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*Attorneys for Plaintiff and the Putative Class*

18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 Charles Robbins, individually and on  
21 behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 Gerber Products Company (d/b/a  
25 Nestlé Nutrition, Nestlé Infant Nutrition,  
26 or Nestlé Nutrition North America) and  
27 Nurture, Inc. (d/b/a Happy Family Brands  
and Happy Family Organics),

28 Defendants.

**Case No.**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff, Charles Robbins (hereinafter “Plaintiff”), individually and on behalf  
2 of all others similarly situated, by his attorneys, alleges the following upon  
3 information and belief, except for those allegations pertaining to Plaintiff, which are  
4 based on personal knowledge:  
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7 **NATURE OF THE ACTION**

8 1. This action seeks to remedy the deceptive and misleading business  
9 practices of GERBER PRODUCTS COMPANY (d/b/a Nestlé Nutrition, Nestlé  
10 Infant Nutrition, or Nestlé Nutrition North America) (hereinafter “Gerber”) and  
11 Nurture, Inc. (d/b/a Happy Family Brands and Happy Family Organics), (hereinafter  
12 “Nurture”) (Gerber and Nurture collectively as “Defendants”) with respect to the  
13 marketing and sales of Defendants Gerber and HappyBABY, HappyTOT, and  
14 HappyKID product lines throughout the State of California and throughout the  
15 country. The Gerber and HappyBABY, HappyTOT, and HappyKID product lines  
16 include the following products (hereinafter the “Products”):  
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- 21 ● Gerber Banana Sitter 2<sup>nd</sup> Foods;
  - 22 ● Gerber Sweet Potato Sitter 2<sup>nd</sup> Foods;
  - 23 ● Gerber Apple Strawberry Banana Sitter 2<sup>nd</sup> Foods;
  - 24 ● Gerber Apple Sitter 2<sup>nd</sup> Foods;
  - 25 ● Gerber Banana Blackberry Blueberry Sitter 2<sup>nd</sup> Foods;
  - 26 ● Gerber Pear Sitter 2<sup>nd</sup> Foods;
  - 27 ● Gerber Apple Banana with Oatmeal Sitter 2<sup>nd</sup> Foods;
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- Gerber Banana Apple Pear Sitter 2<sup>nd</sup> Foods;
- Gerber Butternut Squash Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Orange Medley Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Blueberry Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Green Bean Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Pear Zucchini Pouch Toddler 12+ Months;
- Gerber Carrot Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Blueberry Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Mango Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Fruit & Yogurt Strawberry Banana Pouch Toddler 12+ Months;
- Gerber Peach Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Blueberry Pouch Toddler 12+ Months;
- Gerber Sweet Potato Turkey with Whole Grains Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Pear Peach Strawberry Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Pear Cinnamon with Oatmeal Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Blueberry Spinach Sitter 2<sup>nd</sup> Foods;
- Gerber Pea Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Mango Strawberry Pouch Toddler 12+ Months;
- Gerber Pear Pineapple Sitter 2<sup>nd</sup> Foods;
- Gerber Carrot Sweet Potato Pea Sitter 2<sup>nd</sup> Foods;

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- Gerber Fruit & Yogurt Very Berry Pouch Toddler 12+ Months;
- Gerber Apple Pear Peach Pouch Toddler 12+ Months;
- Gerber Sweet Potato Corn Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Supported Sitter 1<sup>st</sup> Foods;
- Gerber Banana Carrot Mango Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Peach Strawberry, Carrot Apple Mango & Apple Blueberry Spinach Baby Food Pouch Variety Pack Sitter 2<sup>nd</sup> Foods;
- Gerber Mango Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Purple Carrot Banana Acai with Cardamom Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Apricot Mixed Fruit Sitter 2<sup>nd</sup> Foods;
- Gerber Chicken and Gravy Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Squash Pear Peach with Basil Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Squash Apple Sweet Potato Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Sweet Potato Supported Sitter 1<sup>st</sup> Foods;
- Gerber Turkey and Gravy Sitter 2<sup>nd</sup> Foods;
- Gerber Beef with Gravy Sitter 2<sup>nd</sup> Foods;
- Gerber Fruit & Yogurt Peaches & Cream Toddler 12+ Months;
- Gerber Prune Apple Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Zucchini Spinach Strawberry Pouch Sitter 2<sup>nd</sup> Foods;

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- Gerber Ham with Gravy Sitter 2<sup>nd</sup> Foods;
- Gerber Prune Supported Sitter 1<sup>st</sup> Foods;
- Gerber Apple Banana with Mixed Cereal Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Supported Sitter 1<sup>st</sup> Foods;
- Gerber Banana Plum Grape Sitter 2<sup>nd</sup> Foods;
- Gerber Very Berry, Peaches & Cream & Strawberry Banana Fruit & Yogurt Pouches Toddler 12+ Months;
- Gerber Carrot Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Carrot Apple Mango Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Pear Zucchini Corn Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Cherry Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Sweet Potato with Cinnamon Toddler 12+ Months;
- Gerber Banana Blueberry Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Strawberry Banana Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Raspberry & Yogurt with Vanilla Pouch Toddler 12+ Months;
- Gerber Pear Supported Sitter 1<sup>st</sup> Foods;
- Gerber Apple Supported Sitter 1<sup>st</sup> Foods;
- Gerber Apple Strawberry Banana Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Carrot Supported Sitter 1<sup>st</sup> Foods;
- Gerber Apple Avocado Sitter 2<sup>nd</sup> Foods;

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- Gerber Apple Zucchini Peach Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Spinach, Pear Mango Avocado & Apple Zucchini Spinach Strawberry Variety Pack Pouches Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Spinach & Kale Sitter 2<sup>nd</sup> Foods;
- Gerber Butternut Squash Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Mango Apple Carrot Kale, Apple Peach & Banana Mango Baby Food Variety Pack Pouches Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Carrot Squash Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Prune Sitter 2<sup>nd</sup> Foods;
- Gerber Peach Supported Sitter 1<sup>st</sup> Foods;
- Gerber Apple Peach Squash Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Mango Peach Carrot Sweet Potato Oatmeal Pouch Toddler 12+ Months;
- Gerber Pear Carrot Pea Sitter 2<sup>nd</sup> Food;
- Gerber Banana Strawberry Beet Oatmeal Pouch Toddler 12+ Months;
- Gerber Green Bean Supported Sitter 1<sup>st</sup> Foods;
- Gerber Pear Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Banana Mango Avocado Quinoa Vanilla Pouch Toddler 12+ Months;
- Gerber Sweet Potato Apple Pumpkin Sitter 2<sup>nd</sup> Foods;
- Gerber Sweet Potato Banana Orange Sitter 2<sup>nd</sup> Foods;

