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

20 SHELBY COOPER and SAMANTHA
21 HORTON, individually and on behalf of
22 all others similarly situated,

23 Plaintiffs,

24 v.

25 MARS, INC.,

26 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Shelby Cooper and Samantha Horton (hereinafter “Plaintiffs”),
2 individually and on behalf of themselves and all others similarly situated, bring this
3 class action lawsuit against Defendant Mars, Inc. (“Mars” or “Defendant”) based
4 upon personal knowledge as to themselves, the investigation of their counsel, and
5 on information and belief as to all other matters.

6 **NATURE OF THE ACTION**

7 1. This is a class action lawsuit against Defendant regarding the
8 manufacture, distribution, and sale of its Dove Promises Deeper Dark Chocolate
9 70% Cacao products (collectively the “Affected Products”) which contain unsafe
10 levels of lead and cadmium (collectively, “Heavy Metals”). The marketing for and
11 labeling of the Affected Products are silent as to the presence of elevated levels of
12 Heavy Metals in the Affected Products. Defendant’s advertising and packaging are
13 false, misleading, and reasonably likely to deceive the public.

14 2. Lead is a harmful chemical when consumed and is especially
15 dangerous to pregnant women and children. Lead poisoning occurs when lead
16 builds up in the body, over months or years.¹

17 3. Any amount of lead exposure can lead to serious health problems.
18 Children younger than 6 years are especially vulnerable to even mild lead exposure,
19 which can severely affect mental and physical development.² At very high levels,
20 lead poisoning can be fatal in adults and children.³

21 4. Cadmium is also dangerous when consumed. Cadmium can be found
22 in cigarette smoke and a wide variety of industrial products, including batteries,
23 pigments, metal coatings, and plastics. Cadmium is carcinogenic and exposure to
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26 ¹ *Lead poisoning*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717> (last visited January 12,
27 2023).

28 ² *Id.*

³ *Id.*

1 even low levels of cadmium over time may result in a toxic build-up of cadmium in
2 the kidneys, leading to kidney disease⁴ and bones damage and osteoporosis.⁵

3 5. A December 2022 report by Consumer Reports revealed that a
4 selection of dark chocolate products sold to the product, including the Affected
5 Products, contained high levels of heavy metals: specifically, cadmium and lead.⁶

6 6. In November of 1986, California passed the Safe Drinking Water and
7 Toxic Enforcement Act, which came to be known by its legislative name “Prop 65.”
8 Proposition 65 requires businesses to provide warnings to Californians about
9 significant exposures to chemicals that cause cancer, birth defects or other
10 reproductive harm.⁷ As a part of that standard, California’s experts set regulatory
11 standards for acceptable levels of exposure to toxic chemicals, referred to as the
12 maximum allowable dose levels (“MADLs”) in chemicals which are identified as
13 causing cancer, birth defects, or reproductive harm.⁸

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17 ⁴ Nikhil Johri, *Heavy Metal Poisoning: The Effects of Cadmium on the Kidney*,
BIOMETALS (Oct. 2010) <https://pubmed.ncbi.nlm.nih.gov/20354761/> (last visited
18 Jan. 12, 2023).

19 ⁵ Agneta Akesson, *Cadmium-Induced Effects on Bone Population-Based Study of*
Women, ENVIRON HEALTH PROJECT (June 2006)
20 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1480481/> (last visited Jan. 12,
21 2023).

22 ⁶ Kevin Loria, *Lead and Cadmium Could Be in Your Dark Chocolate*, CONSUMER
REPORTS (Dec. 15, 2022) [https://www.consumerreports.org/health/food-
23 safety/lead-and-cadmium-in-dark-chocolate-a8480295550/](https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/) (last visited January 12,
24 2023).

25 ⁷ *About Proposition 65*, OFFICE OF ENVIRONMENTAL HEALTH HAZARD
ASSESSMENT, <https://oehha.ca.gov/proposition-65/about-proposition-65> (last
26 visited January 12, 2023).

27 ⁸ *The mysterious world of Prop 65, part 8: Acceptable risk levels*, CONSUMER
PRODUCTS LAW BLOG (Feb. 19, 2015)
28 [https://www.consumerproductslawblog.com/2015/02/the-mysterious-world-of-
prop-65-part-8-acceptable-risk-levels/](https://www.consumerproductslawblog.com/2015/02/the-mysterious-world-of-prop-65-part-8-acceptable-risk-levels/) (last visited January 12, 2023).

1 7. Consumer Reports referenced California’s MADLs for lead (0.5
2 Micrograms) and cadmium (4.1mcg). The testing performed found that Dove’s
3 Promises Deeper Dark Chocolate 70% Cacao product contained 112% of the
4 MADL of cadmium.⁹ The Affected Products also expose consumers to a significant
5 amount of lead.

6 8. Defendant knew or should have known that its representations and
7 advertisements regarding the Affected Products were false and misleading and that
8 they failed to disclose material information. Defendant had been part of a previous
9 Heavy Metal matter, which started in 2015 as a Proposition 65 Notice raised by
10 watchdog group As You Sow for elevated lead and cadmium levels found in the
11 products of multiple dark chocolate brands, including Mars,¹⁰ and settled in 2018.¹¹

12 9. Consumers could not have known about the unsafe levels of lead and
13 cadmium in the Affected Products before purchasing them without having
14 conducted extensive and expensive scientific testing.

