

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BURSOR & FISHER, P.A.**  
L. Timothy Fisher (State Bar No. 191626)  
Sean L. Litteral (State Bar No. 331985)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
Email: ltfisher@bursor.com  
slitteral@bursor.com

**BURSOR & FISHER, P.A.**  
Joshua D. Arisohn (*pro hac vice* forthcoming)  
Alec M. Leslie (*pro hac vice* forthcoming)  
888 Seventh Avenue  
New York, NY 10019  
Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
E-Mail: jarisohn@bursor.com  
aleslie@bursor.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NEIL HAMMAN and MICHAEL  
STEWART, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

CAVA GROUP, INC.,

Defendant.

Case No. 22cv0593-MMA-MSB

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Neil Hamman and Michael Stewart (“Plaintiffs”) bring this action on  
2 behalf of themselves, and all others similarly situated against Defendant Cava Group,  
3 Inc. (“Defendant”). Plaintiffs make the following allegations pursuant to the  
4 investigation of their counsel and based upon information and belief, except as to the  
5 allegations specifically pertaining to themselves, which are based on personal  
6 knowledge.

7 **NATURE OF ACTION**

8 1. Plaintiffs bring this Class action lawsuit on behalf of themselves and  
9 similarly situated consumers (“Class Members”) who purchased for personal, family,  
10 or household use, Defendant’s grain and salad bowls (the “Products”), which are  
11 unfit for human consumption because the packaging in which they are contained—  
12 and is essential and integral to delivering the Products to the consuming public<sup>1</sup>—  
13 contain heightened levels of organic fluorine and unsafe per-and polyfluoroalkyl  
14 substances (“PFAS”).<sup>2</sup>

15 2. Per- and polyfluoroalkyl substances (“PFAS”) are a class of synthetic  
16 chemicals that have a negative impact on human health and the environment.<sup>3</sup>  
17 Recently, consumers have become aware of the dangers of PFAS exposure.<sup>4</sup>

18  
19  
20 <sup>1</sup> Due to the integral and essential nature of the packaging, the term “Products” or  
“Product” is used herein to denote both the Products and the Products’ packaging.

21 <sup>2</sup> Discovery may reveal that additional Cava’s products are within the scope of this  
22 Complaint. Accordingly, Plaintiffs reserve the right to include additional food  
23 products identified throughout the course of discovery given the substantial  
similarity in the harm presented.

24 <sup>3</sup> Nat’l Inst. of Env’t Health Sciences, Perfluoroalkyl and Polyfluoroalkyl Substances  
(PFAS), Nat’l Insts. Of Health U.S. Dept. of Health and Human Servs.,  
25 [https://www.niehs.nih.gov/health/materials/perfluoroalkyl\\_and\\_polyfluoroalkyl\\_substances\\_508.pdf](https://www.niehs.nih.gov/health/materials/perfluoroalkyl_and_polyfluoroalkyl_substances_508.pdf) (last visited Feb. 28, 2023); Francisca Pérez, et al., Accumulation Of  
26 Perfluoroalkyl Substances In Human Tissues, 59 Environ. Int’l 354 (2013).

27 <sup>4</sup> See e.g. LastWeekTonight, *PFAS: Last Week Tonight With John Oliver (HBO)*,  
28 YouTube (Feb. 28, 2023), <https://www.youtube.com/watch?v=9W74aeuqsiU> and  
*FACT SHEET: Biden-Harris Administration Launches Plan to Combat PFAS  
Pollution*, The White House, <https://bit.ly/3DZvZba> (last visited Feb. 28, 2022).

1           3.     On August 5, 2020, Defendant announced to its consumers that “[a]s  
2 part of our ongoing environmental and social responsibility efforts we are actively  
3 working to ensure our sustainable packaging *continues* to be responsibly sourced,  
4 compostable, functional, and *now* PFAS-free. We will eliminate PFAS for our food  
5 packaging by mid-2021, and will publicly share progress on our commitment in the  
6 year ahead.”<sup>5</sup> *See infra* ¶ 35.

