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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SHERRI PETTIS, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., and WHOLE FOODS
MARKET, INC.,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Sherris Pettis (“Plaintiff”), on behalf of herself and all others similarly situated, by her undersigned attorneys, against Amazon.com and Whole Foods Market, Inc., (collectively “Defendants”), alleges the following based upon personal knowledge as to herself and her own actions, and, as to all other matters, allege, upon information and belief and investigation of her counsel, as follows:

I. INTRODUCTION

1. This action seeks to recover damages and injunctive relief for Defendants’ continuing failure to disclose to consumers that certain Whole Foods herbs and spices, sold under its trade name of “365 By Whole Foods Market,” including Defendants’ Basil, Cumin, and Ground Ginger (the “Products”), contain (or risk containing) lead, arsenic, and cadmium (“Heavy Metals”).

1 2. A November 2021 report by Consumer Reports states that the offending herbs
2 and spices, including the Products, “had high enough levels of arsenic, lead, and cadmium
3 combined, on average, to pose a health concern for children when regularly consumed in
4 typical servicing sizes. Most raise concern for adults, too.”

5 3. Heavy Metals in foods pose a serious safety risk to consumers because they can
6 cause cancer and serious and often irreversible damage to brain development as well as other
7 serious health problems.

8 4. As described more fully below, consumers who purchase the Products are
9 injured by Defendants’ acts and omissions concerning the presence (or risk) of Heavy Metals.
10 No reasonable consumer would know, or have reason to know, that the Products contain (or
11 risk containing) Heavy Metals. Worse, as companies across the industry have adopted methods
12 to limit heavy metals in their herbs and spices, Defendants have stood idly by with a reckless
13 disregard for their consumers’ health and well-being. As such, Plaintiff seek relief in this action
14 individually and as a class action on behalf of all purchasers of the Products.

15 **II. PARTIES**

16 **Plaintiff**

17 5. Plaintiff Sherri Pettis is a resident and citizen of the State of Pennsylvania,
18 residing in Pittsburgh, Pennsylvania. Plaintiff Pettis began purchasing the 365 by Whole Foods
19 Market Ground Ginger in or about 2018 from a Whole Foods retail location in Pittsburgh,
20 Pennsylvania. Her most recent purchase was in 2021 for \$3.49 from that location.

21 6. Prior to purchasing the Product, Plaintiff Pettis saw and relied upon the
22 packaging of the Product. Plaintiff Pettis believed she was purchasing quality and healthy
23 spices that did not contain (or have a risk of containing) Heavy Metals. Had Defendants
24 disclosed on the label that the Product contained (or risked containing) unsafe toxic Heavy
25 Metals, Ms. Pettis would have been aware of that fact and would not have purchased the
26 Product or would have paid less for it.

27

1 7. Ms. Pettis continues to desire to purchase the Product from Defendants.
2 However, Ms. Pettis is unable to determine if the Product is actually safe. Ms. Pettis
3 understands that the composition of the Product may change over time. But as long as
4 Defendant continues to market its Product as safe, she will be unable to make informed
5 decisions about whether to purchase Defendant's Product and will be unable to evaluate the
6 different prices between Defendant's Product and competitor's products. Ms. Pettis is further
7 likely to be repeatedly misled by Defendant's conduct, unless and until Defendant is compelled
8 to ensure that the Product marketed, labeled, packaged and sold as a quality and healthy spice
9 is, in fact, a safe and healthy spice.

10 **Defendants**

11 8. Defendant Amazon.com, Inc. is a Delaware corporation with its corporate
12 headquarters and principal place of business located in Seattle, Washington. In 2017,
13 Defendant Amazon.com acquired Defendant Whole Foods for \$13.7 billion.¹

14 9. Defendant Whole Foods is a Delaware corporation with its headquarters and
15 principal place of business at 525 N Lamar Blvd, Austin, TX 78703. Defendant manufactures,
16 markets, and sells herbs and spices under the Whole Foods 365 brand name throughout the
17 United States. During the relevant period, Defendant controlled the manufacture, design,
18 testing, packaging, labeling, marketing, advertising, promotion, distribution, and sales of its
19 Products. Defendant therefore had complete control over how to label its Products as to their
20 contents. The Products are sold at Whole Foods brick and mortar locations, online, and on
21 Amazon.com.

22 **III. JURISDICTION AND VENUE**

23 10. This Court has subject matter jurisdiction over this action pursuant to the Class
24 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 ("CAFA"), which, *inter alia*, amends 28

25
26 ¹See <https://slate.com/business/2021/06/why-amazon-bought-whole-foods-groceries-online.html#:~:text=In%202017%2C%20Amazon%20entered%20the,purchase%20was%20a%20cataclysmic%20event> (last accessed July 21, 2022).

1 U.S.C. § 1332, at subsection (d), conferring federal jurisdiction over class actions where, as here:
2 (a) there are 100 or more members in the proposed classes; (b) some members of the proposed
3 classes have a different citizenship from Defendant; and (c) the claims of the proposed class
4 members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. See 28
5 U.S.C. § 1332(d)(2) and (6).

