



4. As a result of P&G's false and misleading label regarding the ability of the toothpaste to repair gums, P&G has been able to sell the products to more consumers and for more money than it otherwise would have had the products been properly labeled.

5. Plaintiff Michael Drake was deceived by these misrepresentations and, as a result, purchased P&G's "Gum & Enamel Repair" toothpaste. Accordingly, he brings this action on behalf of himself and other similarly situated consumers to recover damages caused by this unfair and/or deceptive practice.

### **PARTIES**

6. Plaintiff Michael Drake is a citizen of Madison County, Illinois.

7. Defendant The Procter & Gamble Company is an Ohio corporation with a principal place of business in Cincinnati, Ohio. P&G manufactures, markets and sells, and/or did so during the Class period, the Crest Gum & Enamel Repair toothpastes (in "Intensive Clean" and "Advanced Whitening" varieties) and Oral-B Gum & Enamel Repair toothpaste (collectively referred to herein as the "Class Products").

### **JURISDICTION AND VENUE**

8. This Court has personal jurisdiction over P&G because P&G is authorized to conduct and does conduct business in Illinois. P&G has marketed, promoted, distributed, and sold its products, including the Crest and Oral-B products, in Illinois, has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible, and the claims of Plaintiff and the Illinois consumers he seeks to represent arise out of, derive from, and are otherwise connected with P&G's conduct in Illinois.

9. Venue is proper in this Court pursuant to 735 ILCS § 5/2-101 because Madison County is: (a) a county of residence of P&G, which does substantial business in this County, including the operation of a warehouse facility in this County; and (b) the county in which the transaction or some part thereof occurred out of which the cause of action arises.

### **FACTUAL ALLEGATIONS**

#### **Gum Disease (Periodontal Disease) Causes Damage to Gums that Cannot be Repaired Without Professional Treatment**

10. Gum diseases, called periodontal diseases, “are mainly the result of infections and inflammation of the gums and bone that surround and support the teeth.”<sup>1</sup>

11. When someone has periodontal disease, the gum tissue pulls away from the tooth. As the disease worsens, the tissue and bone that support the tooth are destroyed. Over time, teeth may fall out or need to be removed.<sup>2</sup>

12. Periodontal diseases are caused by plaque, a sticky film that is always forming on teeth. Plaque contains bacteria that produce harmful toxins. If teeth are not cleaned well, the toxins can irritate and inflame the gums.<sup>3</sup>

13. If plaque is not removed, it can cause gums (gingivae) to pull away from the teeth, forming pockets in which more bacteria can collect. Plaque that is not removed hardens into tartar, also called calculus, along and under the gums.<sup>4</sup>

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<sup>1</sup> Center for Disease Control and Prevention (“CDC”), Periodontal Disease, (July 10, 2013), *available at* <https://www.cdc.gov/oralhealth/conditions/periodontal-disease.html> (last visited Jan. 21, 2021).

<sup>2</sup> Am. Dental Assoc. Patient Education Content (2012), *available at* [http://www.ada.org/en/~/media/ADA/Publications/Files/ADA\\_PatientSmart\\_Perio\\_Disease](http://www.ada.org/en/~/media/ADA/Publications/Files/ADA_PatientSmart_Perio_Disease) (last visited Jan. 22, 2021).

<sup>3</sup> ADA Patient Education Content (2012).

<sup>4</sup> What is Gum Disease?, 142(1) J. Am. Dental Assoc. 111, *available at* [https://www.ada.org/~/media/ADA/Publications/Files/for\\_the\\_dental\\_patient\\_jan\\_2011.pdf](https://www.ada.org/~/media/ADA/Publications/Files/for_the_dental_patient_jan_2011.pdf) (last visited Jan. 22, 2021).

14. “The pockets and hard calculus make it difficult to remove plaque without help from a dentist, and periodontal disease can develop.”<sup>5</sup>

15. “There are various stages to periodontal disease—from gingivitis (early stage) to periodontitis (advanced disease).

16. In the early stage of periodontal disease (gingivitis), the gums can become swollen and red, and they may bleed.<sup>6</sup>

17. According to the American Dental Association (“ADA”), at the early stage (gingivitis), the disease may be reversed if caught early and no damage has been done to the supporting structures under the teeth.

18. Reversing gingivitis, however, requires a professional.

19. As the ADA explains, the early-stage gingivitis reversal process involves “a professional cleaning” where the dentist uses a special tool to scrape the hardened calculus and plaque from along and beneath the gum line.<sup>7</sup>

20. P&G’s website similarly explains that reversing gingivitis requires “the help of your dentist . . . .”<sup>8</sup>

21. “Even with these measures, some patients develop more severe periodontal disease that must be treated” further and which may require multiple visits. In this treatment, plaque and tartar are carefully removed down to the bottom of each periodontal pocket and the tooth’s root surfaces are then smoothed to allow the gum tissue to heal and reattach to the tooth.<sup>9</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* See also CDC, Periodontal Disease.

