

**IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI**

GARRETT WACKER, COURTNEY  
O'ROURKE; and KARA RUTENBAR  
HATMAKER, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

MEAD JOHNSON & COMPANY, LLC, a  
Delaware Company,

Defendant.

Case No.

**PETITION AND JURY DEMAND – CLASS ACTION**

Plaintiffs Garrett Wacker (“Wacker”), Courtney O’Rourke (“O’Rourke”), and Kara Rutenbar Hatmaker (“Hatmaker”) (“Plaintiffs”), individually and on behalf of all others similarly situated, allege the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

**NATURE OF THE CASE**

1. “Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages . . . should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.” 15 U.S.C.A. § 1451.

2. Plaintiffs bring this class-action lawsuit against Mead Johnson & Company, LLC (“Mead Johnson” or “Defendant”) based on Defendant’s misleading, deceptive and unlawful conduct in packaging, marketing and labeling its powder baby and infant formulas under the following brands: Enfamil AR; Enfamil Enspire Gentlease; Enfamil Enspire; Enfamil Gentlease Neuro Pro; Enfamil Infant Neuro Pro; Enfamil Sensitive Neuro Pro; Enfamil Nutramigen LGG; Enfamil Neuro Pro Gentlease; and Enfamil Neuro Pro, which are sold in a variety of sizes, and

collectively referred to herein as “Products” or a “Product.”

3. On the front label of the Products, Defendant prominently represents that the Products make a certain number of fluid-ounce bottles of formula (the “Representations”).

4. For example, on the Enfamil NeuroPro Gentlese All In One 35.2 oz Infant formula, Defendant represents that the Product “MAKES 63 4 FL OZ” bottles of formula.

5. Based on these Representations, reasonable consumers believe that the Products contain sufficient powder formula to make the stated number of bottles of formula.

6. Contrary to these Representations, however, the Products contain nowhere near enough powder formula to make the represented number of bottles of liquid formula when following the “Instructions for Preparation & Use” on the side labels of the Products.

7. Independent expert testing demonstrates that the Products contain between approximately an 8.9%-10.2% deficiency in the total number of bottles of liquid formula that can be made when following the Instructions for Preparation & Use on the Products’ labels.

8. Accordingly, in purchasing the Products, consumers were injured and were denied the benefit of the bargain between what was represented and what was received.

9. Consumers would not have purchased the Products, or would have purchased them on different terms, had they known the truth about the Products, including that they would yield fewer bottles of liquid formula than the number of bottles represented on the Products’ labels.

10. Plaintiffs bring this action on behalf of themselves, and all others similarly situated to recover damages for Defendant’s false, deceptive, and misleading conduct. As set forth below, Plaintiffs seek certification of a Nationwide Class. Plaintiffs seek damages, reasonable attorneys’ fees and costs, and disgorgement of all benefits Defendant has enjoyed from its unlawful and deceptive business practices, as detailed herein. Plaintiffs make these allegations based on their

personal knowledge as to themselves, and their own acts and observations and, otherwise, on information and belief based on investigation of counsel.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. Plaintiffs believe and allege that the total value of their individual claims are at most equal to the refund of the purchase price they paid for the Products.

12. This Court has personal jurisdiction over Defendant pursuant to § 506.500, RSMo., as Defendant has had more than sufficient minimum contact with the State of Missouri and has availed itself of the privilege of conducting business in this state. Additionally, and as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that give rise to civil liability, including distributing and selling the misbranded Products throughout the State of Missouri.

13. Plaintiff Wacker is a citizen of the State of Missouri.

14. Plaintiffs O'Rourke, and Hatmaker are citizens of the State of Florida.

15. Venue is proper in this forum pursuant to §§ 508.010 and 407.025.1, RSMo., because the transactions complained of occurred in Phelps County, Missouri and Plaintiff was injured in Phelps County, Missouri.