15 10. Defendant, on the other hand, is positioned to test its products and has
16 exclusive knowledge of the quality control testing on the Affected Products and the
17 ingredients contained therein. For example, in 2021, Defendant’s Global Food
18 Safety Center claimed to have used an Inductively Coupled Plasma Mass
19 Spectrometry (ICP-MS) tool to determine concentrations of metal and non-metal
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23 ⁹ *Id.*

24 ¹⁰ Bridget Huber, *Warning Sounded on Heavy Metals in Chocolates*, FLORIDA
25 CENTER FOR INVESTIGATIVE REPORTING (Feb. 11, 2015)
<https://fcir.org/2015/02/11/warning-sounded-on-heavy-metals-in-chocolates/> (last
26 visited January 17, 2023).

27 ¹¹ Douglas Yu, *Mars, Hershey and others settle heavy metal chocolate lawsuit*,
28 CONFECTIONERYNEWS (Mar. 08, 2018)
[https://www.confectionerynews.com/Article/2018/03/08/California-Superior-
Court-settles-heavy-metal-chocolate-lawsuit](https://www.confectionerynews.com/Article/2018/03/08/California-Superior-Court-settles-heavy-metal-chocolate-lawsuit) (last visited January 17, 2023).

1 elements in grains of rice.¹² In a self-published article, Defendant noted the ICP-
2 MS’s ability to detect “heavy metal contamination[.]”

3 11. If Plaintiffs knew that the Affected Products contained the Heavy
4 Metals, they would not have purchased the Affected Products on the same terms, if
5 at all.

6 12. Plaintiffs and those similarly situated purchasers (“Class Members”)
7 relied on Defendant's misrepresentations and omissions that the Affected Products
8 contained only those ingredients listed on the Affected Products packaging and
9 labeling.

10 13. Plaintiffs and Class Members paid a premium for the Affected
11 Products based upon Defendant’s marketing and advertising campaign. Given that
12 Plaintiffs and Class Members paid a premium for the Affected Products based on
13 Defendant's misrepresentations and omissions, Plaintiffs and Class Members
14 suffered an injury in the amount of the premium paid.

15 14. Defendant’s conduct violated and continues to violate, inter alia,
16 California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*;
17 California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
18 California's Consumer Legal Remedies Act, Cal. Civ. Code §§ 1761 *et seq.* and
19 Ohio’s Consumer Sales Protection Act, Ohio Revised Code §§ 1345.01 *et seq.*
20 Defendant also breached and continues to breach its warranties regarding the
21 Affected Products and has been and continues to be unjustly enriched. Accordingly,
22 Plaintiffs bring this action against Defendant on behalf of themselves and Class
23 Members who purchased the Affected Products during the applicable statute of
24 limitations period (the “Class Period”).

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26 ¹² *Building International Collaboration Mechanisms to Focus on global Food*
27 *Safety*, MARS GLOBAL FOOD SAFETY CENTER (Apr. 9, 2021
28 <https://gfsc.mars.com/home-page-foodintegrity-capability-building/building-international-collaboration-mechanisms-focus> (last visited January 17, 2023).

JURISDICTION AND VENUE

1
2 15. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
3 1332(d) because there are more than 100 Class members; the aggregate amount in
4 controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs; and at
5 least one Class member is a citizen of a state different from the Defendant.

6 16. This Court has personal jurisdiction over Defendant because
7 Defendant conducts significant business in California such that it has purposefully
8 availed itself of the privilege of doing business in California.

9 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
10 a Defendant transacts significant business within this District, one Plaintiff resides
11 within this District, and a substantial part of the events giving rise to Plaintiffs’
12 claims took place within this District.

13 **PARTIES**

14 18. Plaintiff Shelby Cooper is a resident of the state of California. Plaintiff
15 Cooper purchased the Affected Products during the Class Period from a Walmart
16 retail store located in Riverside, California. Prior to purchasing the Affected
17 Products, Plaintiff Cooper read the Affected Products’ labels and purchased the
18 Affected Products in reliance on Defendant’s representation that the Affected
19 Products contained only the ingredients listed on the Affected Products’ packaging
20 and were safe for consumption. Plaintiff Cooper believed that the Affected Products
21 that were advertised as dark chocolate did not contain lead and cadmium. If Mars
22 remedied the issues identified in this complaint, Plaintiff Cooper would resume
23 purchasing the Affected Products.

24 19. Plaintiff Samantha Horton is a resident of the state of Ohio. Plaintiff
25 Horton purchased the Affected Products during the Class Period from a Rite Aid
26 retail store located in Canton, Ohio. She also purchased the Affected Products from
27 Amazon.com. Prior to purchasing the Affected Products, Plaintiff Horton read the
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1 Affected Products' labels and purchased the Affected Products in reliance on
2 Defendant's representation that the Affected Products contained only the
3 ingredients listed on the Affected Products' packaging and were safe for
4 consumption. Plaintiff Horton believed that the Affected Products that were
5 advertised as dark chocolate did not contain lead and cadmium. If Mars remedied
6 the issues identified in this complaint, Plaintiff Horton would resume purchasing
7 the Affected Products.

8 20. Defendant Mars, Inc. is incorporated in the state of Delaware. It is
9 headquartered in McLean, Virginia. As part of its broader business, Defendant
10 manufactures, advertises, labels, and sells dark chocolate, including the Affected
11 Products, throughout the United States. Defendant created or authorized the
12 creation and dissemination of the deceptive advertisements, packaging, and labeling
13 associated with the Affected Products.