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- Gerber Organic Apple Mango Raspberry Avocado Oatmeal Pouch Toddler 12+ Months;
- Gerber Pear Guava Sitter 2<sup>nd</sup> Foods;
- Gerber Sweet Potato Mango Kale Sitter 2<sup>nd</sup> Foods;
- Gerber Pear Mango Avocado Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Pumpkin Sitter 2<sup>nd</sup> Foods;
- Gerber Squash Pear Pineapple Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Strawberry Rhubarb Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Peach Oatmeal Toddler 12+ Months;
- Gerber Pear Zucchini Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Acai Berry Mixed Grain Pouch Toddler 12+ Months;
- Gerber Pea Supported Sitter 1<sup>st</sup> Foods;
- Gerber Puree Favorites Variety Pack Chicken and Gravy & Turkey and Gravy Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Pasta Marinara Advanced;
- Gerber Pear Parsnip Blueberry Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Purple Carrot Blueberry with Yogurt Pouch Toddler 12+ Months;
- Gerber Carrot Mango Pineapple Sitter 2<sup>nd</sup> Foods;

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- Gerber Pasta Primavera Advanced;
- Gerber Strong Banana Blueberry Purple Carrot Greek Yogurt Mixed Grains Pouch Toddler 12+ Months;
- Gerber Garden Veggies & Rice Advanced;
- Gerber Squash Apple Corn Sitter 2<sup>nd</sup> Foods;
- Gerber Banana Blueberry Rice Pudding Advanced;
- Gerber Strong Pear Sweet Potato Greek Yogurt Oats Cinnamon Pouch Toddler 12+ Months;
- Gerber Pumpkin Banana Sitter 2<sup>nd</sup> Foods;
- Gerber Strong Broccoli Carrot Banana Pineapple Pouch Toddler 12+ Months;
- Gerber My 1<sup>st</sup> Veggies Starter Kit Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Sweet Potato Apple Carrot& Cinnamon Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Supported Sitter 1<sup>st</sup> Foods;
- Gerber Mango Apple Twist Sitter 2<sup>nd</sup> Foods;
- Gerber Sweet Potato Mango Pear Kale Pouch Toddler 12+ Months;
- Gerber Organic Apple Kale Fig Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Carrot Supported Sitter 1<sup>st</sup> Foods;
- Gerber My 1<sup>st</sup> Fruits Starter Kit Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Apple Supported Sitter 1<sup>st</sup> Foods;



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- Gerber Organic Apple Mango Brown Rice with Vanilla Pouch Toddler 12+ Months;
- Gerber Fruit & Veggie Favorites Baby Food Variety Pack Tubs Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Chicken Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Peach Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Spinach with Kale Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Mango with Rice Cereal Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Raspberry Acai Berry Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Apple Strawberry Blueberry Mixed Cereal Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Blueberry Blackberry Oatmeal Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Chicken Noodle Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Mango Apple Banana Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Apple Strawberry with Millet Quinoa & Cinnamon Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Mango Sitter 2<sup>nd</sup> Foods;
- Gerber Chicken Rice Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Squash Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Hawaiian Delight Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Purple Carrot Raspberry Sitter 2<sup>nd</sup> Foods;

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- Gerber Organic Apple Wild Blueberry Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Banana Strawberry Raspberry Mixed Grain Toddler 12+ Months;
- Gerber Mac & Cheese with Vegetables Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Apple Strawberry Beet Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Mango Apple Carrot Kale Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Pea Carrot Spinach Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Blueberry Apple Avocado Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Turkey Rice Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Carrot Banana Mango with Millet & Quinoa Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Spinach Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Vanilla Custard Pudding with Banana Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Carrot Apple Pear Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Zucchini Mango Sitter 2<sup>nd</sup> Foods;
- Gerber Vegetable Beef Dinner Sitter 2<sup>nd</sup> Foods;
- Gerber Organic Pear Supported Sitter 1<sup>st</sup> Foods;
- Gerber Organic Pumpkin Banana Carrot Pouch Sitter 2<sup>nd</sup> Foods;
- Gerber Vegetable Chicken Sitter 2<sup>nd</sup> Foods;
- Gerber Lil' Mixers Vegetable Chicken + Mixed Grain & Carrot Beginner;

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- Gerber Lil’ Mixers Sweet Potato Turkey + Mixed Grain & Carrot Beginner;
- Gerber Lil’ Mixers Apple Avocado + Quinoa Crisp Intermediate;
- Gerber Lil’ Mixers Carrot Sweet Potato Pea + Quinoa Crisp Intermediate;
- Organics HappyBABY Organic Squash Chickpeas & Spinach with Avocado oil + sage Pouch;
- Organics HappyBABY Organic Broccoli & Carrots with Olive Oil + Garlic Pouch;
- Organics HappyBABY Organic Sweet Potatos with Olive Oil + Rosemary Pouch;
- Organics HappyBABY Organic Purple Carrots & Cauliflower with Avocado Oil + Oregano Pouch;
- Organics HappyTOT Organic Oatmeal & Sprouted Quinoa with Bananas & Strawberries;
- Organics HappyTOT Organic Oatmeal & Sprouted Quinoa with Apples & Blueberries;
- Organics HappyBABY Organic Pears, Mangos & Spinach Pouch;
- Organics HappyTOT Fiber & Protein Gluten Free Oat Bar Organic Apples & Spinach;
- Organics HappyBABY Apples & Spinach;