### **PARTIES**

16. Plaintiff Garrett Wacker is a resident of Phelps County, Missouri. On multiple occasions during the Class Period, Plaintiff purchased Defendant's Products, including Enfamil Nutramigen LGG Formula, 27.8 oz, in Rolla, Missouri, for personal, family, or household purposes. Plaintiff's claim is typical of all members of the Class in this regard. In addition, the misleading Representations on the Product purchased by Plaintiff are typical of the

Representations on the Products purchased by members of the Class.

17. Plaintiff Courtney O'Rourke is a resident of Broward County, Florida. On multiple occasions during the Class Period, Plaintiff purchased Defendant's Products, including Enfamil Neuropro Gentlease Infant Formula, 35.2 oz, in Pompano Beach, Florida, for personal, family, or household purposes. Plaintiff's claim is typical of all members of the Class in this regard. In addition, the misleading Representations on the Product purchased by Plaintiff are typical of the Representations on the Products purchased by members of the Class.

18. Plaintiff Kara Rutenbar Hatmaker is a resident of Polk County, Florida. On multiple occasions during the Class Period, Plaintiff purchased Defendant's Products, specifically Enfamil Neuropro Gentlease Infant Formula, 15.2 oz, 17.6 oz and/or 20 oz, in Highland City, Florida, for personal, family, or household purposes. Plaintiff's claim is typical of all members of the Class in this regard. In addition, the misleading Representations on the Product purchased by Plaintiff are typical of the Representations on the Products purchased by members of the Class.

19. Defendant, Mead Johnson & Company, LLC is a Delaware company, which at all times material hereto was conducting business in the United States, including in Missouri, through its services as a supplier to various stores in Missouri and by maintaining agents for the customary transaction of business in the State of Missouri.

20. Defendant Mead Johnson manufactured and labeled the Products at issue in this Action.

21. Defendant and its agents manufactured, labeled, promoted, marketed, and sold the Products at issue in this jurisdiction and in this judicial district. The unfair, unlawful, deceptive, and misleading advertising and labeling of the Products was prepared and/or approved by Defendant and its agents and was disseminated by Defendant and its agents through labeling and

advertising containing the misrepresentations and omissions alleged herein.

## FACTUAL ALLEGATIONS

### A. The Products are falsely and misleadingly labeled and advertised

22. Defendant manufactures, labels, markets, promotes, advertises, and sells the Products.

23. The front labels of the Products prominently represent that the Products make a specific number of fluid-ounce bottles, as demonstrated by the following image, which states: “MAKES 63 4 fl oz” adjacent to an image of a baby bottle:

24. The side label of the Products provides “Instructions for Preparation & Use” to make a bottle of liquid formula and states “1. Wash hands thoroughly with soap & water before preparing formula. 2. Pour desired amount of water in the bottle. Add powder. 3. Cap bottle and SHAKE WELL.”





25. The Product labels further state: “Use the chart below for correct amounts of water and powder. Use scoop in carton to measure powder. Store DRY scoop in pouch.” The referenced chart states:

To Make**	Water	Powder
2 fl oz bottle	2 fl oz	1 unpacked level scoop (8.7 g)
4 fl oz bottle	4 fl oz	2 unpacked level scoops (17.4 g)
8 fl oz bottle	8 fl oz	4 unpacked level scoops (34.8 g)

26. Directly below the mixing directions chart, the label contains the statement: “\*\*Each scoop adds about 0.2 fl oz to the amount of prepared formula.”

27. Contrary to these directions and the Representations, the Products do not contain anywhere near enough powder formula to make the stated number of bottles.

28. According to independent expert testing, the Products contain between approximately an 8.9%-10.2% deficiency in the total number of bottles that can be made when following the Products directions.

29. Specifically, according to testing, a Product bearing the representation that it “MAKES 63 4 FL OZ” bottles produced only 57 bottles of liquid formula when following the Instructions for Preparation and Use, and therefore contained a 9.5% deficiency in the number of bottles.

30. Consumers therefore receive at most 57 bottles, or 90.5% of the number of bottles represented on the front label of the Products, and are deprived of at least 6 bottles, or 9.5% of the Products they paid to receive.