14 **FACTUAL ALLEGATIONS**

15 21. Consumers must and do rely on Defendant to truthfully and honestly
16 report what their Affected Products contain on their packaging or labels.
17 Companies, including Mars as alleged herein, profit from consumers' search for
18 safe and healthy products. Consumers will, and do, pay premiums for safe and
19 healthy products.

20 22. While the advertising and marketing for the Affected Products is silent
21 as to the presence of cadmium and lead present in the Affected Products, public
22 reports and articles recently revealed that Defendant's Affected Products contain
23 lead and cadmium. The level of cadmium observed exceeded the MADL for
24 established by California; posing serious health risks.

25 23. Lead and cadmium, which are both present in the Affected Products,
26 are heavy metals and their presence in food, alone or combined, poses a serious
27 safety risk to consumers because they can cause cancer and other serious problems
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1 (often irreversible) such as damage to brain development, the liver, kidneys, and
2 bones.¹³

3 24. California recognized that lead and cadmium as “known to the state to
4 cause cancer or reproductive toxicity . . .” after the state’s qualified experts formed
5 the opinion that both lead¹⁴ and cadmium¹⁵ were “shown through scientifically valid
6 testing according to generally accepted principles to cause cancer or reproductive
7 toxicity.”¹⁶

8 25. The harmful effects of lead have been studied extensively, particularly
9 its effect on children. Studies have shown that even lower levels of lead exposure
10 in children may result in reduced neurobehavioral functioning, with symptoms
11 ranging from neuropsychological deficits that interfere with classroom
12 performance, lower IQ, decreased verbal processing and attention span.¹⁷

13 26. Lead can also cross the fetal barrier during pregnancy, exposing the
14 developing fetus and mother to risks in the form of reduced growth and premature
15 birth.¹⁸

17 ¹³ *Heavy metals in food crops: Health risks, fate, mechanisms, and management*,
18 SCIEDIRECT,
19 <https://www.sciencedirect.com/science/article/pii/S0160412018327971> (last
20 visited January 12, 2023).

21 ¹⁴ *Lead and Lead Compounds*, CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH
22 HAZARD ASSESSMENT, [https://oehha.ca.gov/proposition-65/chemicals/lead-and-
23 lead-compounds](https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds) (last visited January 12, 2023).

24 ¹⁵ Cadmium, CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD
25 ASSESSMENT, <https://oehha.ca.gov/proposition-65/chemicals/cadmium> (last visited
26 January 12, 2023).

27 ¹⁶ See Cal. Health & Safety Code § 25249.8(b).

28 ¹⁷ Theodore I. Lidsky and Jay S. Schneider, *Lead neurotoxicity in children: basic
mechanisms and clinical correlates*, BRAIN, Vol. 126, Issue 1 (Jan. 2003)
<https://academic.oup.com/brain/article/126/1/5/299373#.Y79duQG8eOc.link> (last
visited January 12, 2023).

¹⁸ See *Childhood Lead Poisoning Prevention: Pregnant Women*, CENTERS FOR
DISEASE CONTROL AND PREVENTION,

1 27. More generally, lead may cause anemia, weakness, and kidney and
2 brain damage.¹⁹ In fact, lead accumulates over time and may affect almost every
3 organ and system in a person’s body, leading to toxicity and serious health risks,
4 including inhibited neurological function, anemia, seizures, and, at worst, coma and
5 death.²⁰

6 28. Adults are also affected by lead toxicity, as the bones can store lead
7 after initial exposure and re-expose the body by releasing the stored lead into the
8 blood stream.²¹

9 29. Because the negative effects of lead can be experienced below
10 established limits, “[n]o amount of lead is known to be safe.”²²

11 30. Cadmium, a heavy metal like lead, also poses severe safety concerns
12 for consumers.

13 31. Like lead, cadmium may cause complications in pregnant women such
14 as fetal growth restriction.²³

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18 <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm> (last visited January 12,
19 2023).

20 ¹⁹ *The National Institute for Occupational Safety and Health (NIOSH): Lead*,
CENTERS FOR DISEASE CONTROL AND PREVENTION,
21 <https://www.cdc.gov/niosh/topics/lead/health.html> (January 12, 2023).

22 ²⁰ *Id.*

23 ²¹ See *Lead Exposure in Adults: A Guide for Health Care Providers*, STATE OF NEW
YORK DEPARTMENT OF HEALTH, <https://www.health.ny.gov/publications/2584.pdf>
(last visited January 12, 2023).

24 ²² Jessica Pupovac, *Lead Levels Below EPA Limits Can Still Impact Your Health*,
NPR (Aug. 13, 2016), [https://www.npr.org/sections/thetwo-
25 way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-
26 health](https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health) (last visited Jan. 12, 2023).

27 ²³ Hui-Xia Geng et al, *Cadmium: Toxic Effects on Placental And Embryonic
Development*, NIH: NATIONAL LIBRARY OF MEDICINE (Feb. 15, 2019)
28 <https://pubmed.ncbi.nlm.nih.gov/30797179/> (last visited Jan. 12, 2023)

1 32. The World Health Organization classified cadmium as a Group 1
2 carcinogen in 2012,²⁴ and its exposure is known to cause a variety of cancers.²⁵ The
3 US Center for Disease Control concurs with the World Health Organization and
4 similarly considers cadmium to be “a cancer-causing agent.”²⁶

5 33. When eaten, large amounts of cadmium can severely irritate the
6 stomach and cause vomiting and diarrhea.²⁷ Even at low exposure levels, cadmium
7 can build up in the kidneys and cause kidney disease and fragile bones.²⁸

8 34. Consumers lack the meaningful ability to test or independently
9 discover whether a product contains unhealthy substances such as lead, cadmium,
10 or other unsafe substances, especially at the point of sale. The testing necessary to
11 discover many unhealthy substances, including cadmium and lead, requires
12 expensive and destructive scientific testing. Given the relatively low price of the
13 Affected Products, no reasonable consumer would engage in such testing before
14 purchasing the Affected Products.

