals and/or perchlorate;
- 18 j. whether Plum’s representations in advertising, warranties, packaging, and/or  
19 labeling are false, deceptive, and misleading;
- 20 k. whether those representations are likely to deceive a reasonable consumer;
- 21 l. whether a reasonable consumer would consider the presence, or risk of, heavy  
22 metals and/or perchlorate as a material fact in purchasing baby food;
- 23 m. whether Plum had knowledge that those representations were false, deceptive, and  
24 misleading;
- 25 n. whether Plum continues to disseminate those representations despite knowledge  
26 that the representations are false, deceptive, and misleading;
- 27
- 28

- 1 o. whether a representation that a product is healthy, superior quality, nutritious and
- 2 safe for consumption and does not contain arsenic, mercury, cadmium, lead and/or
- 3 perchlorate is material to a reasonable consumer;
- 4 p. whether Plum's representations and descriptions on the labeling of the Baby Foods
- 5 are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- 6 q. whether Plum violated the laws of the State of California;
- 7 r. whether Plum violated the laws of the State of Minnesota;
- 8 s. Whether Plum violated the laws of the State of Pennsylvania;
- 9 t. whether Plum breached its express warranties;
- 10 u. whether Plum breached its implied warranties;
- 11 v. whether Plum engaged in unfair trade practices;
- 12 w. whether Plum engaged in false advertising;
- 13 x. whether Plum's conduct was negligent per se;
- 14 y. whether Plum made negligent and/or fraudulent misrepresentations and/or
- 15 omissions;
- 16 z. whether Plaintiffs and the members of the Class are entitled to actual, statutory, and
- 17 punitive damages; and
- 18 aa. whether Plaintiffs and members of the Class are entitled to declaratory and
- 19 injunctive relief.

20 106. Plum engaged in a common course of conduct giving rise to the legal rights sought  
21 to be enforced by Plaintiffs individually and on behalf of the other members of the Class. Identical  
22 statutory violations and business practices and harms are involved. Individual questions, if any,  
23 are not prevalent in comparison to the numerous common questions that dominate this action.

24 107. Plaintiffs' claims are typical of those of the members of the Class in that they are  
25 based on the same underlying facts, events, and circumstances relating to Plum's conduct.

26 108. Plaintiffs will fairly and adequately represent and protect the interests of the  
27 Classes, have no interests incompatible with the interests of the Class, and have retained counsel  
28 competent and experienced in class action, consumer protection, and false advertising litigation.

1 109. Class treatment is superior to other options for resolution of the controversy  
2 because the relief sought for each member of the Class is small such that, absent representative  
3 litigation, it would be infeasible for members of the Class to redress the wrongs done to them.

4 110. Questions of law and fact common to the Class predominate over any questions  
5 affecting only individual members of the Class.

6 111. As a result of the foregoing, class treatment is appropriate.

7 **CLAIMS FOR RELIEF**

8 **COUNT I**

9 **Breach of Express Warranty Against Defendants on Behalf of the Class (or, alternatively,  
10 the State Subclasses)**

11 112. Plaintiffs incorporate by reference and reallege each and every allegation contained  
12 above, as though fully set forth herein.

13 113. Plum marketed and sold the Baby Foods into the stream of commerce with the intent  
14 that the Baby Foods would be purchased by Plaintiffs and the Class.

15 114. Plum expressly warranted, advertised, and represented to Plaintiffs and the Class that  
16 their Baby Foods are:

- 17 a. Organic; and  
18 b. Appropriate for certain “Stage[s]” of babies.

19 115. Plum made these express warranties regarding the Baby Foods’ quality, ingredients,  
20 and fitness for consumption in writing through its website, advertisements, and marketing materials  
21 and on the Baby Foods’ packaging and labels. These express warranties became part of the basis of  
22 the bargain that Plaintiffs and the Class entered into upon purchasing the Baby Foods.

23 116. Plum’s advertisements, warranties, and representations were made in connection  
24 with the sale of the Baby Foods to Plaintiffs and the Class. Plaintiffs and the Class relied on Plum’s  
25 advertisements, warranties, and representations regarding the Baby Foods in deciding whether to  
26 purchase Plum’s products.

27 117. Defendant’s Baby Foods do not conform to Plum’s advertisements, warranties and  
28 representations in that they:

- 1 a. Are not organic or suitable for consumption by human infants; and
- 2 b. Contain, or may contain, levels of various heavy metals and/or perchlorate;

3 118. Plum was on notice of this breach as they were aware of the included heavy metals  
4 and/or perchlorate in the Baby Foods and based on the public investigation by the Healthy Babies  
5 Bright Futures report that showed their baby food products as unhealthy.