6 11. This Court has personal jurisdiction over Defendants because Defendant
7 Amazon.com, the parent company of Defendant Whole Foods, maintains its principal place of
8 business in this District.

9 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
10 Amazon.com is headquartered and has its principal place of business in this District, a
11 substantial part of the conduct giving rise to Plaintiff's claims occurred in this District, and
12 Defendant conducts substantial business in this District.

13 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial
14 part of the events or omissions giving rise to these claims occurred in, were directed to and/or
15 emanated from this District. Defendant Amazon.com resides within this judicial district and a
16 substantial part of the events giving rise to the claims alleged herein occurred within this
17 judicial district.

18 IV. FACTUAL ALLEGATIONS

19 A. Lead, Arsenic, and Cadmium Are Toxic

20 14. Lead, arsenic, and cadmium are heavy metals. As described more fully below,
21 the harmful effects of heavy metals are well-documented, particularly on children. Exposure
22 puts children at risk for lowered IQ, behavioral problems (such as attention deficit hyperactivity
23 disorder), type 2 diabetes, and cancer, among other health issues. Heavy metals also pose risks
24 to adults. Even modest amounts of heavy metals can increase the risk of cancer, cognitive and
25 reproductive problems, and other adverse conditions. As such, it is important to limit exposure.

1 15. “No amount of lead is known to be safe.”² Exposure to lead may cause anemia,
2 weakness, and kidney and brain damage.³ Lead can affect almost every organ and system in the
3 body. Lead accumulates in the body over time, and can lead to health risks and toxicity,
4 including inhibiting neurological function, anemia, kidney damage, seizures, and in extreme
5 cases, coma and death. Lead can also cross the fetal barrier during pregnancy, exposing the
6 mother and developing fetus to serious risks, including reduced growth and premature birth.
7 Lead exposure is also harmful to adults as more than 90 percent of the total body burden of
8 lead is accumulated in the bones, where it is stored. Lead in bones may be released into the
9 blood, re-exposing organ systems long after the original exposure.⁴

10 16. Arsenic is also dangerous to humans. “Arsenic is ranked first among toxicants
11 posing a significant potential threat to human health based on known or suspected toxicity.”⁵
12 Long term exposure is linked to cardiovascular disease. Arsenic can also cause bladder, lung,
13 liver, and skin cancer, strokes, and diabetes. Recent studies have suggested that arsenic may
14 cause IQ deficits in children and may be harmful to fetal development as “even low
15 concentrations of arsenic impair neurological function[.]”⁶ There is “essentially no safe level” of
16 arsenic.⁷

20 _____
21 ² See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health> (last accessed August 8, 2022).

22 ³ Centers for Disease Control and Prevention, “Health Problems Caused by Lead,” *The National Institute for Occupational Safety and Health (NIOSH)*,
23 <https://www.cdc.gov/niosh/topics/lead/health.html#:~:text=Exposure%20to%20high%20levels%20of,a%20developing%20baby's%20nervous%20system> (last accessed August 8, 2022).

24 ⁴ State of New York Department of Health, “Lead Exposure in Adults: A Guide for Health Care Providers,”
25 <https://www.health.ny.gov/publications/2584.pdf> (last accessed August 8, 2022).

26 ⁵ Christina R. Tyler and Andrea M. Allan, “The Effects of Arsenic Exposure on Neurological and Cognitive Dysfunction in Human and Rodent Studies: A Review,” *Curr Environ Health Rep.* 2014; 1(2): 132-147,
27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4026128/> (last accessed August 8, 2022).

⁶ *Id.*

⁷ See <https://publicintegrity.org/environment/what-to-do-if-your-drinking-water-contains-arsenic/> (last accessed August 8, 2022).

1 17. Cadmium is similarly harmful. “[A]ny cadmium exposure should be avoided.”⁸
 2 Exposure to cadmium may lead to damage to kidneys, lungs, and bones.⁹ “Even relatively low
 3 chronic exposure can cause irreversible renal tubule damage, potentially progressing to
 4 glomerular damage and kidney failure” and “bone loss often is seen in concert with these
 5 effects.”¹⁰ This metal is also known to cause cancer and targets the body’s cardiovascular, renal,
 6 gastrointestinal, neurological, reproductive, and respiratory systems.¹¹

7 **B. Whole Foods’ Herbs & Spices Contain Toxic Arsenic, Lead, and Cadmium.**

8 18. In November of 2021, Consumer Reports published a report titled “Your Herbs
 9 and Spices Might Contain Arsenic, Cadmium, and Lead.” Employing the Analysis for Arsenic,
 10 Cadmium, Lead, and Mercury by Triple Quadruple Inductively Coupled Plasma Mass
 11 Spectrometry (IC-QQQ-MS), With Collision Cell, Consumer Reports determined that each of the
 12 Products contains toxic Heavy Metals. Consumer Reports’ samples were prepared and analyzed
 13 in accordance with the Association of Official Analytical Chemists (AOAC) Method 2015.01.