15 35. Consumers must, instead, rely on Defendant to truthfully represent
16 what its Affected Products contain on its packaging and labels.

19 ²⁴ *IARC Monographs on the Identification of Carcinogenic Hazards to Humans:*
20 *List of Classifications*, INTERNATIONAL AGENCY FOR RESEARCH ON CANCER –
21 WORLD HEALTH ORGANIZATION, [https://monographs.iarc.who.int/list-of-](https://monographs.iarc.who.int/list-of-classifications)
[classifications](https://monographs.iarc.who.int/list-of-classifications) (last visited Jan. 12, 2023).

22 ²⁵ *Cancer Trends Progress Report: Cadmium*, NATIONAL CANCER INSTITUTE – NIH,
23 [https://progressreport.cancer.gov/prevention/cadmium#:~:text=Cadmium%20and](https://progressreport.cancer.gov/prevention/cadmium#:~:text=Cadmium%20and%20its%20compounds%20are,the%20breast%20and%20urinary%20bladder)
24 [%20its%20compounds%20are,the%20breast%20and%20urinary%20bladder](https://progressreport.cancer.gov/prevention/cadmium#:~:text=Cadmium%20and%20its%20compounds%20are,the%20breast%20and%20urinary%20bladder). (last
visited Jan. 12, 2023).

25 ²⁶ *National Biomonitoring Program: Cadmium Factsheet*, CENTERS FOR DISEASE
26 CONTROL AND PREVENTION,
https://www.cdc.gov/biomonitoring/Cadmium_FactSheet.html (last visited January
27 12, 2023).

27 ²⁷ *Id.*

28 ²⁸ *Id.*

1 36. However, public reports and articles recently revealed that
2 Defendant's Affected Products contain lead and cadmium. The level of cadmium
3 observed exceeded the MADL set by California; posing serious health risks.
4 Despite these risks, Defendant failed to include any disclosures regarding lead and
5 cadmium levels on its Affected Products.

6 37. Defendant knew or should have known of the lead and cadmium in the
7 Affected Products. In 2016, Mars (as well as other manufacturers and distributors)
8 received notice that at least some of its dark chocolate products, including
9 Defendant's products, contained excessive cadmium and lead.²⁹ This notice came
10 in the form of Proposition 65 Violation Notices which confirmed the presence of
11 heavy metals in the Mars products.³⁰ In the intervening 6 years, Mars has not
12 remedied the issue, failing to warn consumers that the Affected Products would
13 expose consumers to cadmium and lead when eaten.

14 38. Researchers have found that heavy metals were "typically found
15 naturally in the outer shell of the cocoa bean, not in the bean itself."³¹ The beans
16 were measured soon after being picked and removed from pods, showing low levels
17 of cadmium and lead, but, as the beans dried, the levels increased.³² Consumer
18 Reports and its researches concluded that "[d]uring that time, lead-filled dust and
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22 ²⁹ Bridget Huber, *Warning Sounded on Heavy Metals in Chocolates*, FLORIDA
23 CENTER FOR INVESTIGATIVE REPORTING (Feb. 11, 2015)
24 <https://fcir.org/2015/02/11/warning-sounded-on-heavy-metals-in-chocolates/> (last
visited Jan. 12, 2023).

25 ³⁰ *Id.*

26 ³¹ Kevin Loria, *Lead And Cadmium Could Be In Your Dark Chocolate*, CONSUMER
27 REPORTS (Dec. 15, 2022) [https://www.consumerreports.org/health/food-
safety/lead-and-cadmium-in-dark-chocolate-a8480295550/](https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/) (last visited Jan. 12,
2023).

28 ³² *Id.*

1 dirt accumulated on the beans.”³³ Thus, on information and belief, Mars itself is
2 responsible for lead being present in the Affected Products.

3 39. Additionally, Defendant has a responsibility to implement controls to
4 significantly minimize or prevent unnecessary consumer exposure to the Heavy
5 Metals in the Affected Products. Mars prides itself on founding its own Global
6 Food Safety Center, and touts possessing equipment which may have detected the
7 cadmium and lead at issue here.³⁴

8 40. Accordingly, Defendant is in the best position to test the Affected
9 products for lead and cadmium levels.

10 41. Defendant knew that the Affected Products contain Heavy Metals, and
11 failed to provide any warning on packaging or labels, that the Affected Products
12 contain, or risk containing, lead and cadmium.

13 42. In making their purchasing decisions, consumers, such as Plaintiffs
14 and the Class Members, are influenced by the ingredients listed, as well as any
15 warnings (or lack thereof) on the packaging of food they purchase. If Defendant had
16 not failed to disclose that the Affected Products were not safe for consumption, then
17 Plaintiffs and the Class would not have paid a premium for the Affected Products
18 (or purchased them at all).