6 119. Privity exists because Plum expressly warranted to Plaintiffs and the Class through  
7 the warranting, packaging, advertising, marketing, and labeling that the Baby Foods were healthy,  
8 safe, and suitable for consumption and by failing to make any mention of heavy metals,  
9 perchlorate, and/or unnatural or other ingredients.

10 120. As a direct and proximate result of Plum's conduct, Plaintiffs and the Class have  
11 suffered actual damages in that they purchased Baby Foods that were worth less than the price they  
12 paid and they would not have purchased at all had they known of the risk and/or presence of heavy  
13 metals, perchlorate, and/or unnatural or other ingredients that do not conform to the products' labels,  
14 packaging, advertising, and statements.

15 121. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,  
16 attorneys' fees, costs, and any other just and proper relief available thereunder for Plum's failure to  
17 deliver goods conforming to their express warranties and resulting breach.

18 **COUNT II**

19 **Breach of Implied Warranty of Merchantability Against Defendants on Behalf of the Class**  
20 **(or, alternatively, the State Subclasses)**

21 122. Plaintiffs incorporate by reference and reallege each and every allegation contained  
22 above, as though fully set forth herein.

23 123. Plum is a merchant engaging in the sale of goods to Plaintiffs and the Class.

24 124. There was a sale of goods from Plum to Plaintiffs and the Class.

25 125. At all times mentioned herein, Plum manufactured or supplied the Baby Foods, and  
26 prior to the time the Baby Foods were purchased by Plaintiffs and the Class, Plum impliedly warranted  
27 to them that the Baby Foods were of merchantable quality, fit for their ordinary use (consumption by  
28 babies), and conformed to the promises and affirmations of fact made on the Baby Foods' containers  
and labels, including that the food was high-quality and safe and appropriate for human infant

1 consumption. Plaintiffs and the Class relied on Plum’s promises and affirmations of fact when they  
2 purchased the Baby Foods.

3 126. The Baby Foods were not fit for their ordinary use, consumption by babies, and did  
4 not conform to Plum’s affirmations of fact and promises as they contained, or were at risk of  
5 containing, heavy metals, perchlorate, and/or unnatural or other ingredients or contaminants that  
6 do not conform to the packaging.

7 127. The Baby Foods did not conform to Plum’s affirmations of fact that they were  
8 organic because they contained the chemical perchlorate.

9 128. Plum breached its implied warranties by selling Baby Foods that failed to conform  
10 to the promises or affirmations of fact made on the container or label as each product contained  
11 heavy metals, perchlorate, and/or unnatural or other ingredients or contaminants that do not  
12 conform to the packaging.

13 129. Plum was on notice of this breach, as it was aware of the heavy metals and/or  
14 perchlorate included, or at risk, in the Baby Foods, and based on the public investigation by  
15 Healthy Babies Bright Futures that showed Plum’s baby food products as unhealthy and  
16 contaminated.

17 130. Privity exists because Plum impliedly warranted to Plaintiffs and the Class through  
18 the warranting, packaging, advertising, marketing, and labeling that the Baby Foods were high-  
19 quality and suitable for consumption by babies, and by failing to make any mention of heavy  
20 metals, perchlorate, and/or unnatural or other ingredients.

21 131. As a direct and proximate result of Plum’s conduct, Plaintiffs and the Class have  
22 suffered actual damages in that they have purchased Baby Food that is worth less than the price  
23 they paid and that they would not have purchased at all had they known of the presence or risk of  
24 heavy metals, perchlorate, and/or unnatural or other ingredients.

25 132. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,  
26 attorneys' fees, costs, and any other just and proper relief available thereunder for Plum’s failure  
27 to deliver goods conforming to their implied warranties and resulting breach.  
28

**COUNT III**

**Fraudulent Misrepresentation Against Defendants on Behalf of the Class (or, alternatively, the State Subclasses)**

1  
2  
3 133. Plaintiffs incorporate by reference and reallege each and every allegation contained  
4 above, as though fully set forth herein.

5 134. Plum falsely represented to Plaintiffs and the Class that their Baby Foods are:

6 (a) Organic; and

7 (b) Appropriate for certain “Stage[s]” of babies.

8 135. Plum intentionally, knowingly, and recklessly made these misrepresentations to  
9 induce Plaintiffs and the Class to purchase its Baby Foods.

10 136. Plum knew that their representations about the Baby Foods were false in that the  
11 Baby Foods contained, or were at risk of containing, levels of heavy metals, perchlorate, and/or  
12 unnatural or other ingredients that do not conform to the products’ labels, packaging, advertising,  
13 and statements. Plum allowed their packaging, labels, advertisements, promotional materials, and  
14 websites to intentionally mislead consumers, such as Plaintiffs and the Class.

15 137. Plaintiffs and the Class did in fact rely on these misrepresentations and purchased  
16 the Baby Foods to their detriment. Given the deceptive manner in which Plum advertised,  
17 represented, and otherwise promoted the Baby Foods, Plaintiffs’ and the Class’s reliance on  
18 Plum’s misrepresentations was justifiable.