<sup>7</sup> What is Gum Disease?, 142(1) J. Am. Dental Assoc. 111; ADA Patient Education Content (2012).

<sup>8</sup> <https://crest.com/en-us/oral-health/conditions/gums/gingivitis-symptoms-causes-treatments> (last visited Jan. 22, 2021).

<sup>9</sup> ADA Patient Education Content (2012).



22. If early gingivitis is not properly treated, it may lead to a more serious condition called periodontitis, which can do lasting damage to the gums, bones, and other structures that support the teeth.<sup>10</sup>

23. As periodontal disease progresses to its more advanced form, called periodontitis, the gums can pull further away from the tooth, bone can be lost, and the teeth may loosen or even fall out.”<sup>11</sup>

24. P&G explains that “[p]eriodontal disease is the main cause of gum recession,” which “is when the margin of the gum tissue surrounding the teeth wears away, or pulls back, exposing more of the tooth, or the tooth’s root.”<sup>12</sup>

25. P&G recognizes that “[r]eceding gums is a widespread dental condition. Most people aren’t aware that they have receding gums since it occurs gradually.”<sup>13</sup>

26. P&G also recognizes that “[m]ild gum recession can be treated by a professional deep cleaning in the affected area. During the deep cleaning, plaque and tartar is removed and the exposed root area is smoothed over, making it more difficult for bacteria to attach itself. Antibiotics can also be used to kill any remaining bacteria.”<sup>14</sup>

27. However, “[i]f a deep cleaning is not sufficient to treat the condition, because of excess loss of bone and deep pockets, receding gums surgery may be required.”<sup>15</sup>

28. P&G also acknowledges that brushing, flossing, and visiting the dentist is the “best way to prevent gum recession.”<sup>16</sup>

<sup>10</sup> ADA Patient Education Content (2012).

<sup>11</sup> <https://www.cdc.gov/oralhealth/conditions/periodontal-disease.html> (last visited Jan. 21, 2021).

<sup>12</sup> <https://oralb.com/en-us/oral-health/conditions/gums/receding-gums-symptoms-causes-treatments> (last visited Jan. 21, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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

<sup>16</sup> *Id.*

29. While brushing can help prevent further gum recession, it is well accepted that it “won’t correct the existing recession.”<sup>17</sup> This is because receding gums do not grow back: “Once the gum tissue has pulled back and away from the teeth, it’s gone for good.”<sup>18</sup>

30. Accepted methods to repair gum recession include professional deep cleaning, gum grafting (a surgical procedure in which a small amount of tissue is transferred to the gum area), and the pinhole surgical technique (a procedure that involves manipulating existing gum tissue over the exposed roots).<sup>19</sup>

### **Many Americans Suffer from Gum Disease**

31. According to P&G, “[s]tudies show that 30% of the population may be predisposed to gum disease, even if they take good care of their teeth.”<sup>20</sup>

32. According to P&G, “[m]ore than one in three Americans say . . . [t]hey are unaware that periodontal disease needs to be treated and cannot be left alone.”<sup>21</sup>

33. According to P&G, gingivitis occurs in 3 out of 4 Americans during their lifetime.<sup>22</sup>

34. According to the CDC, nearly half of U.S. adults over the age of 30 have periodontitis.<sup>23</sup>

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<sup>17</sup> <https://www.colgate.com/en-us/oral-health/gum-disease/can-receding-gums-grow-back> (last visited Jan. 21, 2021).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> <https://oralb.com/en-us/oral-health/conditions/gums/receding-gums-symptoms-causes-treatments> (last visited Jan. 21, 2021).

<sup>21</sup> <https://crest.com/en-us/oral-health/why-crest/faq/history-toothpaste> (last visited Jan. 22, 2021).

<sup>22</sup> <https://crest.com/en-us/oral-health/conditions/gums/gingivitis-symptoms-causes-treatments> (last visited Jan. 22, 2021).

<sup>23</sup> CDC, Periodontal Disease (*citing* Eke PI, Dye B, Wei L, Thornton-Evans G, Genco R. Prevalence of Periodontitis in Adults in the United States: 2009 and 2010. *J Dent Res*. Published online 30 August 2012:1–7), abstract available at <https://journals.sagepub.com/doi/pdf/10.1177/0022034512457373> (last visited Jan. 21, 2021).