19 43. Plaintiffs and the Class reasonably relied on the marketing, labeling,
20 and information provided by Defendant in making purchasing decisions. By
21 representing that the Affected Products contain only the ingredients listed on the
22 Affected Products’ labeling, and not disclosing the presence of the Heavy Metals,
23 Defendant misled reasonable consumers, including Plaintiffs and the Class.

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³³ *Id.*

26 ³⁴ *Building International Collaboration Mechanisms to Focus on Global Food*
27 *Safety*, MARS GLOBAL FOOD SAFETY CENTER (Apr. 9, 2021)
28 <https://gfsc.mars.com/home-page-foodintegrity-capability-building/building-international-collaboration-mechanisms-focus> (last visited Jan. 12, 2023).

1 44. Defendant’s false, misleading, and deceptive misrepresentations and
2 omissions are likely to continue to deceive and mislead reasonable consumers and
3 the general public, as they have already deceived and misled Plaintiffs and the Class
4 Members.

5 45. Plaintiffs would not have purchased the Affected Products, or would
6 have paid less for them, had the Affected Products been truthfully and accurately
7 labeled.

8 **CLASS ALLEGATIONS**

9 46. Plaintiffs brings their claims for relief pursuant to the Federal Rules of
10 Civil Procedure 23(a), 23(b)(2), or 23(b)(3) on behalf of the following Class
11 (collectively “the Class”):

12 All consumers who purchased one or more of the Affected Products in the
13 United States within the applicable limitations period (the “Nationwide
Class”).

14 47. Plaintiff Cooper brings this class action individually and on behalf of
15 the following California subclass:

16 All consumers who purchased one or more of the Affected Products in the
17 state of California within the applicable limitations period (the “California
Subclass”).

18 48. Plaintiff Horton brings this class action individually and on behalf of
19 the following Ohio subclass:

20 All consumers who purchased one or more of the Affected Products in the
21 state of Ohio within the applicable limitations period (the “Ohio Subclass”).

22 49. Excluded from the Class is governmental entities, Defendants, any
23 entity in which Defendant has a controlling interest, and Defendant’s officers,
24 directors, affiliates, legal representatives, employees, co-conspirators, successors,
25 subsidiaries, and assigns, as well as any judge, justice, or judicial officer presiding
26 over this matter and the members of their immediate families and judicial staff.
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1 50. The Nationwide Class, California Subclass, and Ohio Subclass shall
2 be referred to collectively throughout the Complaint as the Class.

3 51. The Nationwide Class, California Subclass and Ohio Subclass are
4 properly brought and should be maintained as class actions under Rule 23(a),
5 satisfying the class action prerequisites of numerosity, commonality, typicality, and
6 adequacy because:

7 52. Numerosity: Class Members are so numerous that joinder of all
8 members is impracticable. Plaintiffs believes that there are thousands of consumers
9 in the Class who have been damaged by Defendant’s deceptive and misleading
10 practices.

11 53. Commonality: The questions of law and fact common to the Class
12 Members which predominate over any questions which may affect individual Class
13 Members include, but are not limited to:

- 14 a. Whether Defendant’s marketing, advertising, packing, and labeling for
15 the Affected Products was false, misleading, and/or deceptive;
- 16 b. Whether Defendant is responsible for the conduct alleged herein which
17 was uniformly directed at all consumers who purchased its Affected
18 Products;
- 19 c. Whether the Affected Products contain unsafe levels of lead and
20 cadmium;
- 21 d. Whether Defendant breached the implied warranty of merchantability
22 relating to the Affected Products;
- 23 e. Whether Defendant’s misconduct set forth in this Complaint
24 demonstrates that Defendant has engaged in unfair, fraudulent, or
25 unlawful business practices with respect to the advertising, marketing,
26 and sale of the Affected Products;

1 f. Whether Defendant's false and misleading statement concerning the
2 Affected Products were likely to deceive the public; and

3 g. Whether Plaintiffs and the Class are entitled to money damages under
4 the same causes of action as the other Class Members.

5 54. Typicality: Plaintiffs' claims are typical of the claims of the Class
6 because Plaintiffs, like all other Class Members, purchased the Affected Products,
7 suffered damages as a result of that purchase, and seek the same relief as the
8 proposed Class Members.

9 55. Adequacy: Plaintiffs adequately represent the Class because their
10 interests do not conflict with the interests of the members of the Class, and they
11 have retained counsel competent and experienced in complex class action and
12 consumer litigation. Plaintiffs and their counsel will fairly and adequately protect
13 the interest of the members of the Class.

14 56. Predominance: Pursuant to Rule 23(b)(3), the common issues of law
15 and fact identified above predominate over any other questions affecting only
16 individual members of the Class. The Class issues fully predominate over any
17 individual issue because no inquiry into individual conduct is necessary; all that is
18 required is a narrow focus on Defendant's deceptive and misleading marketing and
19 labeling practices.

20 57. Superiority: A class action is superior to other available means of
21 adjudication for this controversy. It would be impracticable for members of the
22 Class to individually litigate their own claims against Defendant because the
23 damages suffered by Plaintiffs and the members of the Class are relatively small
24 compared to the cost of individually litigating their claims. Individual litigation
25 would create the potential for inconsistent judgments and delay and expenses to the
26 court system. A class action provides an efficient means for adjudication with fewer
27 management difficulties and comprehensive supervision by a single court.