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- Organics HappyBABY Organic Greek Yogis Blueberry & Purple Carrot;
- Organics HappyBABY Apples, Oats & Cinnamon;
- Organics HappyBABY Organic Rice Cakes Apple;
- Organics HappyBABY Bananas & Strawberries;
- Organics HappyBABY Organic Rice Cakes Blueberry & Beet;
- Organics HappyBABY Bananas & Sweet Potatoes;
- Organics HappyBABY Bananas, Blueberries & Beets;
- Organics HappyBABY Carrots;
- Organics HappyBABY Pears;
- Organics HappyBABY Green Beans;
- Organics HappyBABY Organic Bananas, Beets & Blueberries Pouch;
- Organics HappyBABY Pears & Kale;
- Organics HappyBABY Carrots & Peas;
- Organics HappyBABY Pears, Mangos & Spinach;
- Organics HappyBABY Pears & Prunes;
- Organics HappyBABY Sweet Potatoes;
- Organics HappyBABY Pears, Pineapple & Avocados;
- Organics HappyBABY Organic Pears, Peas & Broccoli Pouch;
- Organics HappyBABY Apples, Mangos & Beets;

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- Organics HappyBABY Oats & Quinoa Baby Cereal;
- Organics HappyBABY Organic Apples, Spinach & Kale Pouch;
- Organics HappyTOT Organic Mac & Cheese with Lentil Pasta & Veggie Sauce;
- Organics HappyBABY Organic Creamies Strawberry, Raspberry & Carrot;
- Organics HappyTOT Organic Cheesy Lentils & Quinoa with Cauliflower & Parmesan Sauce;
- Organics HappyBABY Organic Creamies Apple, Spinach, Pea & Kiwi;
- Organics HappyTOT Super Foods Organic Pears, Green Beans, & Peas Pouch;
- Organics HappyTOT Fiber & Protein Organic Pears, Raspberries, Carrots & Butternut Squash Pouch;
- Organics HappyTOT Organic Turkey Bolognese with Lentil Pasta & Vegetable Sauce;
- Organics HappyTOT Super Foods Organics Apples, Sweet Potatoes, Carrots, & Cinnamon Pouch;
- Organics HappyTOT Fiber & Protein Organic Pears, Blueberries & Spinach Pouch;
- Organics HappyTOT Super Foods Gluten Free Oat Bar Organic Blueberries & Oatmeal;

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- Organics HappyTOT Super Foods Organic Pears, Mangos & Spinach Pouch;
- Organics HappyTOT Super Foods Organic Apples & Butternut Squash Pouch;
- Organics HappyTOT Super Foods Gluten Free Oat Bar Organic Bananas, Strawberries & Sunflower Butter;
- Organics HappyTOT Super Foods Organic Bananas, Peaches & Mangos Pouch;
- Organics HappyTOT Fiber & Protein Gluten Free Oat Bar Organic Bananas & Carrots Pouch;
- Organics HappyKID Organic Mango & Sweet Potato;
- Organics HappyTOT Fiber & Protein Organic Pears, Kiwi & Kale;
- Organics HappyKID Organic Raspberry & Butternut Squash;
- Organics HappyTOT Fiber & Protein Organic Pears, Peaches, Pumpkin & Apples Pouch;
- Organics HappyTOT Super Foods Organic Apples, Mangos & Kale Pouch;
- Organics HappyBABY Organic Teether Crackers Mango & Pumpkin;
- Organics HappyTOT Super Foods Organic Pears; Beets & Blueberries Pouch;
- Organics HappyKID Organic Apple & Cinnamon;

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- Organics HappyBABY Organic Teether Crackers Strawberry & Beet;
- Organics HappyTOT Super Foods Organic Apples, Spinach, Peas & Broccoli Pouch;
- Organics HappyKID Organic Blueberry & Raspberry;
- Organics HappyBABY Organic Stage 1 Infant Formula;
- Organics HappyTOT Super Foods Organic Pears, Bananas, Sweet Potato & Pumpkin Pouch;
- Organics HappyTOT Organic Veggies & Wild Rice with Mushrooms & Parmesan;
- Organics HappyKID Organic Banana & Chocolate;
- Organics HappyTOT Organic Beef & Quinoa Fiesta with Vegetable Salsa;
- Organics HappyBABY Squash, Pears & Apricots Pouch;
- Organics HappyBABY Organic Teethers Pea & Spinach;
- Organics HappyTOT Super Morning Organic Bananas, Blueberries, Yogurt & Oats Pouch;
- Organics HappyBABY Oatmeal Baby Cereal;
- Organics HappyBABY Peas, Bananas & Kiwi Pouch;
- Organics HappyTOT Super Morning Organic Apples, Cinnamon, Yogurt & Oats Pouch;
- Organics HappyBABY Organic Teethers Blueberry & Purple Carrot;

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- Organics HappyTOT Super Bellies Immune + Digestive Organic Bananas, Spinach & Blueberries Pouch;
- Organics HappyTOT Super Bellies Immune + Digestive Organic Pears, Beets & Blackberries;
- Organics HappyBABY Organic Teethers Sweet Potato & Banana;
- Organics HappyBABY Mangos Pouch;
- Organics HappyTOT Super Bellies Immune + Digestive Organic Bananas, Carrots & Strawberries Pouch;
- Organics HappyKID Organic Apple, Kale & Mango Pouch;
- Organics HappyBABY Apples, Kale & Oats Pouch;
- Organics HappyBABY Prunes Pouch;
- Organics HappyTOT ABC Multi-Grain Cookies Organic Cinnamon & Sweet Potato + Flaxseed;
- Organics HappyKID Organic Apple, Beet, Strawberry & Kiwi Pouch;
- Organics HappyBABY Apples & Carrots Pouch;
- Organics HappyBABY Green Beans, Spinach & Pears Pouch;
- Organics HappyTOT ABC Multi-Grain Cookies Organic Vanilla & Oat + Flaxseed;
- Organics HappyKID Organic Apple, Blueberry & Pomegranate Pouch;
- Organics HappyBABY Pears, Squash & Oats Pouch;



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- Organics HappyTOT Super Smart Organic Bananas, Mangos & Spinach + Coconut Milk Pouch;
- Organics HappyBABY Sweet Potatoes, Mangos & Carrots Pouch;
- Organics HappyTOT Super Morning Dairy Free Organic Bananas, Dragon Fruit, Coconut Milk & Oats Pouch;
- Organics HappyKID Organic Apple, Kale & Blueberry Pouch;
- Organics HappyTOT Super Smart Organic Bananas, Beets & Strawberries Pouch;
- Organics HappyTOT Super Morning Dairy Free Organic Apples, Acai, Coconut Milk & Oats Pouch;
- Organics HappyBABY Carrots, Strawberries & Chickpeas Pouch;
- Organics HappyBABY Nutty Blends Organic Apples with 1tsp Walnut Butter Pouch;
- Organics HappyBABY Purple Carrots, Bananas, Avocados & Quinoa Pouch;
- Organics HappyBABY Nutty Blends Organic Bananas with 1tsp Almond Butter Pouch;
- Organics HappyBABY Organic Harvest Vegetables & Chicken with Quinoa Pouch;
- Organics HappyBABY Superfood Puffs Apple & Broccoli;