7           4.     At the time of that statement, however, Defendant was in receipt of  
8 material information showing that its grain and salad bowls (the “Products”) were  
9 unfit for human consumption because the packaging in which they were contained—  
10 and which are essential and integral to delivering the Products to the consuming  
11 public<sup>6</sup>—were not free of organic fluorine, which is the leading indicator of whether  
12 the Products contain unsafe PFAS.<sup>7</sup>

13           5.     Specifically, independent research conducted by Mind the Store and  
14 Toxic-Free Future and performed at an independent laboratory in February 2020, and  
15 published on August 6, 2020, determined that the Products’ packaging contained  
16 heightened levels of organic fluorine.<sup>8</sup>

17           6.     Mind the Store and Toxic-Free Future tested two of Defendant’s grain  
18 and salad bowls. The first test revealed that the Products’ packaging contained 660  
19 parts per million (ppm) of total organic fluorine.

20           7.     The second test revealed that the Products’ packaging contained  
21 945ppm of total organic fluorine.

---

22 <sup>5</sup> Emphasis added.

23 <sup>6</sup> Due to the integral and essential nature of the packaging, the term “Product” is used  
herein to denote both the Product and the Product’s packaging.

24 <sup>7</sup> For additional context, products containing over 100 ppm of organofluorine have  
25 recently been banned by a series of legislative bills in California due to the toxic and  
26 environmentally destructive nature of these compounds. *See California Issues New  
PFAS Consumer Product Regulations*, Exponent (Feb. 28, 2023),  
<https://bit.ly/3ug4hVP>.

27 <sup>8</sup> Jen Dickman, *et al.*, *Packaged in Pollution: Are food chains using PFAS in*  
28 *packaging?*, Toxic-Free Future, <https://toxicfreefuture.org/packaged-in-pollution/>  
(last visited Feb. 28, 2023).

1           8. Prior to the release of those results on August 6, 2020, Mind the Store  
2 and Toxic-Free Future contacted Defendant and informed Defendant of those results.

3           9. Despite the receipt of this material information, Defendant affirmatively  
4 misrepresented that information in its confusing and contradictory press release, and  
5 continued to hold out its Products as safe, healthy, and sustainable.

6           10. Subsequent testing performed by Consumer Reports at an independent  
7 laboratory more than two years later determined that the Products continued to  
8 contain heightened levels of fluorine in the amount of 508.3 ppm.<sup>9</sup>

9           11. Additional testing commissioned by Plaintiffs’ counsel in July of 2022  
10 and conducted by Galbraith’s Laboratories confirmed the continued existence of  
11 organic fluorine amounts over 100 ppm in the Products’ packaging.

12           12. These tests results conducted across more than two years and across  
13 geography are concerning as PFAS are a group of synthetic chemicals known to be  
14 harmful to both the environment and humans. Because PFAS persist and accumulate  
15 over time, they are harmful even at very low levels. Indeed, “PFAS have been  
16 shown to have a number of toxicological effects in laboratory studies and have been  
17 associated with thyroid disorders, immunotoxic effects, and various cancers in  
18 epidemiology studies.”<sup>10</sup>

19           13. In fact, scientists are studying—and are extremely concerned about—  
20 how PFAS affect human health. Consequently, the CDC outlined “a host of health  
21  
22  
23

---

24 <sup>9</sup> Kevin Loria, “Dangerous PFAS Chemicals Are in Your Food Packaging,”  
25 *Consumer Reports*, [https://www.consumerreports.org/pfas-food-](https://www.consumerreports.org/pfas-food-packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/)  
26 [packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/](https://www.consumerreports.org/pfas-food-packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/)  
(last visited Feb. 28, 2023).

27 <sup>10</sup> Nicholas J. Heckert, et al. “Characterization of Per- and Polyfluorinated Alkyl  
28 Substances Present in Commercial Anti-fog Products and Their In Vitro Adipogenic  
Activity,” *Environ. Sci. Technol.* 2022, 56, 1162-1173, 1162.