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1 58. Accordingly, this Class is properly brought and should be maintained
2 as a class action under Rule 23(b)(3) because questions of law or fact common to
3 Class Members predominate over any questions affecting only individual members,
4 and because a class action is superior to other available methods for fairly and
5 efficiently adjudicating this controversy.

6 **CAUSES OF ACTION**

7 **COUNT I**

8 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)**
9 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***
10 **(On Behalf of Plaintiff Cooper and California Subclass Members)**

11 59. Plaintiff Cooper repeats, re-alleges, and incorporates each and every
12 factual allegation contained in all previous paragraphs as if fully set forth herein.

13 60. The UCL prohibits acts of “unfair competition,” including any
14 “unlawful, unfair or fraudulent business act or practice.”

15 61. By violating state consumer protection statutes, Defendant has
16 violated the UCL’s “unlawful prong,” as described herein.

17 62. Defendant’s failure to disclose the presence of the Heavy Metals in the
18 Affected Products is unlawful and violates California’s Consumers Legal Remedies
19 Act³⁵ and False Advertising Law.³⁶

20 63. By marketing and packaging the Affected Products with no mention
21 of Heavy Metals, Defendant violates the unfair prong of the UCL because such
22 conduct was: (i) immoral, unethical, unscrupulous, and oppressive; (ii) caused harm
23 to members of the California Subclass who purchased the Affected Products; and
24 (iii) violated established public policy against deceptive conduct by businesses.
25 Defendant’s justifications or reasons for, or the utility or benefit (if any) of
26 Defendant’s misconduct, were substantially outweighed by the substantial

27 ³⁵ Cal. Civ. Code §§ 1750 *et seq.*

28 ³⁶ Cal. Bus. & Prof. Code §§ 17500 *et seq.*

1 economic harm that such misconduct caused members of the California Subclass.
2 Finally, the harm caused by Defendant's misconduct is not one that members of the
3 California Subclass could have reasonably avoided given Defendant's exclusive
4 knowledge of and control over its testing practices, quality assurance programs, and
5 marketing.

6 64. Defendant also violated the fraudulent prong of the UCL by failing to
7 disclose the presence of the Heavy Metals in the Affected Products, which was
8 likely to deceive the public.

9 65. As a result of Defendant's UCL violations, as described above,
10 Plaintiff Cooper and other members of the California Subclass have suffered injury,
11 including, but not limited to, paying for products that they would not have otherwise
12 purchased on the same terms had they known the products contained unsafe levels
13 of Heavy Metals.

14 66. Plaintiff Cooper and the California Subclass members would have
15 considered it important to their decisions to purchase the products to know that they
16 were purchasing food products that would be exposing them to unsafe levels of
17 Heavy Metals.

18 67. Because of Mars' UCL violations described above, Plaintiff Cooper
19 and the California Subclass suffered injury, and lost money, by paying for the
20 Affected Products that they would not have purchased on the same terms, if at all,
21 had they known the Affected Products contain the Heavy Metals.

22 68. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff Cooper and the
23 California Subclass are entitled to: a) an Order requiring Defendant to cease the acts
24 of unfair competition alleged herein; b) full restitution of all monies paid to
25 Defendant as a result of its deceptive practices; c) interest at the highest rate
26 allowable by law; and d) an award of attorneys' fees and costs.

COUNT II

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW
Cal. Bus. & Prof. Code §§ 17500 *et seq.*
(On Behalf of Plaintiff Cooper and the California Subclass Members)

69. Plaintiff Cooper repeats and re-alleges each and every factual allegation contained in all previous paragraphs as if fully set forth herein.

70. California’s False Advertising Law prohibits untrue or misleading statements or omissions in connection with the sale of goods.³⁷

71. Defendant’s failure to adequately disclose the presence of lead and cadmium in the Affected Products, as set forth herein, is likely to deceive the public.

72. Defendant knew, or should have known, that the Affected Products contained cadmium and lead and had a duty to disclose their presence to consumers.

73. By failing to alert consumers to the presence of the Heavy Metals, Defendant misled consumers. Defendant knew, or should have known, that its omissions would result in misleading reasonable consumers.

74. Defendant continues to omit the presence of the Heavy Metals from its representations and labeling concerning the Affected Products. Prospective injunctive relief is necessary to cure Defendant’s conduct, especially as Plaintiff Cooper wishes to purchase the Affected products in the future, assuming Defendant can assure her that it will not contain unsafe levels of Heavy Metals in the future.

75. Plaintiff Cooper and the California Subclass Members are entitled to injunctive and equitable relief, and restitution in the form of a full refund for the amount spent on the Affected Products.

³⁷ Cal. Bus. & Prof. Code § 17500

COUNT III

VIOLATION OF CALIFORNIA CLRA

Cal. Civ. Code §§ 1750 *et seq.*

(On Behalf of Plaintiff Cooper and the California Subclass Members)

76. Plaintiff repeats and re-alleges each and every factual allegation contained in all previous paragraphs as if fully set forth herein.

77. The Affected Products are “goods” as defined by Cal. Civ. Code § 1761(a).

78. Defendant is a “person” as defined by Cal. Civ. Code § 1761(c).

79. Plaintiff Cooper and the California Subclass qualify as “consumers” pursuant to California Civ. Code § 1761(d).

80. Plaintiff Cooper’s and the California Subclass’s purchases of the Affected Products qualify as “transactions,” as defined by Cal. Civ. Code § 1761(e).