19 138. As a direct and proximate result of Plum’s conduct, Plaintiffs and the Class have  
20 suffered actual damages in that they purchased Baby Foods that were worth less than the price  
21 they paid and that they would not have purchased at all had they known of the risk and/or presence  
22 of heavy metals, perchlorate, and/or unnatural or other ingredients that do not conform to the  
23 products’ labels, packaging, advertising, and statements.

24 139. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,  
25 attorneys’ fees, costs, and any other just and proper relief available under the laws.  
26  
27  
28



**COUNT IV**

**Fraud by Omission Against Defendants on Behalf of the Class (or, alternatively, the State Subclasses)**

1  
2  
3 140. Plaintiffs incorporate by reference and reallege each and every allegation contained  
4 above, as though fully set forth herein.

5 141. Plum concealed from and failed to disclose to Plaintiffs and the Class that their  
6 Baby Foods contained, or were at risk of containing, heavy metals, perchlorate, and/or unnatural  
7 or other ingredients that do not conform to the products' labels, packaging, advertising, and  
8 statements.

9 142. Plum was under a duty to disclose to Plaintiffs and the Class the true quality,  
10 characteristics, ingredients and suitability of the Baby Foods because: (1) Plum was in a superior  
11 position to know the true state of facts about its products; (2) Plum was in a superior position to  
12 know the actual ingredients, characteristics, and suitability of the Baby Foods for consumption by  
13 babies; and (3) Plum knew that Plaintiffs and the Class could not reasonably have been expected  
14 to learn or discover that the Baby Foods were misrepresented in the packaging, labels, advertising,  
15 and websites prior to purchasing the Baby Foods.

16 143. The facts concealed or not disclosed by Plum to Plaintiffs and the Class are material  
17 in that a reasonable consumer would have considered them important when deciding whether to  
18 purchase the Baby Foods.

19 144. Plaintiffs and the Class justifiably relied on Plum's omissions to their detriment.  
20 The detriment is evident from the true quality, characteristics, and ingredients of the Baby Foods,  
21 which is inferior when compared to how the Baby Foods are advertised and represented by Plum.

22 145. As a direct and proximate result of Plum's conduct, Plaintiffs and the Class have  
23 suffered actual damages in that they purchased Baby Foods that were worth less than the price  
24 they paid and that they would not have purchased at all had they known of the risk and/or presence  
25 of heavy metals, perchlorate, and/or unnatural or other ingredients that do not conform to the  
26 products' labels, packaging, advertising, and statements.

27 146. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,  
28 attorneys' fees, costs, and any other just and proper relief available under the laws.

**COUNT V**

**Negligent Misrepresentation Against Defendants on Behalf of the Class (or, alternatively, the State Subclasses)**

1  
2  
3 147. Plaintiffs incorporate by reference and reallege each and every allegation contained  
4 above, as though fully set forth herein.

5 148. Plum had a duty to Plaintiffs and the Class to exercise reasonable and ordinary care  
6 in the formulation, testing, manufacture, marketing, distribution, and sale of the Baby Foods.

7 149. Plum breached its duty to Plaintiffs and the Class by formulating, testing,  
8 manufacturing, advertising, marketing, distributing, and selling products to Plaintiffs and the Class  
9 that do not have the ingredients, qualities, characteristics, and suitability for consumption as  
10 advertised by Plum and by failing to promptly remove the Baby Foods from the marketplace or to  
11 take other appropriate remedial action.

12 150. Plum knew or should have known that the ingredients, qualities, and characteristics  
13 of the Baby Foods were not as advertised or suitable for their intended use, consumption by infants,  
14 and were otherwise not as warranted and represented by Plum. Specifically, Plum knew or should  
15 have known that: (1) certain Baby Foods were not organic because they contained, or were at risk  
16 of containing, levels of perchlorate; (2) the Baby Foods were not nutritious, superior quality, pure,  
17 healthy and safe for consumption because they contained, or had a risk of containing, levels of  
18 heavy metals, perchlorate, and/or other unnatural ingredients or contaminants that do not conform  
19 to the packaging; (3) the Baby Foods were adulterated, or at risk of being adulterated, by heavy  
20 metals and perchlorate; and (4) the Baby Foods were otherwise not as warranted and represented  
21 by Plum.

22 151. As a direct and proximate result of Plum conduct, Plaintiffs and the Class have  
23 suffered actual damages in that they purchased Baby Foods that were worth less than the price  
24 they paid and that they would not have purchased at all had they known they contained, or were at  
25 risk of containing, heavy metals, perchlorate, and/or unnatural or other ingredients that do not  
26 conform to the products' labels, packaging, advertising, and statements.