14 19. Consumer Reports analyzed “126 individual products from national and private-
 15 label brands,” including Whole Food’s.¹²

16 20. Consumer Reports determined that “[r]oughly one-third of the tested products,
 17 40 in total, had high enough levels of arsenic, lead, and cadmium combined, on average, to
 18 pose a health concern for children when regularly consumed in typical serving sizes. Most
 19 raised concern for adults, too.”¹³

20 21. The authors cautioned that “just one serving—3/4 teaspoons or more—per day
 21 leaves little room for heavy metal exposure from other sources” including in “fruit juice, baby

22 _____
 23 ⁸ M. Nathaniel Mead, “Cadmium Confusion: Do Consumers Need Protection,” *Environ Health Perspect.* 2010 Dec;
 118(12): A528-A534, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/> (last accessed August 8, 2022).

24 ⁹ See Agency for Toxic Substances and Disease Registry, “ToxFAQs for Cadmium,” Toxic Substances Portal,
<https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15> (last accessed August 8, 2022).

25 ¹⁰ Mead, *supra* note 8.

26 ¹¹ See Occupational Safety & Health, “Cadmium,” <https://www.osha.gov/cadmium> (last accessed August 8, 2022).

27 ¹² Lisa L. Gill, “Your Herbs and Spices Might Contain Arsenic, Cadmium, and Lead,” *Consumer Reports* (Nov. 9,
 2021), <https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/> (last accessed August 8, 2022).

¹³ *Id.*

1 food, and rice[.]”¹⁴ These latter food categories have also tested high for heavy metals and have
2 been the subject of numerous lawsuits.

3 22. With regards to the results, James E. Rogers, PhD, director of food safety and
4 testing at Consumer Reports remarked that “[w]hen people think about heavy metals in their
5 diet, if they do at all, it’s probably the lead in their drinking water or arsenic in their children’s
6 fruit juices or cereals . . . But our tests show that dried herbs and spices can be a surprising, and
7 worrisome, source for children and adults.”¹⁵

8 23. Concerning the source of the heavy metals in herbs and spices, Consumer
9 Reports stated that heavy metals may get into food, “including herbs and spices, during
10 manufacturing—from processing equipment or packaging[.]”¹⁶

11 24. Along these lines, Consumer Reports determined that “it is possible for herb and
12 spice companies to limit heavy metals in their products” as “[a]bout two-thirds of the spices
13 [Consumer Reports] tested did not have concerning levels of heavy metals.”¹⁷

14 25. Yet, upon information and belief, Defendants fail to adequately test for Heavy
15 Metals in its Products.

16 26. Instead, Defendants chose to ignore the health of the consuming public in
17 pursuit of profit.

18 **C. The Presence (or Risk) of Toxic Heavy Metals in Whole Foods’ Products Far Exceeds**
19 **Expectations of Reasonable Consumers**

20 27. According to Global Market Insights, “[t]he demand for spices and seasonings
21 has increased in recent years owing to their varied nutritional benefits.”¹⁸ Indeed, “[m]ore
22 Americans are considering the use of spices and herbs for medicinal and therapeutic/remedy

23 ¹⁴ *Id.*

24 ¹⁵ *Id.*

25 ¹⁶ *Id.*

26 ¹⁷ *Id.*

27 ¹⁸ Global Market Insights, “North America Seasonings Market to Exceed \$5bn by 2027,” *Press Releases* (Oct. 22, 2021), https://www.gminsights.com/pressrelease/north-america-seasonings-market?utm_source=globenewswire.com&utm_medium=referral&utm_campaign=Paid_globenewswire (last accessed August 8, 2022).

1 use, especially for various chronic conditions” as “[t]here is now ample evidence that spices and
 2 herbs possess antioxidant, anti-inflammatory, antitumorogenic, anticarcinogenic, and glucose-
 3 and cholesterol -lowering activities as well as properties that affect cognition and mood.”¹⁹ As
 4 such, the safety of herbs and spices that can be easily purchased to season such food, amongst
 5 others, is a material fact to consumers (such as Plaintiff and the Class members).

6 28. Given the negative effects of toxic heavy metals (such as arsenic, lead, and
 7 cadmium) on child development and adult health, the presence of these substances in food is a
 8 material fact to reasonable consumers, including Plaintiff and members of the Class.

9 29. Defendants know that the safety of their herbs and spices (as a general matter)
 10 is a material fact to reasonable consumers, as demonstrated below.

11 30. As such, Defendants also know that the presence (or risk) of toxic Heavy Metals
 12 in their herbs and spices is a material fact to reasonable consumers, including Plaintiff and the
 13 Class members.

14 31. A consumer survey confirms that purchasers of spices consider it important to
 15 know if there are Heavy Metals (or the risk of Heavy Metals) in the products even in small
 16 amounts. Plaintiff’s counsel conducted a nationwide survey of just over 500 adult consumers
 17 who bought spices, including Defendants’ spices, within the past two years.²⁰ The vast majority
 18 (approximately 94%) answered that the presence or risk of even a small amount of Heavy
 19 Metals in the spices would be either important or very important to their purchasing
 20 decisions.²¹

21 _____
 22 ¹⁹ T Alan Jiang, “Health Benefits of Culinary Herbs and Spices,” *J AOAC Int.* 2019 Mar 1; 102(2): 395-411,
 10.5740/jaoacint.18-0418 (last accessed August 8, 2022).