81. Defendant’s conduct violated by the CLRA by: a) failing to disclose presence of Heavy Metals on the Affected Products’ packaging;³⁸ b) knowingly, recklessly, and/or intentionally representing that the Affected Products were of a particular standard, quality, or grade, when they were of another;³⁹ and c) knowingly, recklessly, and/or intentionally advertising the Affected Products with the intent not to sell them as advertised.⁴⁰

82. Defendant’s omissions were material to reasonable consumers, including Plaintiff Cooper and California Subclass, as they would have considered the presence of Heavy Metals in their food as an important point of information when determining whether to purchase the Affected Products.

83. Defendant had a duty to disclose the presence of Heavy Metals in the Affected Products because Defendant had exclusive knowledge as to the levels of

³⁸ Cal. Civ. Code § 1770(a)(5).

³⁹ Cal. Civ. Code § 1770(a)(7).

⁴⁰ Cal. Civ. Code § 1770(a)(9).

1 Heavy Metals in the Affected Products, which was not reasonably accessible to
2 Plaintiff Cooper and the California Subclass, and Defendant concealed the presence
3 and high levels of cadmium and lead in the Affected Products from Plaintiff Cooper
4 and the California Subclass.

5 84. Plaintiff Cooper and California Subclass relied on Defendant's
6 representations and packaging as to the quality and ingredients of the Affected
7 Products.

8 85. Plaintiff Cooper and the California Subclass were harmed, and will
9 continue to be harmed, as a direct and proximate result of Defendant's violations
10 unless Defendant is prevented from continuing to use misleading labeling and
11 marketing as set forth herein in connection with advertising, distribution, and sale
12 of the Affected Products.

13 86. Accordingly, Plaintiff Cooper, on behalf of herself and all other
14 members of the California Subclass, seeks injunctive relief.

15 87. On January 25, 2023, Defendant was served with a pre-suit notice
16 letter pursuant to CLRA § 1782. The letter was sent certified mail, return receipt
17 requested, and provided notice of Defendant's violation of the CLRA and demands
18 that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged
19 here. If Defendant does not fully correct the problem for Plaintiffs and for each
20 member of the California Subclass within 30 days after service of Plaintiffs' notice
21 letter, Plaintiff Cooper and the California subclass will amend their complaint to
22 seek all monetary relief allowed under the CLRA.

23 **COUNT IV**

24 **VIOLATION OF OHIO'S CONSUMER SALES PROTECTION ACT**
25 **Ohio Revised Code §§ 1345.01 et seq.**
26 **(On Behalf of Plaintiff Horton and the Ohio Subclass Members)**

27 88. Plaintiff Horton repeats and re-alleges each and every factual
28 allegation contained in all previous paragraphs as if fully set forth herein.

1 89. Plaintiff Horton brings this claim individually and on behalf of the
2 Ohio Subclass members.

3 90. Plaintiff Horton and the Ohio Subclass members are “consumers,” as
4 defined by ORC Ann. § 1345.01(D).

5 91. At all times mentioned herein, Defendant engaged in a “consumer
6 transaction” in Ohio, as defined in OR.C. § 1345.01(A).

7 92. Defendant has committed and continues to commit unfair and
8 deceptive acts or practices in connection with a consumer transaction in violation
9 of the Ohio Consumer Sales Practices Act, R.C. § 1345.01, *et seq.*, (the “OCSPA”),
10 namely the sale of the Affected Products to consumers in Ohio while making false
11 and misleading statements and omissions concerning the presence of the Heavy
12 Metals in the Affected Products.

13 93. Defendant has unfairly and deceptively omitted and concealed
14 material information related to the Affected Products from consumers in violation
15 of the OCSPA.

16 94. Defendant’s unfair and deceptive practices deceived Plaintiff Horton
17 and the Ohio Subclass and deceived a substantial segment of the target audience.

18 95. Defendant’s unfair and deceptive practices were material as it
19 influenced purchasing and payment decisions.

20 96. Plaintiff Horton and the Ohio Subclass have been damaged as a direct
21 and proximate result of Defendant’s deceptive and unfair practices.

22 97. Defendant’s conduct outlined herein violates the OCSPA.

23 98. Plaintiff Horton and the Ohio Subclass are entitled to recover
24 compensatory damages, plus interest, attorneys’ fees, and costs.

25 99. Defendant’s conduct was intentional, willful, wanton, malicious, and
26 egregious, entitling Plaintiff Horton and members of the Ohio Subclass to punitive
27 damages and attorneys’ fees in an amount to be determined at trial.
28

COUNT V

**BREACH OF IMPLIED WARRANTY
(On Behalf of Plaintiffs and All Class Members)**

1
2
3
4 100. Plaintiffs repeat and reallege each and every allegation contained in
5 the foregoing paragraphs as if fully set forth herein.

6 101. Defendant manufactured, marketed, labeled, distributed, and sold the
7 Affected Products, as part of its overall business.

8 102. The Affected Products are considered a “good” under the relevant
9 laws.

10 103. For goods to be merchantable under UCC section 2-314, it must (a)
11 pass without objection in the trade under the contract description; (b) in the case of
12 fungible goods, are of fair average quality within the description; (c) are fit for the
13 ordinary purposes for which such goods are used; and (d) run, within the variations
14 permitted by the agreement, of even kind, quality and quantity within each unit and
15 among all units involved.

16 104. Defendant breached the implied warranty of merchantability. The
17 Affected Products, meant to be ingested, should not contain unsafe levels of Heavy
18 Metals.