27 152. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,  
28 attorneys' fees, costs, and any other just and proper relief available.

1 **COUNT VI**

2 **Unjust Enrichment Against Defendants on Behalf of the Class (or, alternatively, the State**  
3 **Subclasses)**

4 153. Plaintiffs incorporate by reference and reallege each and every allegation contained  
5 above, as though fully set forth herein.

6 154. Substantial benefits have been conferred on Plum by Plaintiffs and the Class  
7 through the purchase of the Baby Foods. Plum knowingly and willingly accepted and enjoyed  
8 these benefits.

9 155. Plum either knew or should have known that the payments rendered by Plaintiffs  
10 and the Class were given and received with the expectation that the Baby Foods would have the  
11 qualities, characteristics, ingredients, and suitability for consumption represented and warranted  
12 by Plum. As such, it would be inequitable for Plum to retain the benefit of the payments under  
13 these circumstances.

14 156. Plum's acceptance and retention of these benefits under the circumstances alleged  
15 herein make it inequitable for Plum to retain the benefits without payment of the value to Plaintiffs  
16 and the Class.

17 157. Plaintiffs and the Class are entitled to recover from Plum all amounts wrongfully  
18 collected and improperly retained by Plum, plus interest thereon.

19 158. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,  
20 attorneys' fees, costs, and any other just and proper relief available under the laws.

21 **COUNT VII**

22 **Violation of California's Consumer Legal Remedies Act, California Civil Code §§1750, et**  
23 **Seq., Against Defendants on Behalf of the Class**

24 159. Plaintiffs incorporate by reference and realleges each and every allegation  
25 contained above, as though fully set forth herein.

26 160. Plaintiffs and each Class member is a "consumer," as that term is defined in  
27 California Civil Code section 1761(d).

28 161. The Baby Foods are "goods," as that term is defined in California Civil Code  
section 1761(a).

162. Plum is a "person" as that term is defined in California Civil Code section 1761(c).

1 163. Plaintiffs and each proposed Class member’s purchase of Defendant’s products  
2 constituted a “transaction,” as that term is defined in California Civil Code section 1761(e).

3 164. Plum’s conduct alleged herein violated the following provisions of California’s  
4 Consumer Legal Remedies Act (the “CLRA”):

5 (a) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or  
6 intentionally representing that the Baby Foods are:

- 7 i. Organic; and  
8 ii. Appropriate for certain “Stage[s]” of babies.

9 (b) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or  
10 intentionally representing that the Baby Foods are healthy, nutritious, made from  
11 the best ingredients, and safe for consumption, and by failing to make any mention  
12 of Heavy Metals in the Contaminated Baby Foods;

13 (b) California Civil Code section 1770(a)(7), by negligently, recklessly, and/or  
14 intentionally representing that the Baby Foods were of a particular standard,  
15 quality, or grade, when they were of another;

16 (c) California Civil Code section 1770(a)(9), by negligently, recklessly, and/or  
17 intentionally advertising the Baby Foods with intent not to sell them as advertised;  
18 and

19 (d) California Civil Code section 1770(a)(16), by representing that the Baby Foods  
20 have been supplied in accordance with previous representations when they have  
21 not.

22 165. On February 12, 2021, counsel for Plaintiffs and the Class sent Plum written notice  
23 (via U.S. certified mail, return receipt requested) that they are in violation of the CLRA by selling  
24 the Baby Foods containing, or at risk of containing, heavy metals, perchlorate, and/or unnatural or  
25 other ingredients while claiming, among other things, that the Baby Foods are organic, and fit for  
26 consumption by infants.

27 166. Assuming Plum fails to provide appropriate relief for their violations of CLRA  
28 sections 1770(a)(5), (7), (9), and (16) within thirty days of receipt of Plaintiffs’ letter, in

1 accordance with CLRA section 1782(b), Plaintiffs and the Class are entitled, under CLRA section  
2 1780, to recover and obtain the following relief for Plum’s violations of CLRA sections  
3 1770(a)(5), (7), (9), and (16):

- 4 (a) Actual damages under CLRA section 1780(a)(1);
- 5 (b) Restitution of property under CLRA section 1780(a)(3);
- 6 (c) Punitive damages under CLRA section 1780(a)(4) and because Plum has engaged  
7 in fraud, malice, or oppression; and
- 8 (d) Any other relief the Court deems proper under CLRA section 1780(a)(5).

9 167. As a direct and proximate result of these violations, Plaintiffs and the Class have  
10 been harmed, and that harm will continue unless Plum is enjoined from using the misleading  
11 marketing described herein in any manner in connection with the advertising and sale of the Baby  
12 Foods.

13 168. Plaintiffs seek an award of attorneys’ fees pursuant to, *inter alia*, California Civil  
14 Code section 1780(e) and California Code of Civil Procedure section 1021.5.