35. Periodontitis is more common in men than women, those living below the federal poverty level, those with less than a high school education, and current smokers.<sup>24</sup>

### **P&G's Crest Toothpaste**

36. P&G has been selling toothpaste under the Crest brand since the 1950s.<sup>25</sup>

37. P&G markets Crest as "a leader in dental health innovations since its inception in 1955."<sup>26</sup>

38. Currently, P&G sells Crest toothpastes under eight product-lines with the following categories: (1) Future-Proof; (2) Clean + Freshen; (3) Enamel; (4) Sensitivity; (5) All-Around Protection; (6) Kids; (7) Whitening; and (8) Gum Health.<sup>27</sup>

### **A TOOTHPASTE FOR EVERY NEED**

All of our toothpastes give you a healthy smile,  
with specialized solutions tailored to you.



39. P&G offers a variety of toothpastes in its "Future-Proof" line that it advertises as removing plaque along the gum line or defending gums against future issues, such as the following<sup>28</sup>:

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

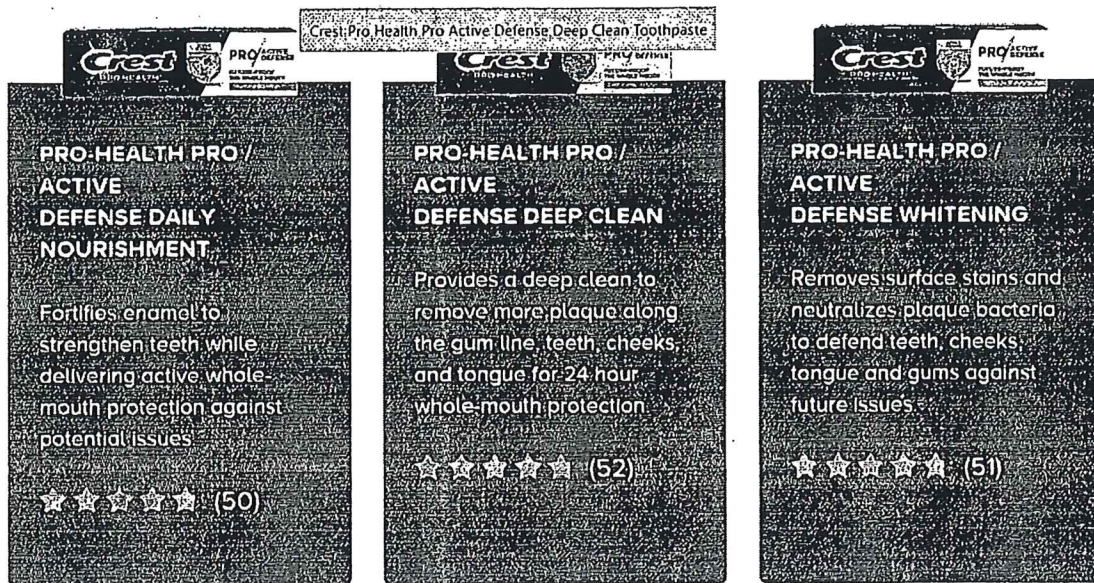
<sup>25</sup> <https://crest.com/en-us/oral-health/why-crest/faq/history-toothpaste> (last visited Jan. 22, 2021).

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

<sup>27</sup> <https://crest.com/en-us/products/compare/crest-toothpaste> (last visited Jan. 22, 2021).

<sup>28</sup> <https://crest.com/en-us/products/toothpaste/future-proof> (last visited Jan. 21, 2021).





40. P&G also offers different toothpastes in its “All Around Protection” line that it advertises as helping to prevent plaque, tartar, and gingivitis, stating that its Pro-Health Advanced Gum Protection Toothpaste provides “Crest’s highest level of protection against gingivitis and plaque bacteria to help keep gums healthy,” as follows<sup>29</sup>:

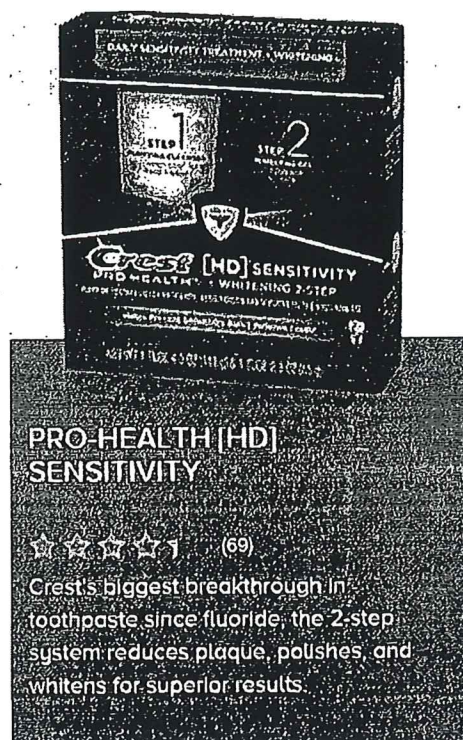
<sup>29</sup> <https://crest.com/en-us/products/toothpaste/all-around-protection> (last visited Jan. 21, 2021).