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- Organics HappyBABY Nutty Blends Organic Bananas with 1tsp Peanut Butter Pouch;
- Organics HappyBABY Bananas, Plums & Granola Pouch;
- Organics HappyBABY Organic Root Vegetables & Turkey with Quinoa Pouch;
- Organics HappyBABY Superfood Puffs Banana & Pumpkin;
- Organics HappyBABY Nutty Blends Organic Pears with 1tsp Cashew Butter Pouch;
- Organics HappyBABY Apples, Sweet Potatoes & Granola Pouch;
- Organics HappyBABY Organic Vegetable & Beef Medley with Quinoa Pouch;
- Organics HappyBABY Superfood Puffs Kale & Spinach;
- Organics HappyBABY Zucchini, Apples, Peas, Quinoa & Basil Pouch;
- Organics HappyBABY Superfood Puffs Sweet Potato & Carrot;
- Organics HappyBABY Organic Stage 2 Infant Formula;
- Organics HappyBABY Apples, Kale & Avocadoes Pouch;
- Organics HappyBABY Organic Stage 1 Baby Formula Sensitive;
- Organics HappyBABY Superfood Puffs Strawberry & Beet;
- Organics HappyBABY Apples, Guavas & Beets Pouch;
- Organics HappyTOT Love My Veggies Organic Carrots, Bananas, Mangos & Sweet Potatoes Pouch;

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- Organics HappyBABY Superfood Puffs Purple Carrot & Blueberry;
- Organics HappyBABY Apples, Pumpkin & Carrots Pouch;
- Organics HappyTOT Love My Veggies Organic Bananas, Beets, Squash & Blueberries Pouch;
- Organics HappyBABY Pears, Squash & Blackberries Pouch;
- Organics HappyTOT Love My Veggies Organic Spinach, Apples, Sweet Potatoes & Kiwi Pouch;
- Organics Apples, Blueberries & Oats Pouch;
- Organics HappyTOT Love My Veggies Organic Zucchini, Pears, Chickpeas & Kale Pouch;
- Organics HappyBABY Pears, Kale & Spinach Pouch;
- Organics HappyBABY Bananas, Sweet Potatoes & Papayas Pouch;
- Organics HappyTOT Organic Cheese & Spinach Ravioli with Marina Sauce;
- Organics HAPPYBABY Bananas, Raspberries & Oats Pouch;
- Organics HappyTOT Organic Squash Ravioli with Squash, Pumpkin & Sage Sauce;
- Organics HappyBABY Pears, Zucchini & Peas Pouch;
- Organics Pears, Pumpkin & Passion Fruit Pouch;
- Organics HappyBABY Organic Yogis Strawberry;
- Organics HappyBABY Black Beans, Beets & Bananas Pouch;

- 1 ● Organics HappyBABY Organic Yogis Mixed Berry Pouch;
- 2 ● Organics HappyBABY Pears, Pumpkin, Peaches & Granola Pouch;
- 3 ● Organics HappyBABY Organic Yogis Banana & Mango Pouch;
- 4 ● Organics HappyBABY Bananas, Pineapple, Avocado & Granola Pouch;
- 5 ● Organics HappyBABY Organic Greek Yogis Strawberry Banana;
- 6 ● Organics HappyBABY Apples & Blueberries.

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9 2. Caregivers like Plaintiff trust manufacturers like Defendants to sell food  
10 for babies/children that is nutritious, safe, and free from harmful toxins, contaminants,  
11 and chemicals. Caregivers certainly expect that the food that they feed their infants  
12 and toddlers will be free from heavy metals, harmful toxins, and contaminants.  
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15 3. Plaintiff and those similarly situated (“Class Members”) relied on  
16 Defendants’ misrepresentations when purchasing the Products. Plaintiff and Class  
17 Members paid a premium for the Products based upon their representations. Given  
18 that Plaintiff and Class Members paid a premium for the Products based on  
19 Defendants’ misrepresentations, Plaintiff and Class Members suffered an injury in the  
20 amount of the premium paid.  
21

22  
23 4. Plaintiff and Class Members did not know that, contrary to the  
24 representations on the Products’ labels, the Products contained heavy metals  
25 (including arsenic, cadmium, and lead) at levels that are above what is considered safe  
26 for babies. As a result, the Products’ labeling is deceptive and misleading.  
27  
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1 5. Defendants’ conduct violated and continues to violate laws including,  
2 but not limited to: Negligent Misrepresentation, California’s Consumer Legal  
3 Remedies Act, California False Advertising Law, Unfair Competition Law, Breach  
4 of Express Warranty, Breach of Implied Warranty, and Unjust Enrichment.  
5 Defendants breached and continue to breach their warranties regarding the Products.  
6 Defendants have been and continue to be unjustly enriched. Accordingly, Plaintiff  
7 brings this action against Defendants on behalf of himself and Class Members who  
8 purchased the Products during the applicable statute of limitations period (the “Class  
9 Period”).  
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14 **FACTUAL BACKGROUND**

15 6. Consumers lack the scientific knowledge necessary to determine  
16 whether the Defendants’ products contain heavy metals or to know or ascertain  
17 the true nature of the ingredients and quality of the Products. Reasonable  
18 consumers therefore must and do rely on Defendants to honestly report what  
19 their products contain.  
20

21  
22 7. Defendants did not list heavy metals as an ingredient on their  
23 Products’ labels, nor do they warn of the potential presence of heavy metals in  
24 their Products.  
25

26 8. A recent report by the U.S. House of Representatives’ Subcommittee  
27 on Economic and Consumer Policy, Committee on Oversight and Reform  
28 reveals that caregivers’ trust has been violated. The Subcommittee's