### 15 **COUNT VIII**

#### 16 **Violation of California's False Advertising Law, California Business & Professions Code 17 §§17500, *Et Seq.*, Against Defendants on Behalf of the Class**

18 169. Plaintiffs incorporate by reference and realleges each and every allegation  
19 contained above, as though fully set forth herein.

20 170. California’s False Advertising Law prohibits any statement in connection with the  
21 sale of goods “which is untrue or misleading.” Cal. Bus. & Prof. Code §17500.

22 171. As set forth herein, Plum’s claims that the Baby Foods are organic, nutritious,  
23 quality, pure, healthy, and safe for consumption by babies are literally false and likely to deceive  
24 the public.

25 172. Plum’s claims that the Baby Foods are organic, nutritious, superior quality, pure,  
26 healthy, and safe for consumption by babies are untrue or misleading, as is failing to make any  
27 disclose the presence or risk of heavy metals and/or perchlorate in the Baby Foods.

28 173. Plum knew, or reasonably should have known, that all these claims were untrue or  
misleading.

1 174. Plum’s conduct is ongoing and continuing, such that prospective injunctive relief  
2 is necessary, especially given Plaintiffs’ desire to purchase these products in the future if they can  
3 be assured that, so long as the Baby Foods are, as advertised, nutritious, superior quality, pure,  
4 healthy, and safe for consumption and do not contain heavy metals, perchlorate and/or any other  
5 ingredients or contaminants that do not conform to the packaging claims.

6 175. Plaintiffs and members of the Class are entitled to injunctive and equitable relief,  
7 and restitution in the amount they spent on the Baby Foods.

8 **COUNT IX**

9 **Violation of the Unfair Competition Law, California Business  
10 & Professions Code §§17200, Et Seq., Against Defendants on Behalf of the Class**

11 176. Plaintiffs incorporate by reference and realleges each and every allegation  
12 contained above, as though fully set forth herein.

13 177. The Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business  
14 act or practice.” Cal. Bus. & Prof. Code §17200.

15 **Fraudulent**

16 178. Plum’s statements that the Baby Foods are nutritious, superior quality, pure,  
17 healthy, and safe for consumption by babies are literally false and likely to deceive the public, as  
18 is Plum’s failing to make any mention of the presence or risk of heavy metals and/or perchlorate  
19 in the Baby Foods.

20 **Unlawful**

21 179. As alleged herein, Plum has advertised the Baby Foods with false or misleading  
22 claims, such that Defendant’s actions as alleged herein violate at least the following laws:

23 (a) The CLRA, California Business & Professions Code sections 1750, *et seq.*; and

24 (b) The False Advertising Law, California Business & Professions Code sections  
25 17500, *et seq.*

26 **Unfair**

27 180. Plum’s conduct with respect to the labeling, packaging, advertising, marketing, and  
28 sale of the Baby Foods is unfair because Defendant’s conduct was immoral, unethical,

1 unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not  
2 outweigh the gravity of the harm to its victims.

3 181. Defendant’s conduct with respect to the labeling, packaging, advertising,  
4 marketing, and sale of the Baby Foods is also unfair because it violates public policy as declared  
5 by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the  
6 False Advertising Law and the CLRA.

7 182. Plum’s conduct with respect to the labeling, packaging, advertising, marketing, and  
8 sale of the Baby Foods is also unfair because the consumer injury is substantial, not outweighed  
9 by benefits to consumers or competition, and not one consumers, themselves, can reasonably  
10 avoid.

11 183. In accordance with California Business & Professions Code section 17203,  
12 Plaintiffs and the Class seek an order enjoining Plum from continuing to conduct business through  
13 fraudulent or unlawful acts and practices and to commence a corrective advertising campaign.  
14 Defendant’s conduct is ongoing and continuing, such that prospective injunctive relief is  
15 necessary.

16 184. On behalf of themselves and the Class, Plaintiffs also seek an order for the  
17 restitution of all monies from the sale the Baby Foods, which were unjustly acquired through acts  
18 of fraudulent, unfair, or unlawful competition.

19 **COUNT X**

20 **Violation of Minnesota Unlawful Trade Practices Act**

21 **Minn. Stat. § 325D.13, *et seq.* on Behalf of Plaintiff McKeon and the Minnesota Sub-Class**

22 185. Plaintiffs incorporate by reference and allege each and every allegation contained  
23 above, as though fully set forth herein.

24 186. Plum is a “person” within the meaning of the Minnesota Unlawful Trade Practices  
25 Act (MUTPA).

26 187. Plum violated the MUTPA by knowingly misrepresenting the true quality and  
27 ingredients of the Baby Foods by falsely claiming that the Baby Foods are:

- 28 (a) “Organic”; and

1 (b) Appropriate for certain “Stage[s] of babies.