23 ²⁰ The survey included 503 participants over the age of 18, 259 of whom were female, 242 of whom were male, and
 24 2 of whom were non-binary. Some 67 percent of the participants were from the following states, with a minimum
 25 of 3% (15 participants) each: Arizona, California, Florida, Illinois, Maryland, Michigan, New Jersey, New York, North
 26 Carolina, Ohio, Pennsylvania, Texas and Washington. The remaining approximately 33 percent, with a minimum of
 27 one participant each, were from the following states: Alabama, Alaska, Arkansas, Colorado, Connecticut, District of
 Columbia, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota,
 Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon,
 South Carolina, Tennessee, Utah, Virginia, West Virginia and Wisconsin.

²¹ The question in the survey was as follows: “A November 2021 report of an investigation by Consumer Reports
 reveals that certain brands of particular herbs and spices contain heavy metals consisting of lead, arsenic, and/or

1 32. Herbs and spices manufacturers (such as Defendants) hold a special position of
2 public trust. Consumers believe that they would not sell products that are unsafe.

3 33. Defendants knew that if the presence (or risk) of toxic Heavy Metals in their
4 herbs and spices was disclosed to Plaintiff and the Class members, then Plaintiff and the Class
5 members would be unwilling to purchase them or would pay less for them.

6 34. In light of Defendants' knowledge that Plaintiff and the Class members would be
7 unwilling to purchase the Products or would pay less for the Products if they knew that they
8 contained (or risked containing) toxic Heavy Metals, Defendants intentionally and knowingly
9 concealed this fact from Plaintiff and the Class members and did not disclose the presence (or
10 risk) of these toxic Heavy Metals on the labels of the Products.

11 35. Defendants knew or should have known that Plaintiff and the Class members
12 would rely upon the packages of the Products and intended for them to do so but failed to
13 disclose the presence (or risk) of Heavy Metals.

14 36. Defendants knew or should have known that they owed consumers a duty of
15 care to adequately test for Heavy Metals in the Products, which they failed to do.

16 37. Additionally, Defendants knew or should have been aware that a reasonable
17 consumer would consume the Products multiple times each day, and possibly multiple
18 Products. This leads to repeated exposure to the Heavy Metals.

19 38. Defendants knew or should have known they could control the levels of Heavy
20 Metals in the Products by properly monitoring the ingredients for Heavy Metals and adjusting
21 any formulation to reduce or eliminate ingredients that contained or may contain higher levels
22 of Heavy Metals.

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27 cadmium. Please select how important, if at all, would it be to your purchasing decision if the spice(s) you purchased
contained, or risked containing, even a small amount of the heavy metals previously described?" The response
choices provided were as follows: Not at all important; important; very important.

1 39. Prior to purchasing the Products, Plaintiff and the Class members were exposed
2 to, saw, read, and understood Defendants' labels, and relied upon them in purchasing the
3 Products, but Defendants failed to disclose the presence (or risk) of Heavy Metals.

4 40. As a result of Defendants' concealment of the fact that the Products contained
5 (or risked containing) toxic Heavy Metals, Plaintiff and the Class members reasonably believed
6 that Defendants' Products were free from substances that would negatively affect children's
7 development as well as their own health.

8 41. In reliance upon Defendants' labels that contained material omissions, Plaintiff
9 and the Class members purchased Defendants' Products.

10 42. Had Plaintiff and the Class members known the truth—*i.e.*, that the Products
11 contained (or risked containing) toxic Heavy Metals, rendering them unsafe for consumption by
12 children and adults—they would not have been willing to purchase them or would have paid
13 less for them.

14 43. Therefore, as a direct and proximate result of Defendants' omissions concerning
15 the Products, Plaintiff and the Class members purchased the Products.

16 44. Plaintiff and the Class members were harmed in the form of the monies they
17 paid for the Products which they would not otherwise have paid had they known the truth
18 about the Products. Since the presence (or risk) of toxic Heavy Metals in herbs and spices
19 renders them unsafe for human consumption, the Products that Plaintiff and the Class
20 members purchased are worthless or are worth less than Plaintiff and the Class paid for them.

21 45. Defendants' label omissions at issue in this Complaint are put in context by
22 Defendant Whole Foods' website, where Defendants prominently touts that they launched the
23 "365 by Whole Foods Market" brand to offer "convenience and everyday low prices on natural
24 and organic products that meet the company's industry-leading quality standards" in 2016.²²

25
26 ²² See <https://media.wholefoodsmarket.com/whole-foods-market-introduces-365-by-whole-foods-market-chain#:~:text=today%20announced%20the%20name%20of,company's%20industry%20leading%20quality%20standards> (last accessed July 21, 2022).
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1 46. On Defendant’s website, it further claims: “Our purpose is to nourish people and
2 the planet. We’re a purpose-driven company that aims to set the standards of excellence for
3 food retailers. Quality is a state of mind at Whole Foods Market.”²³

4 47. In its “Core Values” it heralds that it sells “products with ingredients you can
5 trust,” and that its team vets its “products to make sure they meet our high standards by
6 researching ingredients, reading labels and auditing sourcing practices — all to make shopping
7 easier for you. Remember, if it doesn’t meet our standards, we don’t sell it.”²⁴

8 48. The foregoing statements on the website demonstrate that Defendants know
9 that reasonable consumers consider it important that the Products are pure, and high quality
10 and thus safe and free from toxins such as the Heavy Metals.