41. In this “All Around Protection” line, P&G also offers the Crest Pro-Health HD Daily Two Step Toothpaste System, which it describes as a 2-step system that “reduces plaque, polishes, and whitens for superior results”<sup>30</sup>.

<sup>30</sup> <https://crest.com/en-us/products/compare/crest-toothpaste> (last visited Jan. 21, 2021).



#### **P&G's Marketing of Crest Toothpaste for Gum & Enamel Repair**

42. P&G also offers different toothpastes in its "Gum Health" line that it advertises on its website as being created after years of research and being specially formulated to reverse early gum disease and issues that come with it, as follows<sup>31</sup>:

### **CREST GUM CARE COLLECTION**

Created after years of research by Crest scientists, these toothpastes have been specially formulated to help reverse early gum disease and the issues that come with it.

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<sup>31</sup> *Id.*

43. Upon information and belief, in or around April 2018, P&G introduced a new Crest toothpaste in the Gum Health line called "Crest Gum & Enamel Repair."

44. The label on the front of the Crest Gum & Enamel Repair toothpaste box displayed on store shelves and online advertisements, and the toothpaste tube, is shown below<sup>32</sup>:

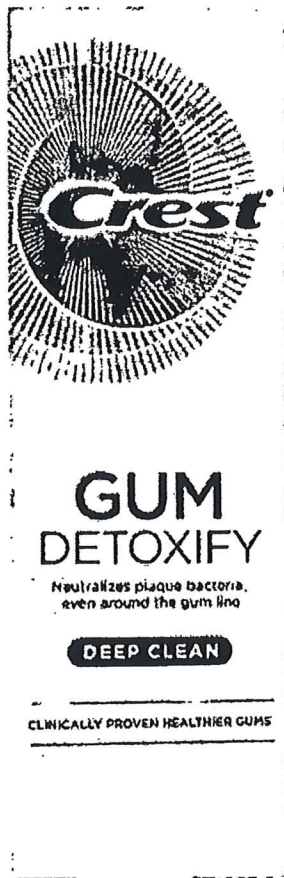


<sup>32</sup> The first picture is available at <https://www.walgreens.com/store/c/crest-gum-&-enamel-repair-toothpaste/ID=prod6383755-product> (last visited Jan. 21, 2021). The second picture is available at <https://crest.com/en-us/products/toothpaste/gum-enamel-repair-toothpaste-intensive-clean> (last visited Jan. 21, 2021).



45. P&G has other toothpastes in its “Gum Health” line, such as its “Gum and Breath Purify” toothpaste; “Gum Detoxify” toothpaste; “Gum and Sensitivity” toothpaste; and “Advanced Gum Restore” toothpaste.

46. The label for the “Gum Detoxify” toothpaste states that it “[n]eutralizes plaque bacteria, even around the gum line,” and P&G advertisements state that this toothpaste “penetrates hard to reach areas to remove plaque bacteria and helps reverse gingivitis.”<sup>33</sup>



## CREST GUM DETOXIFY DEEP CLEAN TOOTHPASTE

★★★★★ 4.7/5 (314)

[Read All 314 Reviews](#)

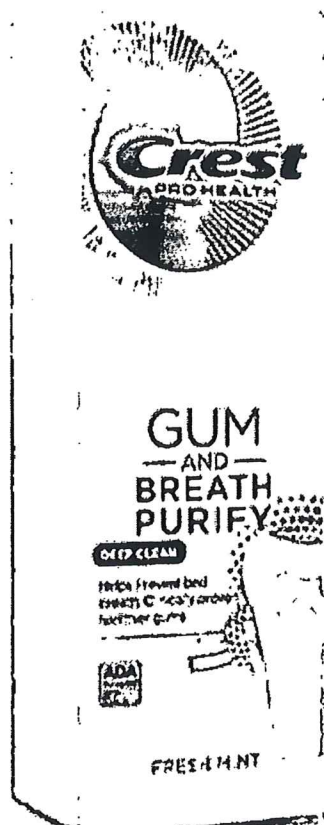
[Write A Review](#)

Activated foam formula penetrates hard to reach areas to remove plaque bacteria and helps reverse gingivitis.

<sup>33</sup> <https://crest.com/en-us/products/toothpaste/crest-gum-detoxify-deep-clean-toothpaste> (last visited Jan. 21, 2021).