31. Accordingly, the Representations, which are displayed on each of the Products’ labels, are false, misleading, and deceptive.

32. Furthermore, the Representations are uniform, consistent, and prominently displayed on the labels of the Products.

33. The Representations are also untrue, misleading, and deceptive to reasonable consumers, including Plaintiffs and members of the Class.

34. Based on Defendant’s uniform, material misrepresentations and omissions, consumers have purchased the Products to their detriment.

**B. Plaintiffs Purchased the Misbranded Products to his Detriment**

35. As set forth herein, Plaintiffs purchased the Products for personal and family use.

36. Plaintiffs purchased the Products with the reasonable belief that they were purchasing Products capable of making the represented number of bottles of liquid formula.

37. Defendant knew or should have known that reasonable consumers would consider the Representations material in deciding to purchase the Products.

38. As described herein, Defendant's Representations are false, misleading, and likely to mislead reasonable consumers. In addition, in making the Representations, Defendant omitted material information concerning the true number of bottles that could be made by the Products when following the Product instructions.

39. At the time Plaintiffs purchased the Products, Plaintiffs did not know, and had no reason to know, that the Product labels and advertising were misleading, deceptive and unlawful as set forth herein.

40. Plaintiffs would not have purchased the Products, or would have purchased them on different terms, if they had known the truth.

41. Plaintiffs suffered injury in fact and an ascertainable loss as a result of Defendant's unlawful conduct, including because the value of the Products as purchased was less than the value of the Products as represented.

42. It is possible, however, that Plaintiffs would purchase the Products in the future if the Products were truthfully labeled and represented.

#### **CLASS DEFINITION**

43. Plaintiffs hereby re-allege and incorporate the foregoing allegations as if set forth herein in their entirety.

44. Plaintiffs seek to represent the following Class and Subclasses (collectively defined as the "Class"), as follows:

All residents of the United States who purchased in the United States the Products during the Class Period for personal and household use and not for resale ("Nationwide Class").

45. Excluded from the Settlement Class are the following: (a) Persons who purchased or acquired any Products for resale; (b) the Released Parties; (c) all Persons who file a timely and valid Opt-Out; (d) Plaintiffs' Counsel, their employees, and counsel as well as the household

members of Plaintiffs' employees and counsel; (e) Defendant's Counsel, their employees, and counsel as well as the household members of Defendant's employees and counsel; (e) federal, state, and local governments, political subdivisions or agencies of federal, state and local governments; and (f) the judicial officers, courtroom staff, and members of their households overseeing the Action.

### **CLASS ALLEGATIONS**

46. Plaintiffs hereby re-allege and incorporate the foregoing allegations as if set forth herein in their entirety.

47. On information and belief, the Class consists of millions of purchasers dispersed throughout the United States and hundreds of thousands of purchasers in the State of Missouri. Accordingly, it would be impracticable to join all members of the Class before the Court.

48. There are numerous and substantial questions of law or fact common to all members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

- a. Whether Defendant made misrepresentations and false statements in violation of Missouri law;
- b. Whether Defendant engaged in unfair practices in violation of Missouri law;
- c. Whether Defendant engaged in concealment or omission of any material fact in violation of Missouri law;
- d. Whether Defendant has been unjustly enriched by the sale of the Products;
- e. Whether Defendant breached an express/and or implied warranty pursuant to the Uniform Commercial Code;
- f. Whether Plaintiffs and the Class are entitled to equitable and/or injunctive relief;

g. Whether Plaintiffs and Class members have sustained damages as a result of Defendant's unlawful conduct; and

h. The proper measure of damages sustained by Plaintiffs and Class members.

49. Plaintiffs' claims are typical of the claims of members of the Class, in that they share the above-referenced facts and legal claims or questions with members of the Class, there is a sufficient relationship between the damage to Plaintiffs and Defendant's conduct affecting members of the Class, and Plaintiffs have no interests adverse to the interests of other members of the Class.