11 49. The Products’ labels are materially deceptive, false and misleading given
12 Defendants’ material omission about the presence (or risk) of Heavy Metals as described above.

13 **FED. R. CIV. P. 9(b) ALLEGATIONS**

14 50. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n alleging fraud
15 or mistake, a party must state with particularity the circumstances constituting fraud or
16 mistake.” To the extent necessary, as detailed in the paragraphs above and below, Plaintiff has
17 satisfied the requirements of Rule 9(b) by establishing the following elements with sufficient
18 particularity.

19 51. **WHO**: Defendants made material omissions of fact in their packaging of the
20 Products by omitting the presence (or risk) of Heavy Metals.

21 52. **WHAT**: Defendants’ conduct was and continues to be fraudulent and deceptive
22 because it has the effect of deceiving consumers into believing that the Products do not contain
23 (or risk containing) Heavy Metals. Defendant omitted from Plaintiff and Class members that the
24 Products contain (or risk containing) Heavy Metals. Defendants knew or should have known this
25 information is material to all reasonable consumers and impacts consumers’ purchasing

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27 ²³ See <https://www.wholefoodsmarket.com/mission-values> (last accessed August 8, 2022).

²⁴ See <https://www.wholefoodsmarket.com/mission-values/core-values> (last accessed August 8, 2022).

1 decisions. Yet, Defendants have omitted from the Products' labeling the fact that they contain
2 (or risk containing) Heavy Metals.

3 53. **WHEN:** Defendants made material omissions detailed herein, that the Products
4 do contain (or risk containing) Heavy Metals, continuously throughout the applicable relevant
5 periods.

6 54. **WHERE:** Defendants' omissions were made on the labeling and packaging of the
7 Products and were thus viewed by every purchaser, including Plaintiff and the Class, at the
8 point of sale in every transaction. The Products are sold worldwide in brick-and-mortar stores
9 and online stores nationwide.

10 55. **HOW:** Defendants omitted from the Products' labeling the fact that they contain
11 (or risk containing) Heavy Metals. And as discussed in detail throughout this Complaint, Plaintiff
12 and Class members read and relied on Defendants' label omissions before purchasing the
13 Products.

14 56. **WHY:** Defendants omitted from the Products' labeling the fact that they contain
15 (or risk containing) Heavy Metals for the express purpose of inducing Plaintiff and Class
16 members to purchase the Products at a substantial price premium or more than they would
17 have paid had they known the truth about the Products. As such, Defendants profited by selling
18 the Products to at least thousands of consumers throughout the nation, including Plaintiff and
19 the Class members.

20 **CLASS ACTION ALLEGATIONS**

21 57. Plaintiff brings this action individually and on behalf of all other persons similarly
22 situated pursuant to Federal Rule of Civil Procedure 23. The class definition(s) may depend on
23 the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings
24 this action and seeks certification of the following proposed class:

25 **Class:** All persons within the United States who purchased the
26 Products during the fullest period of law.
27

1 58. Plaintiff also brings this action on behalf of the following State Subclass (the
2 “Pennsylvania” Subclass”):

3 **Pennsylvania Subclass:** All persons who purchased the Products in the
4 State of Pennsylvania during the fullest period of law.

5 59. Excluded from the proposed Classes are the Defendants, and any entities in
6 which the Defendants have controlling interest, the Defendants’ agents, employees and their
7 legal representatives, any Judge to whom this action is assigned and any member of such
8 Judge’s staff and immediate family, and all resellers of the Products.

9 60. Plaintiff reserves the right to amend the definition of the Classes if discovery or
10 further investigation reveals that the Classes should be expanded or otherwise modified.

11 61. Plaintiff further reserves the right to amend the above class definition as
12 appropriate after further investigation and discovery, including by seeking to certify a narrower
13 multi-state class (or classes) in lieu of a nationwide class if appropriate.

14 62. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
15 Classes are so numerous that their individual joinder herein is impracticable. On information
16 and belief, members of the Classes number in the thousands to tens of thousands. The number
17 of members in the Classes is presently unknown to Plaintiff but may be verified by Defendants’
18 records. Members of the Classes may be notified of the pendency of this action by mail, email,
19 Internet postings, and/or publication.