47. The label for the “Gum and Breath Purify” toothpaste states that it provides “[c]linically proven healthier gums,” and P&G advertisements state that this toothpaste “combats . . . bacteria at the gum line, for clinically proven healthier gums.”<sup>34</sup>



## GUM AND BREATH PURIFY DEEP CLEAN TOOTHPASTE

☆☆☆☆☆ 4.85/5 ( 52 )

[Read All 52 Reviews](#)

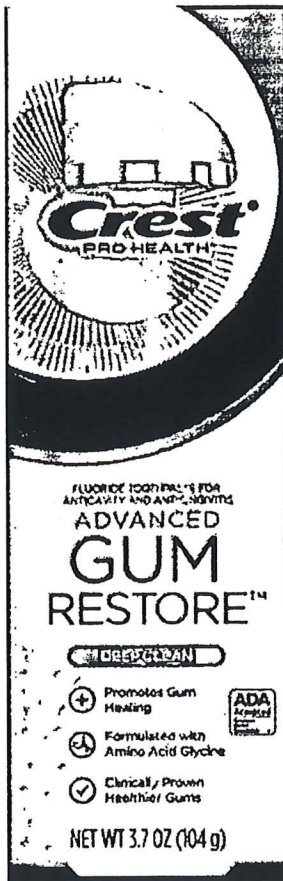
[Write A Review](#)

Unique formula infused with essential oils combats bad breath bacteria at the gum line, for clinically proven healthier gums.

48. The label for the “Advanced Gum Restore” toothpaste states that it “[p]romotes Gum Healing,” and P&G advertisements state that this toothpaste “promot[es] gum healing while fighting gingivitis.”<sup>35</sup>

<sup>34</sup> <https://crest.com/en-us/products/toothpaste/crest-gum-breath-purify-deep-clean-toothpaste> (last visited Jan. 21, 2021).

<sup>35</sup> <https://crest.com/en-us/products/toothpaste/crest-advanced-gum-restore-deep-clean> (last visited Jan. 21, 2021).



## CREST PRO-HEALTH ADVANCED GUM RESTORE TOOTHPASTE, DEEP CLEAN 3.7OZ

No Review Message

[Write A Review](#)

Advanced Amino Acid formula restores gums by promoting gum healing while fighting gingivitis.

### P&G's Oral-B Gum & Enamel Repair Toothpaste

49. Upon information and belief, in or around November 2017, P&G introduced a new toothpaste under its Oral-B brand called Oral-B Gum & Enamel Repair.



**The Plain, Ordinary, and Reasonable Meaning of “Gum & Enamel Repair” is that the Product Repairs Gums and Enamel**

50. Based on the different varieties of toothpastes in the “Future-Proof” line and P&G’s labeling and advertising of same, P&G intended to advertise the Gum Health line as providing benefits other than:

- “remov[ing] . . . plaque along the gum line, teeth, cheeks, and tongue” [Pro-Health Pro/Active Defense Deep Clean]
- “neutraliz[ing] plaque bacteria” [Pro Health Pro/Active Defense Whitening];  
or
- “defend[ing] teeth, cheeks, tongue and gums against future issues” [against gingivitis and plaque bacteria” [Pro Health Pro/Active Defense Whitening].

51. Based on the different varieties of toothpastes in the “All Around Protection” line and P&G’s labeling and advertising of same, P&G intended to advertise the Gum Health line as providing benefits other than:

- “prevent[ing] plaque, tartar, and gingivitis” [Crest Sensitivity Complete Protection];
- providing the “highest level of protection against gingivitis and plaque bacteria to help keep gums healthy” [Pro-Health Advanced Gum Protection];  
or
- providing the “biggest breakthrough in toothpaste since fluoride . . . [that] reduces plaque, polishes, and whitens for superior results” [Pro-Health [HD] Sensitivity].

52. Based on P&G's own statements, P&G intended to market its Gum Health line as being specially formulated to reverse early "gum disease and issues that come with it," which would include gum damage, gum recession, and periodontitis.

53. Based on the different varieties of toothpastes in the Gum Health line and P&G's labeling and advertising of same, P&G intended different meanings for the terms:

- "purify" [Gum & Breath Purify];
- "detoxify" [Gum Detoxify];
- "restore" [Pro-Health Advanced Gum Restore]; and
- "repair" [Gum & Enamel Repair].

54. Similarly, P&G labeled and advertised the other toothpastes in the Gum Health line as

- "promoting gum healing" [Gum Restore];
- "fighting gingivitis" [Gum Restore];
- "combat[ing] . . . bacteria at the gum line" [Gum & Breath Purify];
- "remov[ing] plaque bacteria" [Gum Detoxify];
- "neutraliz[ing] plaque bacteria . . . around the gum line" [Gum Detoxify]; and
- "revers[ing] gingivitis" [Gum Detoxify].

55. By offering a different toothpaste in the Gum Health line called Gum & Enamel Repair, P&G intended to suggest that Gum & Enamel Repair toothpaste had different benefits from the other toothpastes in the Gum Health line, or otherwise sold by P&G—namely, the ability to repair gums.