1 effects associated with PFAS exposure, including cancer, liver damage, decreased  
2 fertility, and increased risk of asthma and thyroid disease.”<sup>11</sup>

3 14. Based on Defendant’s representations, reasonable consumers—like  
4 Plaintiffs who relied on Defendant’s “healthy” and “sustainable” representations as  
5 set out on its website and in-store signage—would expect that the Products can be  
6 safely purchased and healthily consumed as marketed and sold. However, the  
7 Products are not safe or healthy, posing a significant health risk to unsuspecting  
8 consumers; nor are the Products sustainable as packaging treated with such high  
9 levels of organic fluorine are not responsibly sourced and are not compostable.

10 15. Accordingly, Plaintiffs bring this Class action lawsuit on behalf of  
11 themselves and similarly situated consumers (“Class Members”) who purchased  
12 Defendant’s Products for the following claims: (1) violation of California’s Unfair  
13 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) violation of the  
14 Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (3) breach of the  
15 Implied Warranty under Song-Beverly Consumer Warranty Act, Cal. Civ. Code §  
16 1792, *et seq.* and California Commercial Code § 2314; (4) violation of California’s  
17 False Advertising Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (5) Fraud; (6)  
18 Constructive Fraud; (7) Fraudulent Inducement; (8) Fraudulent Misrepresentation;  
19 (9) Negligent Misrepresentation; (10) Quasi-Contract / Unjust Enrichment; and (11)  
20 Breach of Express Warranty.

### 21 **THE PARTIES**

22 16. Plaintiff Neil Hamman is a natural person and citizen of California who  
23 resides in Ramona, California. Plaintiff Hamman has purchased the Products from  
24 Defendant at numerous points over the past few years, including as recently as  
25 March 2022 from a Cava located in La Jolla, California. Prior to his purchase, Mr.

26 \_\_\_\_\_  
27 <sup>11</sup> Harvard T.H. Chan Sch. Of Pub. Health, Health Risks of widely used chemicals  
28 may be underestimated (June 27, 2018), <https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/> (last visited Feb. 28, 2023).

1 Hamman reviewed Defendant’s marketing materials and in-store signage related to  
2 his Products, including those set out herein, including that the Products were healthy,  
3 safe, and sustainable. Mr. Hamman understood that based on Defendant’s claims,  
4 that Products were healthy, safe for consumption, and otherwise a sustainable  
5 product. Mr. Hamman reasonably relied on these representations and warranties in  
6 deciding to purchase the Products, and these representations and warranties were part  
7 of the basis of the bargain in that he would not have purchased the Products, or  
8 would not have purchased them on the same terms, if the true facts had been known.  
9 As a direct result of Defendant’s material misrepresentations, Mr. Hamman suffered  
10 and continues to suffer, economic injuries.

11 17. Mr. Hamman continues to desire to purchase the Products from  
12 Defendant. However, Mr. Hamman is unable to determine if the Products are  
13 actually healthy, safe, and sustainable. Mr. Hamman understands that the  
14 composition of the Products may change over time. But as long as Defendant  
15 continues to market its products as “healthy” and “sustainable,” he will be unable to  
16 make informed decisions about whether to purchase Defendant’s Products and will  
17 be unable to evaluate the different prices between Defendant’s Products and  
18 competitor’s Products. Mr. Hamman is further likely to be repeatedly misled by  
19 Defendant’s conduct, unless and until Defendant is compelled to ensure that the  
20 Products are marketed, labeled, packaged, and advertised as safe and sustainable, are  
21 in fact safe and sustainable.