20 63. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and**
21 **23(b)(3).** Common questions of law and fact exist as to all members of the Classes and
22 predominate over questions affecting only individual members of the Classes. Such common
23 questions of law or fact include, but are not limited to, the following:

- 24 a. whether the Products contain (or risk containing) toxic Heavy Metals;
25 b. whether Defendants’ conduct is unethical, oppressive, unscrupulous, and/or
26 substantially injurious to consumers;
27

- 1 c. whether the amount of toxic Heavy Metals in the Products is material to a
- 2 reasonable consumer;
- 3 d. whether Defendants had a duty to disclose that the Products contained (or
- 4 risked containing) toxic Heavy Metals;
- 5 e. whether Plaintiff and members of the Classes are entitled to injunctive and other
- 6 equitable relief;
- 7 f. whether Defendants failed to disclose material facts concerning the Products;
- 8 g. whether Defendants' conduct was unfair and/or deceptive;
- 9 h. whether Defendants have been unjustly enriched as a result of the unlawful,
- 10 fraudulent, and unfair conduct alleged in this Complaint such that it would be
- 11 inequitable for Defendants to retain the benefits conferred upon Defendants by
- 12 Plaintiff and the Class members;
- 13 i. whether Defendants breached implied warranties to Plaintiff and the Class
- 14 members;
- 15 j. whether Defendants violated the State consumer protection and deceptive
- 16 practice statutes invoked below and are entitled to damages and/or treble
- 17 damages under such state statutes; and
- 18 k. whether Plaintiff and the Class members have sustained damages with respect
- 19 to the common-law claims asserted, and if so, the proper measure of their
- 20 damages.

21 64. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** The claims of the named
22 Plaintiff are typical of the claims of other Members of the Classes. All Members of the Classes
23 were comparably injured by Defendants' conduct described above, and there are no defenses
24 available to Defendants that are unique to Plaintiff or any particular members of the Classes.

25 65. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff
26 is adequate as a Class representative because her interests do not conflict with the interests of
27

1 other Members of the Classes; she has retained class counsel competent to prosecute class
2 actions and financially able to represent the Classes.

3 **66. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**

4 Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the
5 other Members of the Classes, thereby making appropriate final injunctive relief and
6 declaratory relief, as described below, with respect to the Members of the Classes as a whole.

7 In particular, Plaintiff seeks to certify the Classes to enjoin Defendants from selling or otherwise
8 distributing spices until such time that Defendants can demonstrate to the Court’s satisfaction
9 that its spices are accurately labeled.

10 **67. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior

11 to any other means of adjudication for this controversy. It would be impracticable for Members
12 of the Classes to individually litigate their own claims against Defendants because the damages
13 suffered by Plaintiff and the Members of the Classes are relatively small compared to the cost
14 of individually litigating their claims. Individual litigation would create the potential for
15 inconsistent judgments and delay and expenses to the court system. A class action provides an
16 efficient means for adjudication with fewer management difficulties and comprehensive
17 supervision by a single court.

18 **V. CAUSES OF ACTION**

19 **COUNT I**

20 **UNJUST ENRICHMENT**

21 **(On Behalf of the Class and Subclasses)**

22 **68.** Plaintiff incorporates by this reference the allegations contained in the preceding
23 paragraphs as if fully set forth herein.

24 **69.** Plaintiff brings this claim individually and on behalf of the Class and in the
25 alternative on behalf of Plaintiff and the Pennsylvania Subclass.

26 **70.** Plaintiff and the Class and Subclass members conferred a benefit on Defendants
27 in the form of the gross revenues Defendants derived from the money they paid to Defendants.

1 71. Defendants had an appreciation or knowledge of the benefit conferred on them
2 by Plaintiff and the Class and Subclass members.

3 72. Defendants have been unjustly enriched in retaining the revenues derived from
4 Plaintiff and the proposed Class members' purchases of the Products, which retention of such
5 revenues under these circumstances is unjust and inequitable because Defendants omitted that
6 the Products contained (or risked containing) toxic Heavy Metals. This caused injuries to
7 Plaintiff and members of the proposed Classes because they would not have purchased the
8 Products or would have paid less for them if the true facts concerning the Products had been
9 known.

10 73. Defendants accepted and retained the benefit in the amount of the gross
11 revenues they derived from sales of the Products to Plaintiff and the Class and Subclass
12 members.

13 74. Defendants have thereby profited by retaining the benefit under circumstances
14 which would make it unjust for Defendants to retain the benefit.

15 75. Plaintiff and the Class and Subclass members are, therefore, entitled to
16 restitution in the form of the revenues derived from Defendants' sale of the Products.

17 76. As a direct and proximate result of Defendants' actions, Plaintiff and Class and
18 Subclass members have suffered in an amount to be proven at trial.

19 **VI. COUNT II**
20 **FRAUD**
21 **(On Behalf of the Class and Subclasses)**

22 77. Plaintiff incorporates by this reference the allegations contained in the preceding
23 paragraphs as if fully set forth herein.

24 78. Plaintiff brings this claim individually and on behalf of the Class and in the
25 alternative on behalf of Plaintiff and the Pennsylvania Subclass.

26 79. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n alleging fraud
27 or mistake, a party must state with particularity the circumstances constituting fraud or

1 mistake.” To the extent necessary, as detailed in the paragraphs above and below, Plaintiff has
2 satisfied the requirements of Rule 9(b) by establishing the following elements with sufficient
3 particularity:

4 a. **WHO**: Defendants made material omissions of fact in their packaging of
5 the Products by omitting the presence (or risk) of Heavy Metals.