19 105. Defendant is on notice of its breach. In addition to widespread media
20 reports, upon information and belief and based on representations made by Mars,
21 the Company is or should have been aware through its own product testing and
22 records. In addition, on January 25, 2023, Plaintiffs served Defendant with a pre-
23 suit notice letter.

24 106. The Affected Product contained lead and cadmium, in amounts that
25 were dangerous to be consumed. Plaintiffs and each of the members of the Class
26 were injured as a result. Defendant thereby breached the following state warranty
27 laws:
28

- 1 a. Code of Ala. § 7-2-314;
- 2 b. Alaska Stat. § 45.02.314;
- 3 c. A.R.S. § 47-2314;
- 4 d. A.C.A. § 4-2-314;
- 5 e. Cal. Comm. Code § 2314;
- 6 f. Colo. Rev. Stat. § 4-2-314;
- 7 g. Conn. Gen. Stat. § 42a-2-314;
- 8 h. 6 Del. C. § 2-314;
- 9 i. D.C. Code § 28:2-314;
- 10 j. Fla. Stat. § 672.314;
- 11 k. O.C.G.A. § 11-2-314;
- 12 l. H.R.S. § 490:2-314;
- 13 m. Idaho Code § 28-2-314;
- 14 n. 810 I.L.C.S. 5/2-314;
- 15 o. Ind. Code § 26-1-2-314;
- 16 p. Iowa Code § 554.2314;
- 17 q. K.S.A. § 84-2-314;
- 18 r. K.R.S. § 355.2-313;
- 19 s. 11 M.R.S. § 2-314;
- 20 t. Md. Commercial Law Code Ann. § 2-314;
- 21 u. 106 Mass. Gen. Laws Ann. § 2-314;
- 22 v. M.C.L.S. § 440.2314;
- 23 w. Minn. Stat. § 336.2-314;
- 24 x. Miss. Code Ann. § 75-2-314;
- 25 y. R.S. Mo. § 400.2-314;
- 26 z. Mont. Code Anno. § 30-2-314;
- 27 aa. Neb. Rev. Stat. § 2-314;
- 28

- 1 bb. Nev. Rev. Stat. Ann. § 104.2314;
- 2 cc. R.S.A. 382-A:2-314;
- 3 dd. N.J. Stat. Ann. § 12A:2-314;
- 4 ee. N.M. Stat. Ann. § 55-2-314;
- 5 ff. N.Y. U.C.C. Law § 2-314;
- 6 gg. N.C. Gen. Stat. § 25-2-314;
- 7 hh. N.D. Cent. Code § 41-02-31;
- 8 ii. II. O.R.C. Ann. § 1302.27;
- 9 jj. 12A Okl. St. § 2-314;
- 10 kk. Or. Rev. Stat. § 72-3140;
- 11 ll. 13 Pa. Rev. Stat. § 72-3140;
- 12 mm. R.I. Gen. Laws § 6A-2-314;
- 13 nn. S.C. Code Ann. § 36-2-314;
- 14 oo. S.D. Codified Laws, § 57A-2-314;
- 15 pp. Tenn. Code Ann. § 47-2-314;
- 16 qq. Tex. Bus. & Com. Code § 2.314;
- 17 rr. Utah Code Ann. § 70A-2-314;
- 18 ss. 9A V.S.A. § 2-314;
- 19 tt. Va. Code Ann. § 8.2-314;
- 20 uu. Wash. Rev. Code Ann. § 6A.2-314;
- 21 vv. W. Va. Code § 46-2-314;
- 22 ww. Wis. Stat. § 402.314; and
- 23 xx. Wyo. Stat. § 34.1-2-314.

24 107. As a direct and proximate result of Defendant's breach of the express
25 warranty, Plaintiffs and Class Members were damaged in the amount of the price
26 they paid for the Affected Products.

COUNT VI

UNJUST ENRICHMENT

(On Behalf of Plaintiffs and All Class Members in the Alternative)

108. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

109. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant.

110. Plaintiffs and members of the Class conferred benefits on Defendant by purchasing the Affected Products.

111. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs' and Class members' purchases of the Affected Products.

112. Retention of those moneys under these circumstances is unjust and inequitable because Defendant has engaged, and continues to engage, in a systematic campaign of representing that the Affected Products do not contain the Heavy Metals, concealing and omitting material facts regarding the true nature of the Affected Products. These false representations and omissions caused injuries to Plaintiffs and members of the Class because they would not have purchased the Affected Products, if at all, if they knew that the Affected Products contained high levels of Heavy Metals.

113. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiffs and members of the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

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

- 1 (a) For an order determining that this action is properly brought as a class
2 action and certifying Plaintiffs as the representatives of the Class and their
3 counsel as Class Counsel;
- 4 (b) For an order declaring the Defendant's conduct violates the laws
5 referenced herein;
- 6 (c) For an order finding in favor of Plaintiffs and the Class on all counts
7 asserted herein;
- 8 (d) For damages in amounts to be determined by the Court and/or jury;
- 9 (e) An award of statutory damages or penalties to the extent available;
- 10 (f) For pre-judgment interest on all amounts awarded;
- 11 (g) For an order of restitution and all other forms of monetary relief; and
- 12 (h) Such other and further relief as the Court deems necessary and
13 appropriate.

14 **DEMAND FOR TRIAL BY JURY**

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

16 Dated: January 25, 2023

Respectfully submitted,

17 By: /s/ Adam M. Apton
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