2 188. Plum knew or should have known that the Baby Foods did not have the quality and  
3 ingredients described above because they contained, and/or had a material risk of containing heavy  
4 metals, perchlorate, and/or unnatural or other ingredients.

5 189. Plum’s pattern of knowing misrepresentations, concealment, omissions, and other  
6 deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive  
7 Plaintiff McKeon and the Minnesota Sub-Class with respect to the Baby Foods’ quality,  
8 ingredients, and suitability for consumption by babies.

9 190. Plum intended that Plaintiff McKeon and the Minnesota Sub-Class would rely on  
10 Plum’s misrepresentations, concealment, warranties, deceptions, and/or omissions regarding the  
11 Baby Foods’ quality, ingredients, and suitability for consumption by babies.

12 191. Plum’s conduct and omissions described herein occurred repeatedly in Plum’s trade  
13 or business and were capable of deceiving a substantial portion of the consuming public.

14 192. The facts concealed or not disclosed by Plum were material facts in that Plaintiff  
15 McKeon and any reasonable consumer would have considered them in deciding whether to  
16 purchase the Baby Foods. Had Plaintiff known the Baby Foods did not have the quality advertised  
17 by Plum, she would not have purchased the Baby Foods.

18 193. Defendant’s unlawful conduct is continuing, with no indication that Plum intends  
19 to cease this fraudulent course of conduct.

20 194. As a direct and proximate result of Plum’s conduct, Plaintiff McKeon and the  
21 Minnesota Sub-Class have suffered actual damages in that they purchased the Baby Food that was  
22 worth less than the price they paid.

23 195. Plaintiff McKeon and the members of the Minnesota Sub-Class would not have  
24 purchased the Baby Food at all had they known of the presence or risk of heavy metals, perchlorate  
25 and/or any other ingredients or contaminants that do not conform to the packaging claims.

26 196. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325D.15, Plaintiff McKeon and the  
27 Minnesota Sub-Class seek actual damages, injunctive and declaratory relief, attorneys’ fees, costs,  
28 and any other just and proper relief available thereunder for Plum’s violations of the MUTPA.



**COUNT XI**

**Violation of Minnesota Uniform Deceptive Trade Practices Act  
Minn. Stat. § 325D.44, et seq. on Behalf of Plaintiff McKeon and the Minnesota Sub-Class**

197. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

198. Plum is a “person” within the meaning of the Minnesota Uniform Deceptive Trade Practices Act (MUDTPA).

199. Plum willingly engaged in deceptive trade practices, in violation of the MUDTPA, by knowingly misrepresenting the true quality of the Baby Foods by falsely claiming that the Baby Foods:

- (a) “Organic”; and
- (b) Appropriate for certain “Stage[s]” of babies.

200. Plum knew or should have known that the Baby Foods did not have the quality and ingredients described above because they contained, and/or had a material risk of containing, heavy metals, perchlorate, and/or any other ingredients or contaminants that do not conform to the packaging claims.

201. Plum’s misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff McKeon and the Minnesota Sub-Class with respect to the Baby Foods’ ingredients, uses, benefits, standards, quality, grade, and suitability for consumption by babies.

202. Plum intended that Plaintiff McKeon and the Minnesota Sub-Class would rely on Plum’s misrepresentations, concealment, warranties, deceptions, and/or omissions regarding the Baby Foods’ ingredients, uses, benefits, standards, quality, grade, and suitability for consumption by babies.

203. Plum’s conduct and omissions described herein occurred repeatedly in Plum’s trade or business and were capable of deceiving a substantial portion of the consuming public.

204. The facts concealed or not disclosed by Plum were material facts in that Plaintiff McKeon and any reasonable consumer would have considered them in deciding whether to

1 purchase the Baby Foods. Had Plaintiff McKeon known the Baby Foods did not have the quality  
2 advertised by Plum, she would not have purchased the Baby Foods.

3 205. Plum intended that Plaintiff McKeon and the Minnesota Sub-Class would rely on  
4 the deception by purchasing the Baby Foods, unaware of the undisclosed material facts. This  
5 conduct constitutes consumer fraud.

6 206. Plum's unlawful conduct is continuing, with no indication that Plum intends to  
7 cease this fraudulent course of conduct.

8 207. As a direct and proximate result of Plum's conduct, Plaintiff McKeon and the  
9 Minnesota Sub-Class have suffered actual damages in that they purchased the Baby Food that was  
10 worth less than the price they paid.

11 208. Plaintiff McKeon and the members of the Minnesota Sub-Class would not have  
12 purchased the Baby Foods at all had they known of the presence of these heavy metals, perchlorate,  
13 and/or unnatural or other ingredients that do not conform to the packaging.

14 209. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325D.45, Plaintiff McKeon and the  
15 Minnesota Sub-Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs,  
16 and any other just and proper relief available thereunder for Plum's violations of the MUDTPA.