22 18. Plaintiff Michael Stewart is a natural person and citizen of California  
23 who resides in San Diego, California. Plaintiff Stewart has purchased the Products  
24 from Defendant at numerous points over the past few years, including as recently as  
25 January 2022 from a Cava located in San Diego, California. Prior to his purchase,  
26 Mr. Stewart reviewed marketing materials and in-store signage related to his  
27 Products, including those set out herein, including that the Products were healthy,  
28 safe, and sustainable. Mr. Stewart understood that based on Defendant’s claims, that

1 Products were safe for consumption, and otherwise a sustainable product. Mr.  
2 Stewart reasonably relied on these representations and warranties in deciding to  
3 purchase the Products, and these representations and warranties were part of the  
4 basis of the bargain in that he would not have purchased the Products, or would not  
5 have purchased them on the same terms, if the true facts had been known. As a  
6 direct result of Defendant’s material misrepresentations, Mr. Stewart suffered and  
7 continues to suffer, economic injuries.

8 19. Mr. Stewart continues to desire to purchase the Products from  
9 Defendant. However, Mr. Stewart is unable to determine if the Products are actually  
10 healthy, safe, and sustainable. Mr. Stewart understands that the composition of the  
11 Products may change over time. But as long as Defendant continues to market its  
12 products as “healthy” and “sustainable,” he will be unable to make informed  
13 decisions about whether to purchase Defendant’s Products and will be unable to  
14 evaluate the different prices between Defendant’s Products and competitor’s  
15 Products. Mr. Stewart is further likely to be repeatedly misled by Defendant’s  
16 conduct, unless and until Defendant is compelled to ensure that the Products are  
17 marketed, labeled, packaged, and advertised as safe and sustainable, are in fact safe  
18 and sustainable.

19 20. Defendant Cava Group, Inc. (“Defendant”) is a foreign corporation with  
20 its principal place of business located in Washington, D.C.

21 **JURISDICTION AND VENUE**

22 21. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
23 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 (“CAFA”),  
24 because this case is a class action where the aggregate claims of all members of the  
25 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there  
26 are over 100 members of the putative class, and Plaintiffs, as well as most members  
27 of the proposed class, are citizens of different states than Defendant.







1           27. Additionally, “[t]he majority of shoppers . . . are willing to spend more  
2 for a product they know is safer, with 42% willing to spend 5-15% more, 36%  
3 willing to spend 16-25% more, and 17% willing to spend 1-5% more.”<sup>15</sup>

4           28. Also, “nearly two-thirds (64 percent) of Americans are willing to pay  
5 more for sustainable products. . . [and] 78 percent of people are more likely to  
6 purchase a product that is clearly labeled as environmentally friendly.”<sup>16</sup>

7           29. Thus, there is enormous incentive for companies such as Defendant to  
8 market their products as safe, healthy, and sustainable. Indeed, Defendant has  
9 repeatedly and pervasively touted these considerations as reasons to purchase the  
10 Product over competitors, creating a context for consumers to believe that the  
11 Products are indeed safe, healthy, and sustainable. Examples of these  
12 representations are included below.

13           30. These include statements made directly on Defendant’s website such as  
14 “We believe you shouldn’t have to choose healthy over satisfying . . . And we work  
15 hard every single day to make sure that promise stands.”<sup>17</sup>

16           31. Defendant states on its website that “At Cava, we are about our impact  
17 on our communities and the world. As a part of our ongoing environmental and  
18 social responsibility efforts we are actively working to ensure our sustainable  
19 packaging continues to be responsibly sourced, compostable, functional, and now  
20 PFAS free.”<sup>18</sup> An image of this is included below:

21  
22  
23 trends-are-changing-the-game-for-food-beverage-processors/ (last visited Aug. 18,  
2022).

24 <sup>15</sup> Made Safe, “What Shoppers Want,” at 3.

25 <sup>16</sup> Maggie Hanna, Consumers make a plea for sustainability, The Produce News  
26 (June 21, 2021), [https://theproducenews.com/sustainability/consumers-make-plea-](https://theproducenews.com/sustainability/consumers-make-plea-sustainability)  
27 sustainability (last access Feb. 28, 2023).

28 <sup>17</sup> Cava, “Cava Culture,” <https://cava.com/culture> (last accessed Apr. 26, 2022).

<sup>18</sup> Cava, “Newsroom,”  
<https://web.archive.org/web/20220324103526/https://cava.com/newsroom> (last  
accessed Apr. 26, 2022).