50. Plaintiffs will fairly and adequately protect the interests of members of the Class and has retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

51. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

52. The claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;

53. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;

54. Given the size of individual Class members' claims, few, if any, members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent members have no substantial interest in individually controlling the prosecution

of individual actions;

55. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and

56. This action presents no difficulty that would impede its management by the Court as a class action which is the best available means by which Plaintiffs and members of the Class can seek redress for the harm caused to them by Defendant.

57. Because Plaintiffs seek relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

58. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. Consequently, class treatment is a superior method for adjudication of the issues in this case.

**FIRST CLAIM FOR RELIEF**  
**Violation of Missouri's Merchandising Practices Act**  
**Misrepresentations and False Statements**

59. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

60. The MMPA "is designed to regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power as well as those who may fall victim to unfair practices." *Huch v. Charter Commc'ns Inc.*, 290 S.W. 3d 721, 725 (Mo. banc. 2009). The

MMPA provides that it is unlawful to “act, use or employ . . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . .” § 407.020.1, RSMo.

61. The MMPA applies to acts committed “before, during or after the sale, advertisement or solicitation” of merchandise, and provides a cause of action for “any person who purchases or leases merchandise primarily for personal, family or household purposes.” Section 407.020 is intended to supplement the definitions of common law fraud to “preserve fundamental honesty, fair play and right dealings in public transactions.”

62. Defendant’s conduct as described above constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant makes material false representations and omissions with regard to the number of bottles of liquid formula produced by the Products.

63. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its manufacture, sale and advertisement of the Products.

64. Plaintiffs purchased the Products for personal, family, or household purposes.

65. Plaintiffs suffered an ascertainable loss as a result of Defendant’s unlawful conduct because the actual value of the Products as purchased was less than the value of the Products as represented.

66. Plaintiffs are also entitled to recover attorney fees as authorized by § 407.025.

**SECOND CLAIM FOR RELIEF**  
**Violation of Missouri's Merchandising Practices Act**  
**Unfair Practice, 15 CSR 60-8.020**

67. Plaintiffs repeat and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

68. The MMPA prohibits as an unlawful practice the act, use or employment of any "unfair practice" in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020.1, RSMo.

69. "Unfair practice" is defined as "any practice which –

(A) Either

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

15 CSR 60-8.020.

70. Defendant's actions, as alleged herein, constitute an unfair practice.

71. Plaintiffs purchased the Products for personal, family, or household purposes.

72. Plaintiffs suffered an ascertainable loss as a result of Defendant's unlawful conduct because the actual value of the Products as purchased was less than the value of the Products as represented.

73. Plaintiffs are also entitled to recover attorney fees as authorized by § 407.025.

**THIRD CLAIM FOR RELIEF**  
**Violation of Missouri's Merchandising Practices Act**  
**Concealment or Omission of any Material Fact, 15 CSR 60-9.110**

74. Plaintiffs repeat and re-alleges the allegations of the preceding paragraphs as if fully

set forth herein.

75. The MMPA prohibits as an unlawful practice the act, use or employment of the “concealment, suppression or omission of any material fact” in connection with the sale or advertisement of any merchandise in trade or commerce. §407.020.1, RSMo.

76. A “material fact” is defined as “any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner.” 15 CSR 60- 9.010(1)(C).

77. “Concealment of a material fact” is defined as “any method, act, use or practice which operates to hide or keep material facts from consumers.” 15 CSR 60-9.110(1).

78. “Omission of a material fact” is defined as “any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her.” 15 CSR 60-9.110(3).

79. Defendant’s actions as alleged herein constituted the concealment and omission of material facts. Among other things, and as described herein, Defendant concealed and omitted the material fact that the Products make substantially fewer bottles of liquid formula than the number represented on the labels of the Products.

80. Plaintiffs purchased the Products for personal, family, or household purposes.

81. Plaintiffs suffered an ascertainable loss as a result of Defendant’s unlawful conduct because the actual value of the Products as purchased was less than the value of the Products as represented.