17 **COUNT XII**

18 **Violation of Minnesota False Statement in Advertising Act**  
19 **Minn. Stat. § 325F.67, et. seq. on Behalf of Plaintiff McKeon and the Minnesota Sub-Class**

20 210. Plaintiffs incorporate by reference and reallege each and every allegation contained  
21 above, as though fully set forth herein.

22 211. Plaintiff McKeon purchased "goods," specifically the Baby Foods discussed  
23 herein, and is a "person" within the meaning of the False Statement in Advertising Act (FSAA).

24 212. Plaintiff McKeon purchased the Baby Foods through Plum's statements on the  
25 packaging that contained numerous material assertions representations, and statements of fact  
26 made, published, disseminated, circulated, and placed before the public by Plum that were untrue,  
27 deceptive, and misleading.

28 213. By engaging in the conduct herein, Plum violated and continues to violate Minn.  
Stat. § 325F.67.

1           214. Plum’s misrepresentations, knowing omissions, and use of other sharp business  
2 practices include, by way of example, representations that the Baby Foods are:

3                   (a) “Organic”; and

4                   (b) Appropriate for certain “Stage[s]” of babies.

5           215. Plum knew or should have known that the Baby Foods did not have the quality and  
6 ingredients described above because they contained, and/or had a material risk of containing,  
7 heavy metals, perchlorate, and/or any other ingredients or contaminants that do not conform to the  
8 packaging claims.

9           216. Plum’s misrepresentations, concealment, omissions, and other deceptive conduct  
10 were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff McKeon and the  
11 Minnesota Sub-Class with respect to the Baby Foods’ ingredients, uses, benefits, standards,  
12 quality, grade, and suitability for consumption by babies.

13           217. Plum’s conduct and omissions described herein occurred repeatedly in Plum’s trade  
14 or business and were capable of deceiving a substantial portion of the consuming public.

15           218. The facts concealed or not disclosed by Plum were material facts in that Plaintiff  
16 McKeon and any reasonable consumer would have considered them in deciding whether to  
17 purchase the Baby Foods. Had Plaintiff McKeon known the Baby Foods did not have the quality  
18 advertised by Plum, she would not have purchased the Baby Foods.

19           219. Plum intended that Plaintiff McKeon and the Minnesota Sub-Class would rely on  
20 the deception by purchasing the Baby Foods, unaware of the undisclosed material facts. This  
21 conduct constitutes consumer fraud.

22           220. Plum’s unlawful conduct is continuing, with no indication that Plum intends to  
23 cease this fraudulent course of conduct.

24           221. As a direct and proximate result of Plum’s conduct, Plaintiff McKeon and the  
25 Minnesota Sub-Class have suffered actual damages in that they purchased the Baby Foods that  
26 was worth less than the price they paid.  
27  
28



1 the true value of the Baby Foods. Plaintiff McKeon and the Minnesota Sub-Class relied on, and  
2 were in fact deceived by, Plum’s representations and omissions respect to the Baby Foods’ quality,  
3 ingredients, and fitness for consumption in deciding to purchase them over competitors’ baby  
4 foods.

5 232. The facts concealed or not disclosed by Plum were material facts in that Plaintiff  
6 McKeon and any reasonable consumer would have considered them in deciding whether to  
7 purchase the Baby Foods. Had Plaintiff known the Baby Foods did not have the quality advertised  
8 by Plum, she would not have purchased the Baby Foods.

9 233. Plum’s unlawful conduct is continuing, with no indication that Plum intends to  
10 cease this fraudulent course of conduct.

11 234. As a direct and proximate result of Plum’s conduct, Plaintiff McKeon and the  
12 Minnesota Sub-Class have suffered actual damages in that they purchased the Baby Foods that  
13 were worth less than the price they paid.

14 235. Plaintiff McKeon and the members of the Minnesota Sub-Class would not have  
15 purchased the Baby Foods at all had they known of the presence of these non-conforming  
16 ingredients, contaminants, and/or unnatural or other ingredients.

17 236. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325F.69, Plaintiff McKeon and the  
18 Minnesota Sub-Class seek actual damages, injunctive and declaratory relief, attorneys’ fees, costs,  
19 and any other just and proper relief available thereunder for Plum’s violations of the MPCFA.

20 **COUNT XIV**

21 **Violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law,**  
22 **73 Pa. Cons. Stat. Ann. §§201-1 et seq. (the “UTPCPL”) on Behalf of Plaintiff Crawford**  
23 **and the Pennsylvania Sub-Class**

24 237. Plaintiffs incorporate by reference and reallege each and every allegation contained  
25 above, as though fully set forth herein.

26 238. Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons.  
27 Stat. Ann. §§201-1 et seq. (the “UTPCPL”) makes unlawful “unfair methods of competition and  
28 unfair or deceptive acts or practices in the conduct of any trade or commerce.”