56. The plain and ordinary interpretation of "Gum & Enamel Repair" is that "Gum" and "Enamel" are both objects of the verb "Repair."



57. Besides being the most reasonable interpretation, this interpretation is also supported by P&G's labeling of the other toothpastes in the Gum Health line, which include other verbs with one or more objects, such as "Gum Detoxify," "Gum Restore," and "Gum & Breath Purify."

**The Gum & Enamel Repair Label is False or Misleading**

58. Toothpaste ingredients and regular brushing can prevent gingivitis.

59. As set forth above, however, no toothpaste or toothpaste ingredient can repair gums or damage done to gums by periodontal disease.

60. This is because, at every stage of periodontal disease, professional treatment is needed to repair the gums.

61. Accordingly, the prominent representation of "Gum & Enamel Repair" is false and/or misleading.

62. There are no federal requirements specifically addressing the ability of toothpastes to repair gums.

63. When the FDA issued a proposed monograph for labeling of antigingivitis/antiplaque drug products, it did not refer to or address any indications for gum repair.

64. Instead, the FDA's proposed monograph states the indications of an antigingivitis product as helping to:

- "control" "reduce" or "prevent" gingivitis (for antigingivitis products);
- "interfere with harmful effects of plaque associated with gingivitis" (if the product contains stannous fluoride); or

- “control” “reduce” “prevent” or “remove” plaque that leads to gingivitis (for antigingivitis/antiplaque products).<sup>36</sup>

65. Repairing gums is materially different from controlling, reducing, and preventing gingivitis or removing plaque that leads to gingivitis.

66. P&G’s prominent representation of “Gum & Enamel Repair” on its toothpaste label is deceptive because a reasonable consumer like Plaintiff would expect the product to be capable of repairing gums.

67. Reasonable consumers cannot be expected to know that a toothpaste representing it can repair gums cannot actually repair gums.

**P&G Intended to Mislead Consumers and Thereby Gain a Commercial Advantage**

68. By placing the representation “Gum & Enamel Repair” in large font prominently on the front of the label, P&G intended that consumers would rely on the representation in deciding to purchase the product.

69. P&G intended to profit from the use of the false or misleading label by taking away market share from its competitors, which do not offer a “Gum & Enamel Repair” toothpaste, as shown in the following examples:



<sup>36</sup> 68 Fed. Reg. 103, 32285-86 (proposing 21 C.F.R. § 356.65).



70. The deceptive nature of P&G's false and misleading label is especially egregious when considered in the context of the other toothpastes in the marketplace (including those manufactured, marketed, and sold by P&G)—none of which contain the phrase “Gum & Enamel Repair.”

71. In or around July 2018, the Advertising Standards Authority (“ASA”), which is the United Kingdom's independent advertising regulator, banned P&G from running an advertisement for the Oral-B Gum & Enamel Repair toothpaste because the ad's references to “repair” and “restore” suggested the toothpaste could reverse the effects of damaged gums caused by gum disease, and the ad's promotion of the toothpaste's “active repair technology”

and claims and representations of “gum rejuvenation” would be understood by viewers as medical claims.<sup>37</sup>

72. Thereafter, despite this ruling, P&G did not alter the label on the Class Products in the United States.

#### **Plaintiff's Purchases**

73. In or around July 2020, Plaintiff purchased two tubes of P&G's Crest Gum & Enamel Repair toothpaste from Target in Alton, Illinois.

74. Prior to making his purchase, Plaintiff was exposed to and read the statement “Gum & Enamel Repair” prominently displayed on the front of the product label.

75. At all times, Plaintiff believed and had a reasonable expectation that the labeling on the products was truthful and accurate.

76. As a direct result of P&G's false and/or misleading “Gum & Enamel Repair” label on the Class Products as set forth above, Plaintiff and other members of the Class have been deprived of the benefit of their bargain in purchasing these products because the products had less value than represented.

77. Consequently, Plaintiff and members of the Class have suffered injury and lost money and property in purchasing the Class Products.

#### **CLASS ALLEGATIONS**

78. Pursuant to 735 ILCS 5/2-801 through 5/2-807, Plaintiff brings this action on behalf of himself and as a representative of all others who are similarly situated. Plaintiff seeks certification of the following class:

All persons in the state of Illinois who purchased one or more of the Class Products in Illinois during the Class Period.

<sup>37</sup> <https://www.asa.org.uk/rulings/procter---gamble---health---beauty-care---ltd-a17-398219.html> (last visited Jan. 21, 2021).



79. Excluded from the Class are any employee of P&G, as well as the officers, directors, affiliates, legal representatives, predecessors, successors, and assigns of P&G. Also excluded are the judges and court personnel in this case and any members of their immediate families.