1 investigation of the seven largest baby food manufacturers in the United States,  
2 including Defendants, was spurred by "reports alleging high levels of toxic heavy  
3 metals in baby foods" and the knowledge that "[e]ven low levels of exposure  
4 can cause serious and often irreversible damage to brain development."  
5

6  
7 9. The Subcommittee's report revealed that "[i]nternal company  
8 standards permit dangerously high levels of toxic heavy metals, and ... that the  
9 manufacturers have often sold foods that exceeded these levels."  
10

11 10. The investigation found that, when baby food manufacturers  
12 were left to self-regulate and establish their own heavy metals standards,  
13 they routinely failed to abide by their own standards.  
14

15 11. The Subcommittee also revealed that baby foods are "tainted with  
16 significant levels of toxic heavy metals, including arsenic, lead, cadmium, and  
17 mercury."  
18

19 12. Specific to Gerber, the Subcommittee found the following:

- 20 a. Gerber used 67 batches of rice flour that tested over 90 ppb  
21 inorganic arsenic - high arsenic ingredients;  
22  
23 b. Gerber used an ingredient, conventional sweet potatoes, with 48  
24 ppb lead. Gerber also used twelve other batches of sweet potato  
25 that tested over 20 ppb for lead, the EU's lenient upper standard.  
26  
27 c. Gerber used multiple batches of carrots containing as much as 87  
28 ppb cadmium, and 75% of the carrots Gerber used had more than

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5 ppb cadmium – the EPA’s drinking water standard;

- d. Since Gerber’s policy is to only test its ingredients and not its final products the Subcommittee states that, that policy “recklessly endangers babies and children and prevents the companies from ever knowing the full extent of the danger presented by their products.”

Only testing ingredients gives the mistaken appearance of lower-than-actual toxic heavy metal levels.

13. Specific to Nurture, the Subcommittee found the following:

- a. Nurture (HappyBABY) sold baby foods after tests showed they contained as much as 180 parts per billion (ppb) inorganic arsenic. Over 25% of the products Nurture tested before sale contained over 100 ppb inorganic arsenic. Nurture’s testing shows that the typical baby food product it sold contained 60 ppb inorganic arsenic;
- b. Nurture (HappyBABY) sold finished baby food products that tested as high as 641 ppb lead. Almost 20% of the finished baby food products that Nurture tested contained over 10 ppb lead;
- c. Sixty-five percent of Nurture (HappyBABY) finished baby food

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products contained more than 5 ppb cadmium;

d. Nurture (HappyBABY) sold finished baby food products containing as much as 10 ppb mercury; and

e. Nurture (HappyBABY) sold all products tested, regardless of how much toxic heavy metal the baby food contained. By company policy, Nurture’s toxic heavy metal testing is not intended for consumer safety. The Food and Drug Administration (FDA) has only finalized one standard—100 ppb inorganic arsenic in infant rice cereal—and Nurture set its internal standard for that product 15% higher than the FDA limit, at 115 ppb.

14. In its conclusion, the Subcommittee stressed the danger associated with the presence of heavy metals in baby food: "These toxic heavy metals pose serious health risks to babies and toddlers. Manufacturers knowingly sell these products to unsuspecting caregivers, in spite of internal company standards and test results, and without any warning labeling whatsoever."

15. Many of Defendants’ Products contain labels using words such as organic, HappyTot, and/or HappyBaby to imply to consumers that the products are healthy, Consumers would not pay a premium if they knew that these Products contained any levels of toxic heavy metals.



1 16.

2 17. Defendants' deceptive representations and omissions are material in that  
3  
4 a reasonable person would attach importance to such information and would be  
5 induced to act upon such information in making purchase decisions.

6 18. Defendants also know that consumers, such as Plaintiff and the Class,  
7  
8 are unwilling to purchase baby food that contains elevated levels of toxic heavy  
9 metals.

10 19. Defendants each knew that if the elevated levels of toxic heavy metals in  
11  
12 their respective brands of baby food was disclosed to Plaintiff and Class members,  
13 then Plaintiff and Class members would be unwilling to purchase the Products.

14 20. Plaintiff and the Class members reasonably relied to their detriment on  
15  
16 Defendants' misleading representations and omissions.

17 21. Defendants' false, misleading, and deceptive misrepresentations and  
18  
19 omissions are likely to continue to deceive and mislead reasonable consumers and the  
20 general public, as they have already deceived and misled Plaintiff and the Class  
21 members.

22 22. As an immediate, direct, and proximate result of Defendants' false,  
23  
24 misleading, and deceptive representations and omissions, Defendants injured Plaintiff  
25 and the Class members in that they:

- 26  
27 **a.** Paid a sum of money for Products that were not what  
28 Defendants represented;

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- b. Paid a premium price for Products that were not what Defendants represented;
- c. Were deprived of the benefit of the bargain because the Products they purchased were different from what Defendants warranted;
- d. Were deprived of the benefit of the bargain because the Products they purchased had less value than what Defendants represented;
- e. Ingested a substance that was of a different quality than what Defendants promised; and
- f. Were denied the benefit of the beneficial properties of the foods Defendants promised.

23. Had Defendants not made the false, misleading, and deceptive representations and omissions, Plaintiff and the Class members would not have been willing to pay the same amount for the Products they purchased.

24. Plaintiff and the Class members all paid money for the Products; however, Plaintiff and the Class members did not obtain the full value of the advertised Products due to Defendants' misrepresentations and omissions. Plaintiff and the Class members purchased, purchased more of and/or paid more for the Products than they would have had they known the truth about the Products. Consequently, Plaintiff and the Class members have suffered injury in fact and lost money as a result of Defendants' wrongful conduct.