1 239. Plum is a manufacturer, marketer, seller, and distributor of the Baby Foods.

2 240. Plum markets and sells the Baby Foods with express warranties created on the  
3 Products' packaging, labeling, advertisements, marketing literature, and website regarding the  
4 qualities, ingredients, and benefits of the Baby Foods.

5 241. Plaintiff Crawford and the Pennsylvania Sub-Class purchased the Baby Foods for  
6 personal, household, or family use.

7 242. Plum misrepresented the quality of the Baby Foods and the ingredients contained  
8 therein on their labels in violation of the UTPCL.

9 243. Plum's deceptive, false and misleading statements deceived Plaintiff Crawford and  
10 Pennsylvania Sub-Class members and deceived a substantial segment of the target consumer  
11 audience in violation of the UTPCL.

12 244. The conduct described above and throughout this Complaint took place within the  
13 Commonwealth of Pennsylvania and constitutes unfair methods of competition or unfair or  
14 deceptive acts or practices pursuant to §§201-2(4)(v), (vii), and (xxi) of the UTCPL.

15 245. In violation of the UTPCPL, Defendant omitted and concealed material facts from  
16 Plaintiff Crawford and other Pennsylvania Sub-Class members regarding the quality,  
17 characteristics, and benefits of the Baby Foods.

18 246. The omissions and misrepresentations described herein were likely to deceive  
19 consumers into purchasing the Baby Foods.

20 247. Plum knew or reasonably should have known that its representations about the  
21 Baby Foods were false, that the Baby Foods contained, or were at risk of containing heavy metals,  
22 chemicals or toxins, and otherwise were not as warranted and represented by Plum.

23 248. Plum knew or should have known, at the time the Baby Foods left their control that  
24 they contained heavy metals, chemicals or toxins, and were not made of ingredients fit for  
25 consumption by babies.

26 249. Plum's deception is material as it influenced purchasing and payment decisions.

27 250. Plaintiff Crawford and Pennsylvania Sub-Class members have been damaged as a  
28 direct and proximate result of defendant's deceptive and unfair practices.

1           251. Plum intended that Plaintiff Crawford and other Pennsylvania Sub-Class members  
2 rely on their presentations, as their reliance was crucial to Plum being able to command a premium  
3 for the Baby Foods.

4           252. Plum deceived and continues to deceive consumers about the quality and  
5 ingredients of its Baby Foods as well as the fitness of these products for ingestion by babies. This  
6 conduct constitutes unfair or deceptive acts or practices within the meaning of the UTPCPL. This  
7 illegal conduct by Plum is continuing, with no indication that it will cease.

8           253. Plum's actions in connection with the manufacture and distribution of the Baby  
9 Foods as set forth herein evidence a lack of good faith, honesty in fact, and observance of fair  
10 dealing so as to constitute unconscionable commercial practices, in violation of the UTPCPL.

11           254. Plum acted willfully, knowingly, intentionally, unconscionably, and with reckless  
12 indifference when it committed these acts of consumer fraud.

13           255. Plum intended that Plaintiff Crawford and the other Pennsylvania Sub-Class  
14 members rely on the acts of concealment, omissions and misrepresentations regarding the nature  
15 of the Baby Foods so that Plaintiff Crawford and the other Pennsylvania Sub-Class members  
16 would purchase the Baby Foods.

17           256. Plaintiff Crawford and the other Pennsylvania Sub-Class members relied on the  
18 acts of concealment, omissions, and misrepresentations regarding the nature of the Baby Foods.

19           257. Plaintiff Crawford and the other Pennsylvania Sub-Class members, had Plum  
20 disclosed to them all material information regarding the Baby Foods, would have considered the  
21 omitted information material to their decision to purchase the Baby Foods at the price they paid.

22           258. As a direct proximate result of Plum's misrepresentations and omissions, Plaintiff  
23 Crawford and the other members of the Pennsylvania Sub-Class suffered direct economic loss by  
24 purchasing the Baby Foods at a premium, and unwarranted, price. Had Plaintiff Crawford and  
25 other members of the Pennsylvania Sub-Class known the heavy metals, chemicals or toxins  
26 content of the Baby Foods, they would not have bought them, or they would not have paid the  
27 premium price that they did.

28





1 I. An order requiring Plum to pay punitive damages on any count so allowable;

2 J. An order awarding attorney's fees and costs, including the costs of pre-suit  
3 investigation, to Plaintiffs and the Class; and

4 K. An order providing for all other such equitable relief as may be just and proper.

5 **JURY DEMAND**

6 Plaintiffs hereby demand a trial by jury on all issues so triable.

7  
8 Dated: February 15, 2021

Respectfully submitted,

9 /s/Dennis Stewart

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