6 b. **WHAT**: Defendants’ conduct was and continues to be fraudulent and
7 deceptive because it has the effect of deceiving consumers into believing
8 that the Products do not contain (or risk containing) Heavy Metals.

9 Defendants omitted from Plaintiff and Class members that the Products
10 contain (or risk containing) Heavy Metals. Defendants knew or should
11 have known this information is material to all reasonable consumers and
12 impacts consumers’ purchasing decisions. Yet, Defendants have omitted
13 from the Products’ labeling the fact that they contain (or risk containing)
14 Heavy Metals

15 c. **WHEN**: Defendants made material omissions detailed herein, including
16 omitting that the Products do contain (or risk containing) Heavy Metals,
17 continuously throughout the applicable relevant periods.

18 d. **WHERE**: Defendants’ material omissions were made on the labeling and
19 packaging of the Products and were thus viewed by every purchaser,
20 including Plaintiff, at the point of sale in every transaction. The Products
21 are sold worldwide in brick-and-mortar stores and online stores
22 nationwide.

23 e. **HOW**: Defendants made material omissions on the Products’ labeling by
24 never revealing that the Products contain (or risk containing) Heavy
25 Metals. And as discussed in detail throughout this Complaint, Plaintiff and
26 Class members read and relied on Defendants’ omissions before
27 purchasing the Products.

1 f. **WHY:** Defendants omitted from the Products' labeling the fact that they
2 contain (or risk containing) Heavy Metals for the express purpose of
3 inducing Plaintiff and Class members to purchase the Products at a
4 substantial price premium or more than they would have paid had they
5 known the truth about the Products. As such, Defendants profited by
6 selling the Products to at least thousands of consumers throughout the
7 nation, including Plaintiff and the Class members.

8 80. As alleged herein, Defendants made these material omissions in order to induce
9 Plaintiff and Class members to purchase the Products.

10 81. As alleged herein, Defendants knew the omissions regarding the Products were
11 false and misleading but nevertheless made such omissions on the Products' labeling. In
12 reliance on these omissions, Plaintiff and Class members were induced to, and did, pay monies
13 to purchase the Products.

14 82. Had Plaintiff and the Class members known the truth about the Products, they
15 would not have purchased them or would have paid less for them.

16 83. As a proximate result of the fraudulent conduct of Defendants, Plaintiff and Class
17 members paid monies to Defendants, through their regular retail sales channels, to which
18 Defendants are not entitled, and have been damaged in an amount to be proven at trial.

19 **VII. COUNT III**
20 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
21 **(On behalf of the Class and Subclasses)**

22 84. Plaintiff incorporates by this reference the allegations contained in the preceding
23 paragraphs as if fully set forth herein.

24 85. Plaintiff brings this claim individually and on behalf of the Class and in the
25 alternative on behalf of Plaintiff and the Pennsylvania Subclass.

26 86. Defendants are merchants engaging in the sale of goods to Plaintiff and the
27 Classes.

1 87. There was a sale of goods from Defendants to Plaintiff and the Classes.

2 88. As set forth herein, Defendants manufactured and sold the Products, and prior
3 to the time the Products were purchased by Plaintiff and the members of the Classes, impliedly
4 warranted that the Products were of merchantable quality and fit for their ordinary use
5 (consumption by consumers).

6 89. Defendants impliedly warranted to retail buyers that the Products were
7 merchantable in that they: (a) would pass without objection in the trade or industry under the
8 contract description, and (b) were fit for the ordinary purposes for which the Products are used.
9 Defendants breached these implied warranties because the Products were unsafe and
10 contained (or risked containing) toxic Heavy Metals. Therefore, the Products would not pass
11 without objection in the trade or industry and were not fit for the ordinary purpose for which
12 they are used, which is consumption by consumers.

13 90. Plaintiff and the Class members purchased the Products in reliance upon
14 Defendants' skill and judgment in properly packaging and labeling the Products.

15 91. The Products were not altered by Plaintiff or the Class members.

16 92. Defendants knew that the Products would be purchased and used without
17 additional testing by Plaintiff and the Class members.

18 93. Defendants were on notice of this breach as they were aware of the inclusion of
19 Heavy Metals in the Products and based on the public investigation by Consumer Reports that
20 showed the Products contain Heavy Metals.

21 94. Privity is not required where, as here, Plaintiff is a third-party beneficiary of
22 Defendants' contracts with wholesalers or retail sellers and relied on Defendants' packaging in
23 making their purchases. Plaintiff and members of the Classes are third-party beneficiaries
24 because the Products passed into commerce with warranties that were designed for the benefit
25 of the end-user and not for the benefit of the wholesaler or retailer.

26 95. Even if privity is required, Plaintiff is in privity with Defendants by purchasing the
27 Product directly from Defendants.

1 96. As a direct and proximate cause of Defendants’ breach of the implied warranty,
2 Plaintiff and the Class members have been injured and harmed because they would not have
3 purchased the Products or would have paid less for them if they knew the truth about the
4 Products, namely, that they contained (or risked containing) toxic Heavy Metals.