///

1 **JURISDICTION AND VENUE**

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

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12 26. Venue is proper in this Court pursuant to 28 U.S.C. §1339, because  
13 Plaintiff suffered injury as a result of the Defendants’ acts in this district, many of the  
14 acts and transactions giving rise to this action occurred in this district, and Defendants  
15 conduct substantial business in this district. Defendants have intentionally availed  
16 themselves of the laws and markets of this district, and Defendants are subject to  
17 personal jurisdiction in this district.  
18  
19

20 **PARTIES**

21 **Plaintiff**

22  
23 27. Plaintiff is an individual consumer who, at all times material hereto, was  
24 a citizen of the State of California. Plaintiff purchased the Products during the Class  
25 Period. The packaging of the Products Plaintiff purchased did not contain the  
26 representation that the Products contained harmful contaminants and heavy metals. If  
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1 the Products actually were free of harmful contaminants and heavy metals, Plaintiff  
2 would purchase the Products in the immediate future.  
3

4 28. Had Defendants not made the false, misleading, and deceptive  
5 representations and omissions regarding the Products, Plaintiff would not have been  
6 willing to pay the same amount for the Products, and, consequently, would not have  
7 been willing to purchase the Products. Plaintiff purchased, purchased more of and/or  
8 paid more for the Products than he would have had he known the truth about the  
9 Products. The Products Plaintiff received were worth less than the Products for which  
10 he paid. Plaintiff was injured in fact and lost money as a result of Defendants'  
11 improper conduct.  
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### 15 Defendants

16 27. Defendant Gerber Products Company (d/b/a Nestlé Nutrition, Nestlé  
17 Infant Nutrition, or Nestlé Nutrition North America) is a Michigan corporation with  
18 its principal place of business in Virginia. Defendant manufactures, markets,  
19 advertises, and distributes the Products throughout the United States. Defendant  
20 created and/or authorized the false, misleading, and deceptive advertisements,  
21 packaging, and labeling for the Products.  
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24 28. Defendant Nurture, Inc. (d/b/a Happy Family Brands and Happy Family  
25 Organics) is a Delaware corporation with its principal place of business in White  
26 Plains, New York. Defendant manufactures, markets, advertises, and distributes the  
27 Products  
28

1 throughout the United States. Defendant created and/or authorized the false,  
2 misleading, and deceptive advertisements, packaging, and labeling for the Products.  
3

4 **CLASS ACTION ALLEGATIONS**

5 29. Plaintiff brings this action individually and on behalf of the following  
6 Class pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil  
7 Procedure:  
8

9 All persons within the United States who purchased the Products from the  
10 beginning of any applicable limitations period (the “Class”).  
11

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

17 31. This action is brought and may be properly maintained as a class  
18 action. There is a well-defined community of interests in this litigation and the  
19 members of the Class are easily ascertainable.  
20

21 32. The members in the proposed Class are so numerous that individual  
22 joinder of all members is impracticable, and the disposition of the claims of the  
23 members of all Classes members in a single action will provide substantial benefits  
24 to the parties and Court.  
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26 33. Questions of law and fact common to Plaintiff and the Class include,  
27 but are not limited to, the following:  
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- (a) whether Defendants owed a duty of care;
- (b) whether Defendants knew or should have known that the Products contained heavy metals;
- (c) whether Defendants represented and continue to represent that the Products are healthy, nutritious, made from the best ingredients, and safe for consumption;
- (d) whether Defendants represented and continue to represent that the manufacturing of their Products is subjected to rigorous quality standards;
- (e) whether Defendants failed to disclose that the Products contained heavy metals;
- (f) whether Defendants' representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (g) whether those representations are likely to deceive a reasonable consumer;
- (h) whether Defendants had knowledge that those representations were false, deceptive, and misleading;
- (i) whether Defendants continue to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;

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- (j) whether a representation that a product is healthy, nutritious, made from the best ingredients, and safe for consumption and does not contain heavy metals is material to a reasonable consumer;
- (k) whether Defendants' Marketing of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (l) whether Defendants violated California Business & Professions Code sections 17200, *et seq.*;
- (m) whether Defendants violated California Business & Professions Code sections 17500, *et seq.*;
- (n) whether Defendants violated California Civil Code sections 1750, *et seq.*; and
- (o) whether Plaintiff and the members of the Class are entitled to declaratory and injunctive relief?

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

1 35. Plaintiff's claims are typical of those of the members of the Class in  
2 that they are based on the same underlying facts, events, and circumstances relating  
3 to Defendants' conduct.

4  
5 36. Plaintiff will fairly and adequately represent and protect the interests of  
6 the Class, has no interests incompatible with the interests of the Class, and has  
7 retained counsel competent and experienced in class action, consumer protection,  
8 and false advertising litigation.

9  
10  
11 37. Class treatment is superior to other options for resolution of the  
12 controversy because the relief sought for each member of the Class is small enough  
13 that, absent representative litigation, it would be infeasible for members of the Class  
14 to redress the wrongs done to them.

15  
16 38. Questions of law and fact common to the Class predominate over any  
17 questions affecting only individual members of the Class.

18  
19 39. As a result of the foregoing, class treatment is appropriate.

20  
21 **FIRST CAUSE OF ACTION**  
22 **NEGLIGENT MISREPRESENTATION AGAINST DEFENDANTS ON**  
23 **BEHALF OF THE CLASS**

24 40. Plaintiff repeats and realleges each and every allegation contained  
25 above, as though fully set forth herein.

26 41. Plaintiff reasonably relied on Defendants' representations that the  
27 Products were as marketed to him and the Class and were safe for consumption, which  
28 would include being free from heavy metals.



1           42. Defendants owed a duty to use reasonable care to provide accurate  
2 disclosures concerning the presence of heavy metals in the Products, as well as to  
3 avoid misleading consumers by omitting the presence of heavy metals.  
4

5           43. Defendants breached their duty to Plaintiff and the Class by providing  
6 false, misleading, and/or deceptive information about the nature of the Products.  
7

8           44. Plaintiff and the Class reasonably and justifiably relied upon the  
9 information that Defendants represented to them. Reasonable consumers would  
10 have relied on Defendants' own representations regarding the ingredients of the  
11 Products.  
12

13           45. As a result of these misrepresentations, Plaintiff and the Class paid a  
14 premium to purchase the Products.  
15

16           46. Defendants failed to use reasonable care in their representations to  
17 Plaintiff and the Class, especially when it comes to the ingredients contained in the  
18 Products.  
19

20           47. Defendants' negligent misrepresentations have damaged Plaintiff and  
21 the Class in an amount to be proven at trial or alternatively, seek rescission and  
22 disgorgement under this Count.  
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1 **SECOND CAUSE OF ACTION**  
2 **VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT,**  
3 **CALIFORNIA CIVIL CODE §§1750, *Et. Seq.*, AGAINST DEFENDANTS ON**  
4 **BEHALF OF THE CLASS**

5 48. Plaintiff repeats and realleges each and every allegation contained  
6 above, as though fully set forth herein.