82. Plaintiffs are also entitled to recover attorney fees as authorized by § 407.025.

**FOURTH CLAIM FOR RELIEF**  
**Unjust Enrichment**

83. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

84. By purchasing the Products, Plaintiffs and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

85. Defendant had knowledge of such benefits.

86. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

87. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations and omissions.

88. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiffs' and the Class members' expense, and therefore restitution and/or disgorgement of such economic enrichment is required.

**FIFTH CLAIM FOR RELIEF**  
**Breach of Express Warranty Pursuant to Uniform Commercial Code**

89. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

90. By advertising and selling the Products at issue, Defendant made promises and affirmations of fact on the Products' packaging and labeling, as described herein. This labeling and advertising constitute express warranties and became part of the basis of the bargain between Plaintiffs and members of the Class, and Defendant.

91. Defendant, through its advertising and labeling, created express warranties that the Products comport with the label representations. Specifically, Defendant created express

warranties that the Products contain sufficient powder to make the number of bottles of formula represented on the labels of the Products.

92. The express warranties appear on all Product labels and specifically relate to the goods being sold.

93. Despite Defendant's express warranties about the nature of the Products, the Products do not comport with Defendant's Representations. Thus, the Products were and are not what Defendant represented them to be.

94. Accordingly, Defendant breached express warranties about the Products and their qualities because the Products do not conform to Defendant's affirmations and promises.

95. Plaintiffs provided Defendant with pre-suit notice of the breach of warranty.

96. Plaintiffs and members of the Class purchased the Products.

97. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs and members of the Class were harmed in the amount of the purchase price of the Products. Further, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial.

#### **SIXTH CLAIM FOR RELIEF**

##### **Breach of Implied Warranty Pursuant to Uniform Commercial Code**

98. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

99. By advertising and selling the Products at issue, Defendant made implied promises and affirmations of fact concerning the Products, as described herein. These implied warranties became part of the basis of the bargain between Plaintiffs and members of the Class, and Defendant.

100. Defendant, through its advertising and labeling, impliedly warranted that the Products comport with the label Representations, that the label Representations are accurate, and that the Products contain sufficient powder to make the stated number of bottles of formula.

101. Defendant breached the warranty implied in the contract for the sale of the Products because the Products cannot pass without objection in the trade under the contract description, the Products were not of fair average quality within the description, and the Products were not as represented. As a result, Plaintiffs and Class members did not receive the goods as impliedly warranted by Defendant to be merchantable.

102. At the time of purchase, Plaintiffs and members of the Class did not know, and had no reason to know, that the Products were not as they were warranted to be.

103. Defendant knew that the Products were not as they were warranted to be.

104. Plaintiffs and members of the Class purchased the Products.

105. Plaintiffs provided Defendant with pre-suit notice of the breach of warranty.

106. As a direct and proximate result of Defendant's breach of implied warranty, Plaintiffs and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all similarly situated persons, seek judgment against Defendant, as follows:

- a. For an order certifying the Class; naming Plaintiffs as representative of the

Nationwide Class and of the Missouri Subclass; and naming Plaintiffs' attorneys as Class Counsel to represent the Class;

b. For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;

c. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;

d. For an order awarding all compensatory damages, in an amount to be determined by the Court and/or jury;

e. For prejudgment interest on all amounts awarded;

f. For interest on the amount of any and all economic losses, at the prevailing legal rate;

g. For an order of restitution and all other forms of equitable monetary relief;

h. For an order requiring Defendant to cease and desist from selling its misbranded Products in violation of law; enjoining Defendant from continuing to label, market, advertise, distribute, and sell the Products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

i. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees, expenses and costs of suit; and

j. For all such other and further relief as may be just and proper.

Dated this 16<sup>th</sup> day of June, 2022.

Respectfully Submitted,

Garrett Wacker, Courtney O'Rourke,  
Kara and Rutenbar Hatmaker  
Individually, and on Behalf of Classes of Similarly Situated  
Individuals, Plaintiffs

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