80. Plaintiff reserves the right to amend or modify the Class definitions with greater specificity or division into subclasses after having had an opportunity to conduct discovery.

81. The Class Period is that period within the statute of limitations for this action and extending until a Class is certified herein.

82. The Class is certifiable under 735 ILCS 5/2-801.

83. **Numerosity.** 735 ILCS 5/2-801(1). The members of each Class are so numerous that joinder of all members is impractical. In oral care, P&G has the “number two market share position with nearly 20% global market share behind [its] Oral-B and Crest brands.”<sup>38</sup>

84. **Commonality and Predominance.** 735 ILCS 5/2-801(2). There are questions of law and fact common to the Class, which predominate over any questions affecting individual members of the Class. These common questions of law and fact include, without limitation:

- a. Whether the representation of “Gum & Enamel Repair” on the Class Products was false or misleading;
- b. Whether the representation of “Gum & Enamel Repair” on the Class Products was material;
- c. Whether the representation of “Gum & Enamel Repair” on the Class Products constitutes the use or employment of any deception, fraud, false pretense,

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<sup>38</sup> P&G 2019 Annual Report, p. 13, *available at* [https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE\\_PG\\_2019.pdf](https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_PG_2019.pdf) (last visited Jan. 22, 2021).

false promise, misrepresentation or the concealment, suppression or omission of any material fact;

- d. Whether the representation of “Gum & Enamel Repair” on the Class Products was likely to mislead a reasonable consumer;
- e. Whether P&G has been unjustly enriched by its retention of profits from the sale of the misleading Class Products that it advertised, marketed, and sold;
- f. Whether Plaintiff and the members of the Class are entitled to an award of compensatory damages and/or restitution and/or disgorgement;
- g. Whether injunctive declaratory, and/or or other equitable relief is warranted pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act; and
- h. Whether Plaintiff and the Class are entitled to an award of punitive damages as permitted by the Illinois Consumer Fraud and Deceptive Business Practices Act.

85. **Adequacy.** 735 ILCS 5/2-801(2). Plaintiff is a member of the Class he seeks to represent, committed to the vigorous prosecution of this action, and has retained competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

86. **Appropriateness.** 735 ILCS 5/2-801(4). A class action is an appropriate method for the fair and efficient adjudication of the controversy. Because the amount of each individual Class member’s claim is small relative to the complexity of the litigation, and due to the financial resources of P&G, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, Class members will continue to suffer

losses and P&G's misconduct will proceed without remedy. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard that might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court. Finally, Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

87. **Class Action on Limited Issues.** 735 ILCS 5/2-802(b). Because there are common individual issues among the Class, it is appropriate for this action to be maintained as a class action with respect to particular issues if necessary.

**COUNT I**  
**Violation of the Illinois Consumer Fraud and Deceptive Business Practice Act**  
**By Means of Unfair Business Practices**

88. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth above.

89. Each Class Product is "merchandise" pursuant to 815 ILCS § 505/1(b).

90. The advertising, offering for sale, sale, and/or distribution of the Class Products constitutes "trade" or "commerce" pursuant to 815 ILCS § 505/1(f).

91. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2, prohibits unfair methods of competition and unfair or deceptive acts or practices, including, but not limited to, "the use or employment of any deception, fraud, false

pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby.”

92. Section 2 further prohibits unfair methods of competition and unfair or deceptive acts or practices, including “the use or employment of any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act[.]’”

93. Section 2 also provides: “In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.”

94. As set forth above, P&G engaged in, *inter alia*, the following practices in transactions with Plaintiff and the Class in Illinois which were intended to result in, and did result in, the sale of the Class Products:

- a. Falsely stating, misrepresenting, concealing, omitting, and/or suppressing material facts regarding the ability of the Class Products to repair gums.
- b. Representing that the Class Products have characteristics, uses, and/or benefits, that they do not have.
- c. Advertising goods with intent not to sell them as advertised.

95. P&G falsely stated, misrepresented, concealed, omitted, and/or suppressed material facts on the Class Products’ labels as described above when it knew, or should have known, that the Class Products could not repair gums as stated on the label.

96. The acts and practices engaged in by P&G, as set forth herein, constitute unfair business practices in violation of 815 ILCS § 505/1 et seq. because they: (a) offend public



policy; (b) are immoral, unethical, oppressive, or unscrupulous; and/or (c) cause substantial injury to consumers.

97. The aforesaid unfair acts and practices occurred in the course of conduct involving trade or commerce.

98. P&G intended that Plaintiff and the Class rely on the aforesaid unfair acts and practices.

99. As a direct and proximate result of the aforesaid violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, Plaintiff and the Class have suffered an ascertainable loss of money and/or property in that they overpaid for the Class Products because they paid a price that was based on P&G's material false or misleading statements regarding the ability of the Class Products to repair gums, in an amount to be proved at trial.