7 49. Plaintiff and each proposed Class member is a “consumer,” as that term  
8 is defined in California Civil Code section 1761(d).  
9

10 50. The Products are “goods,” as that term is defined in California Civil  
11 Code section 1761(a).  
12

13 51. Defendants are “persons” as that term is defined in California Civil Code  
14 section 1761(c).  
15

16 52. Plaintiff and each proposed Class member’s purchase of Defendants’  
17 products constituted a “transaction” as that term is defined in California Civil Code  
18 section 1761(e).  
19

20 53. Defendants’ conduct alleged herein violates the following provisions of  
21 California’s Consumer Legal Remedies Act (the “CLRA”):  
22

- 23 (a) California Civil Code section 1770(a)(5), by negligently, recklessly,  
24 and/or intentionally representing that the Products are healthy and  
25 safe for consumption, and by failing to make any mention of heavy  
26 metals in the Products;  
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1 (b) California Civil Code section 1770(a)(7), by negligently, recklessly,  
2 and/or intentionally representing that the Products were of a  
3 particular standard, quality, or grade, when they were of another;  
4

5 (c) California Civil Code section 1770(a)(9), by negligently, recklessly,  
6 and/or intentionally advertising the Products with intent not to sell  
7 them as advertised; and  
8

9 (d) California Civil Code section 1770(a)(16), by representing that the  
10 Products have been supplied in accordance with previous  
11 representations when they have not.  
12

13 54. As a direct and proximate result of these violations, Plaintiff and the  
14 Class have been harmed, and that harm will continue unless Defendants are enjoined  
15 from using the misleading marketing described herein in any manner in connection  
16 with the advertising and sale of the Products.  
17  
18

19 55. Plaintiff seeks an award of attorneys' fees pursuant to, *inter alia*,  
20 California Civil Code section 1780(e) and California Code of Civil Procedure  
21 section 1021.5.  
22

23 **THIRD CAUSE OF ACTION**  
24 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW,**  
25 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§17500, *Et Seq.*,**  
26 **AGAINST DEFENDANTS ON BEHALF OF THE CLASS**

27 56. Plaintiff repeats and realleges each and every allegation contained  
28 above, as though fully set forth herein.

1 57. California’s False Advertising Law prohibits any statement in  
2 connection with the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof.  
3 Code §17500.  
4

5 58. As set forth herein, Defendants’ claims that the Products are healthy  
6 and safe for consumption are false and likely to deceive the public.  
7

8 59. Defendants’ claims that the Products are healthy and safe for  
9 consumption are untrue due to the presence of heavy metals in the Products.  
10

11 60. Defendants knew, or reasonably should have known, that all these  
12 claims were untrue or misleading.  
13

14 61. Defendants’ conduct is ongoing and continuing, such that prospective  
15 injunctive relief is necessary. Plaintiff would purchase the Products in the future if  
16 the Products are healthy, safe for consumption, and do not contain heavy metals.  
17

18 62. Plaintiff and members of the Class are entitled to injunctive and equitable  
19 relief, and restitution in the amount the purchase price of the Products.  
20

21 **FOURTH CAUSE OF ACTION**  
22 **VIOLATIONS OF THE UNFAIR COMPETITION LAW, CALIFORNIA**  
23 **BUSINESS & PROFESSIONS CODE §§17200, *Et Seq.*, AGAINST**  
24 **DEFENDANTS ON BEHALF OF THE CLASS**

25 63. Plaintiff repeats and realleges each and every allegation contained  
26 above, as though fully set forth herein.

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

1           65. Defendants' statements that the Products are healthy and safe for  
2 consumption are deceptive to the public, as is Defendants' omitting to divulge the  
3 existence of heavy metals in the Products.  
4

5           66. **Unlawful:** Defendants have advertised the Products using false and/or  
6 misleading claims, such that Defendants' actions as alleged herein violate at least  
7 the following laws:  
8

9           • The CLRA, California Business & Professions Code sections 1750, *et seq.*;

10 and  
11

12           • The False Advertising Law, California Business & Professions Code  
13 sections 17500, *et seq.*  
14

15           67. **Fraudulent:** Defendants' statements that the Products are healthy and  
16 safe for consumption are deceptive to the public, as is Defendants' omitting to  
17 divulge the existence of heavy metals in the Products.  
18

19           68. **Unfair:** Defendants' conduct with respect to the labeling, packaging,  
20 advertising, marketing, and sale of the Products is unfair because Defendants'  
21 conduct was immoral, unethical, unscrupulous, or substantially injurious to  
22 consumers and the utility of its conduct, if any, does not outweigh the gravity of the  
23 harm to its victims.  
24

25           69. Defendants' conduct with respect to the labeling, packaging,  
26 advertising, marketing, and sale of the Products is also unfair because it violates  
27  
28

1 public policy as declared by specific constitutional, statutory, or regulatory  
2 provisions, including, but not limited to, the False Advertising Law and the CLRA.  
3

4 70. Defendants' conduct with respect to the labeling, packaging,  
5 advertising, marketing, and sale of the Products is also unfair because the consumer  
6 injury is substantial, not outweighed by benefits to consumers or competition, and  
7 not one that consumers, can reasonably avoid.  
8

9 71. In accordance with California Business & Professions Code section  
10 17203, Plaintiff seeks an order enjoining Defendants from continuing to conduct  
11 business through fraudulent or unlawful acts and practices and to commence a  
12 corrective advertising campaign. Defendants' conduct is ongoing and continuing,  
13 such that prospective injunctive relief is necessary.  
14  
15

16 72. On behalf of himself and the Class, Plaintiff also seeks an order for the  
17 restitution of all monies from the sales of the Products, which were unjustly  
18 acquired through acts of fraudulent, unfair, or unlawful competition.  
19

20 **FIFTH CAUSE OF ACTION**  
21 **BREACH OF EXPRESS WARRANTY, CALIFORNIA COMMERCIAL**  
22 **CODE §§2313, AGAINST DEFENDANTS ON BEHALF OF THE CLASS**

23 73. Plaintiff repeats and realleges each and every allegation contained  
24 above, as though fully set forth herein.  
25