5 97. On July 25, 2022, Plaintiff, through counsel, provided notice to Defendants,
6 apprising Defendants of their breach of warranties. Defendants have yet to remedy their
7 breaches. Moreover, Defendants were put on notice of their breaches via *Sauceda, et al v.*
8 *Amazon.com, Inc.*, 22-cv-00338 (W.D. WA) – a related case filed on March 22, 2022.

9 98. Plaintiff, on behalf of herself and the members of the Classes, seek actual
10 damages for Defendants’ failure to deliver goods that conform to its implied warranties and
11 resulting breach.

12 **VIII. COUNT IV**
13 **PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER**
14 **PROTECTION LAW, 73, Pa. Cons. Stat. Ann. §§ 2-101, et seq.**

15 99. Plaintiff incorporates by reference and realleges each and every allegation
16 contained in the above, as though fully set forth herein.

17 100. Plaintiff brings this claim against each Defendant, individually and on behalf of
18 the Pennsylvania Subclass.

19 101. At all times mentioned herein, Defendants engaged in “trade” or “commerce” in
20 Pennsylvania, as defined by 73 Pa. Cons. Stat. Ann. § 201-2(3), in that they advertised, offered
21 for sale, and sold goods primarily for personal, family, or household purposes, and advertised,
22 solicited, offered for sale, and sold “property, “article[s],” “commodit[ies],” or “thing[s] of
23 value” in Pennsylvania.

24 102. Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTCPL”),
25 73 Pa. Cons. Stat. Ann. § 201-3 provides that “[u]nfair methods of competition and unfair or
26 deceptive acts or practices in the conduct of any trade or commerce . . . are hereby declared
27 unlawful.”

1 103. For the reasons described herein, Defendants violated and continue to violate
2 the UTCPL by engaging in there herein described unconscionable, deceptive, unfair acts or
3 practices prescribed by UTCPL §§ 201-1, et seq. Defendants' acts and practices, including their
4 material omissions, described herein, were likely to, and did in fact, deceive and mislead
5 members of the public, including consumers acting reasonably under the circumstances, to
6 their detriment.

7 104. Defendants repeatedly advertised on the labels and packaging of the Products,
8 on their website, among other items that the Products were safe and fit for human
9 consumption.

10 105. Defendants failed to disclose material information that the Products were unsafe
11 and unfit for human consumption and that the Products actually contain Heavy Metals.

12 106. Defendants' omissions were material because they were likely to deceive
13 reasonable consumers to induce them to buy the Products without being aware that they were
14 unsafe and unfit for human consumption. As a direct and proximate result of Defendants'
15 unfair and deceptive acts or practices, Plaintiff and members of the Classes suffered damages
16 by purchasing the Products because they would not have purchased the Products or would
17 have purchased them at a lesser price had they known the truth.

18 107. Defendants' deceptive trade practices caused injury in fact and actual damages
19 to Plaintiff and members of the Class in the form of the loss or diminishment of value of the
20 Products that Plaintiff and Class members purchased, which allowed Defendants to profit at the
21 expense of Plaintiff and Class members.

22 108. The injuries to Plaintiff and members of the Class were to legally protected
23 interests.

24 109. The gravity of the harm of Defendants' actions is significant and there is no
25 corresponding benefit to consumers of such conduct.

26 110. Plaintiff and members of the Classes seek relief for the injuries they have
27 suffered as a result of Defendants' unfair and deceptive acts and practices, as provided by 73

1 Pa. Cons. Stat. Ann. § 201-9.2 and applicable law.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, on behalf of herself and other members of the proposed Class,
4 prays for judgment and relief on all of the legal claims as follows:

5 A. That the Court certify the Class and Subclasses under Rule 23 of the Federal
6 Rules of Civil Procedure and appoint Plaintiff as Class and Subclass Representative and her
7 attorneys as Class Counsel to represent the members of the Class and Subclass;

8 B. That the Court declare that Defendants' conduct violates the statutes referenced
9 herein;

10 C. That the Court preliminarily and permanently enjoin Defendants from
11 conducting business through the unlawful, unfair, or fraudulent business acts or practices,
12 untrue, and misleading labeling and marketing and other violations of law described in this
13 Complaint;

14 D. That the Court order preliminary and injunctive relief requiring Defendants to
15 disclose that the Products contain toxic Heavy Metals;

16 E. That the Court order Defendants to implement whatever measures are
17 necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and
18 misleading advertising, and other violations of law described in this Complaint;

19 F. That the Court order Defendants to notify every individual and/or business who
20 purchased the Products of the pendency of the claims in this action to give such individuals and
21 businesses an opportunity to obtain restitution from Defendants;

22 G. That the Court award Plaintiff all damages accordingly to law;

23 H. That the Court grant Plaintiff's reasonable attorneys' fees and costs; and

24 I. That the Court grant such other and further relief as may be just and proper.

25 **DEMAND FOR JURY TRIAL**

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

1 RESPECTFULLY SUBMITTED AND DATED this 10th day of August, 2022.

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**pro hac vice to be filed*

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