100. P&G continues to market, advertise, and sell the Class Products with the false and/or misleading "Gum & Enamel Repair" label.

101. 815 ILCS § 505/10 permits the Court to enter injunctive relief to prevent P&G's continued violation of the law by continuing to market, advertise, and sell the Class Products with the false and/or misleading label described herein.

102. P&G's conduct as aforesaid was and continues to be wanton, willful, outrageous, and in reckless indifference to the rights of Plaintiff and others similarly situated and, therefore, warrants the imposition of punitive damages.

103. Plaintiff has been forced to hire attorneys to enforce his rights under the Illinois Consumer Fraud and Deceptive Business Practices Act.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below.

**COUNT II**

**Violation of the Illinois Consumer Fraud and Deceptive Business Practice Act  
By Means of Deceptive Acts or Practices**

104. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth above.

105. P&G's false and/or misleading statements, omissions, and misrepresentations described herein constitute deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of material facts in connection with the sale of merchandise in Illinois.

106. The acts and practices engaged in by P&G, as set forth herein, constitute deceptive and/or fraudulent business practices in violation of 815 ILCS § 505/1 *et seq.*

107. The aforesaid fraudulent and deceptive acts and practices occurred in the course of conduct involving trade or commerce.

108. P&G intended that Plaintiff and the Class rely on the aforesaid deceptive advertising, acts and practices.

109. As a direct and proximate result of the aforesaid violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, Plaintiff and the Class have suffered an ascertainable loss of money and/or property in that they overpaid for the Class Products because they paid a price that was based on P&G's material false or misleading statements regarding the ability of the Class Products to repair gums, in an amount to be proved at trial.

110. P&G continues to market, advertise, and sell the Class Products with the false and/or misleading "Gum & Enamel Repair" label.

111. 815 ILCS § 505/10 permits the Court to enter injunctive relief to prevent P&G's continued violation of the law by continuing to market, advertise, and sell the Class Products with the false and/or misleading label described herein.

112. P&G's conduct as aforesaid was and continues to be wanton, willful, outrageous, and in reckless indifference to the rights of Plaintiff and others similarly situated and, therefore, warrants the imposition of punitive damages.

113. Plaintiff has been forced to hire attorneys to enforce his rights under the Illinois Consumer Fraud and Deceptive Business Practices Act.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below.

**COUNT III**  
**Unjust Enrichment**

114. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth above.

115. Plaintiff and the Class members conferred a monetary benefit on P&G when they paid for the Class Products.

116. As set forth above, P&G knowingly made false and/or misleading statements of material facts and/or misrepresented and/or concealed material facts in connection with its marketing, advertising, and sales of the Class Products.

117. P&G has retained Plaintiff's and the Class members' purchase price despite their knowing false and/or misleading statements and/or misrepresentations and/or concealments on the Class Products' labels.

118. As a result, P&G is unjustly enriched at the expense of Plaintiff and the Class.

119. Under principles of equity and good conscience, P&G should not be permitted to retain the money belonging to Plaintiff and the Class that P&G gained through deceptive and fraudulent material false and/or misleading statements and/or misrepresentations and/or omissions in the marketing, advertising, and selling of the Class Products.

120. As a direct and proximate result of P&G's conduct, Plaintiff and the Class members overpaid for the Class Products because they paid a price that was based on P&G's material false and/or misleading statements and/or misrepresentations and/or omissions regarding the ability of the Class Products to repair gums.

121. Accordingly, Plaintiff and the Class seek full disgorgement and restitution of the amounts P&G has retained as a result of the unlawful and/or wrongful conduct alleged herein, an amount which will be proved at trial.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Class, seeks the following relief:

- A. certification of the Class pursuant to 735 ILCS § 5/2-801 *et seq.*;
- B. appointing Plaintiff as the Class Representative and Plaintiff's attorneys as Class Counsel;
- C. awarding Plaintiff and the Class compensatory damages, in an amount to be proved at trial;
- D. awarding Plaintiff and the Class injunctive relief as permitted by law or equity, including, but not limited to, enjoining Defendant from continuing the unlawful



practices as set forth herein and ordering Defendant to engage in a corrective advertising campaign;

- E. awarding punitive damages for Plaintiff and the Class under the Illinois Consumer Fraud and Deceptive Business Practices Act in an amount to punish Defendant's egregious conduct as set forth above and to deter Defendant and others from engaging in similar conduct;
- F. awarding attorneys' fees and costs; and
- G. providing such further relief as may be just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all claims so triable.

Dated: February 1, 2021      Respectfully submitted,

**GOLDENBERG HELLER  
& ANTOGNOLI, P.C.**

By: /s/ Kevin P. Green

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