26 74. As set forth herein, Defendants made express representations to  
27 Plaintiff and the Class that the Products were healthy and safe for consumption.  
28

1           75. These promises became part of the basis of the bargain between the  
2 parties and thus constituted express warranties.  
3

4           76. There was a sale of goods from Defendants to Plaintiff and the Class  
5 members.  
6

7           77. On the basis of the express warranty, Defendants sold to Plaintiff and  
8 the Class members the Products.  
9

10           78. Defendants knowingly breached the express warranty by including  
11 heavy metals in the Products.  
12

13           79. Defendants were on notice of this breach as it was aware of the  
14 included heavy metals in the Products.  
15

16           80. Privity exists because Defendants expressly warranted to Plaintiff and  
17 the Class that the Products were healthy and safe for consumption.  
18

19           81. Plaintiff and the Class members reasonably relied on the express  
20 warranty by Defendants.  
21

22           82. As a result of Defendants' breaches of its express warranty, Plaintiff  
23 and the Class suffered damages as they paid money for the Products that were not as  
24 Defendants represented.  
25

26           83. Plaintiff, on behalf of himself and the Class, seek actual damages for  
27 Defendants' breach of warranty.  
28

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28

1 **SIXTH CAUSE OF ACTION**  
2 **BREACH OF IMPLIED WARRANTY, CALIFORNIA COMMERICAL**  
3 **CODE §2314, AGAINST DEFENDANTS ON BEHALF OF THE CLASS**

4 84. Plaintiff repeats and realleges each and every allegation contained  
5 above, as though fully set forth herein.

6 85. Defendants are merchants engaging in the sale of goods to Plaintiff and  
7 the Class members.

8 86. There was a sale of goods from Defendants to Plaintiff and the Class  
9 members.

10 87. As set forth herein, Defendants marketed the Products to Plaintiff and  
11 the Class as healthy and safe for consumption. Defendants did not include heavy  
12 metals on their ingredient lists, nor did they provide adequate warning that the  
13 Products contain heavy metals.

14 88. The Products did not conform to Defendants' representations as they  
15 contained heavy metals at undisclosed and alarming levels.

16 89. These promises became part of the basis of the bargain between the  
17 parties and thus constituted implied warranty.

18 90. Defendants breached the implied warranty by selling the Products that  
19 failed to conform to the representations, including the ingredient labels, as each  
20 product contained heavy metals.

21 91. Defendants were on notice of this breach as it was aware of the  
22 inclusion of heavy metals in the Products, and based on the public investigation by  
23



1 the nonprofit organization, Healthy Babies Bright Futures<sup>1</sup>, that showed its baby  
2 food products as containing heavy metals.  
3

4 92. Privity exists because Defendants impliedly warranted to Plaintiff and  
5 the Class members through the warranting, packaging, advertising, marketing, and  
6 labeling that the Products were healthy and safe for consumption and by failing to  
7 warn about the existence of heavy metals.  
8

9 93. As a result of Defendants' breach of its implied warranty of  
10 merchantability, Plaintiff and the Class sustained damages as they paid money for  
11 the Products that were not what Defendants represented.  
12

13 94. Plaintiff, on behalf of himself and the Class, seek actual damages for  
14 Defendants' breach of warranty.  
15

16 **SEVENTH CAUSE OF ACTION**  
17 **UNJUST ENRICHMENT AGAINST DEFENDANTS ON BEHALF OF**  
18 **CLASSES**

19 95. Plaintiff repeats and reallege each and every allegation contained  
20 above, as though fully set forth herein.  
21

22 96. Substantial benefits have been conferred on Defendants by Plaintiff and  
23 the Class through the purchase of the Products. Defendants knowingly and  
24 willingly accepted and enjoyed these benefits.  
25  
26  
27

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28 <sup>1</sup> [https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport\\_ENGLISH\\_R6.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf)

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97. Defendants either knew, or should have known, that the payments rendered by Plaintiff were given and received with the expectation that the Products would have the ingredients and suitability for consumption represented and warranted by Defendants. As such, it would be inequitable for Defendants to retain the benefit of the payments under these circumstances.

98. Defendants' acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendants to retain the benefits without payment of the value to Plaintiff and the Classes.

99. Plaintiff and the Classes are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants, plus interest thereon.

100. Plaintiff and the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

**PRAYER FOR RELIEF**

**WHEREFORE,** Plaintiff, on behalf of himself and the Class, prays for judgment as follows:

1           A. An order declaring this action to be a proper class action, appointing  
2 Plaintiff and his counsel to represent the Class, and requiring Defendants to bear the  
3 costs of class notice;  
4

5           B. An order enjoining Defendants from selling the Products until the  
6 higher and/or unsafe levels of heavy metals are removed;  
7

8           C. An order enjoining Defendants from selling the Products in any  
9 manner suggesting or implying that they are healthy, nutritious, and safe for  
10 consumption;  
11

12           D. An order requiring Defendants to engage in a corrective advertising  
13 campaign and engage in any further necessary affirmative injunctive relief, such as  
14 recalling existing products;  
15

16           E. An order awarding declaratory relief, and any further retrospective  
17 or prospective injunctive relief permitted by law or equity, including enjoining  
18 Defendants from continuing the unlawful practices alleged herein, and injunctive  
19 relief to remedy Defendants' past conduct;  
20

21           F. An order requiring Defendants to pay restitution to restore all funds  
22 acquired by means of any act or practice declared by this Court to be an unlawful,  
23 unfair, or fraudulent business act or practice, untrue or misleading advertising, or a  
24 violation of the Unfair Competition Law, False Advertising Law, or CLRA, plus  
25 pre- and post-judgment interest thereon;  
26  
27  
28

1 G. An order requiring Defendants to disgorge or return all monies,  
2 revenues, and profits obtained by means of any wrongful or unlawful act or practice;  
3

4 H. An order requiring Defendants to pay all actual and statutory  
5 damages permitted under the counts alleged herein;  
6

7 I. An order requiring Defendants to pay punitive damages on any count  
8 so allowable;

9 J. An order awarding attorneys' fees and costs to Plaintiff, the Class;  
10  
11 and

12 K. An order providing for all other such equitable relief as may be just  
13 and proper.  
14

15 Date: February 17, 2021

16 **SHOOP | A PROFESSIONAL LAW**  
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