August 5, 2020

## Eliminating PFAS From Our Food Packaging

At CAVA, we care about our impact on our communities and on the world at large. As part of our ongoing environmental and social responsibility efforts we are actively working to ensure our sustainable packaging continues to be responsibly sourced, compostable, functional, and now PFAS free. We will eliminate PFAS from our food packaging by mid-2021, and will publicly share progress on our commitment in the year ahead.

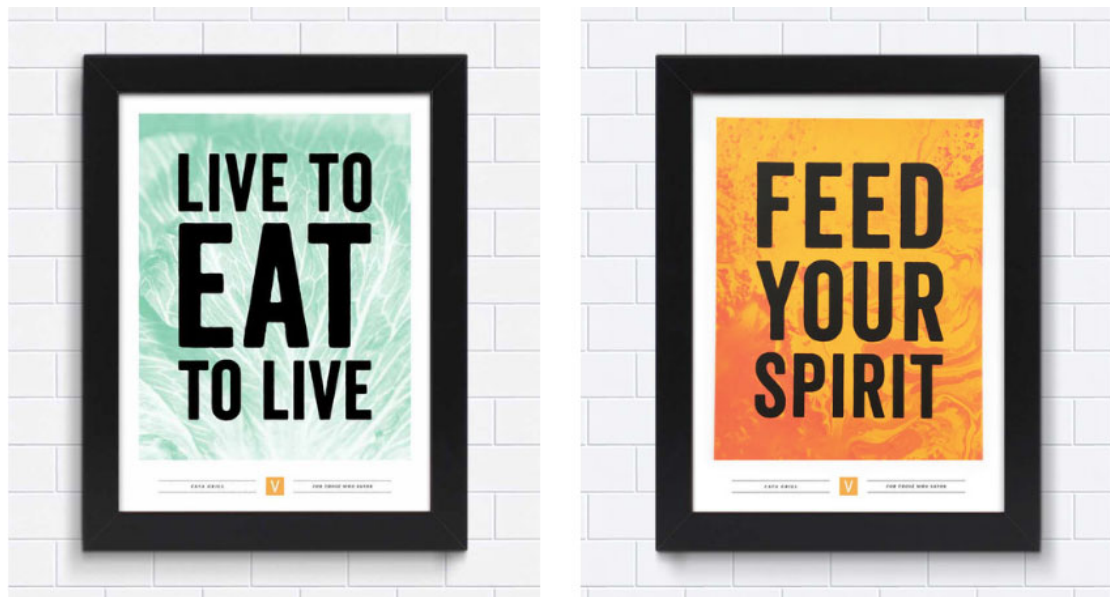
32. Defendant furthers its image as a go-to restaurant for healthy foods, stating directly on its website that it only uses “Simple Ingredients.” An example is included below:



33. Defendant also highlights these attributes in its in-store signage, stating that “Food . . . cannot be artificial” and that “Cava Grill is evolved to be smarter, healthier, and more transparent.” An example of this representation is set out below:



34. To this point, Defendant also partnered with the marketing firm, Homestead, to “[d]evelop[] visuals” that convey its sentiment to consumers. As Homestead tells it, “[l]ively colors and honest foods led to a series of in-store posters the promote the brand’s mission,” including those such as the following:





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14         35. Indeed, Cava’s CEO, Brett Schulmann, also echoed Defendant’s  
15 approach to food, noting that “[p]eople are eating out more, and they’re seeking  
16 higher-quality ingredients. When we take these naturally health nutritional profiles,  
17 great flavors, and fulfilling foods to a reasonable price point, we’re solving a  
18 problem for a variety of consumers on the go.”<sup>19</sup>

19         36. Mr. Schulmann further remarked that a part of this requires “an  
20 atmosphere of transparency[.]”<sup>20</sup>

21         37. Mr. Schulmann has also noted that Cava’s “better for your body” and  
22 that “consumers are mindful about what they’re ingesting[.]”<sup>21</sup>

23  
24 <sup>19</sup> QSR, “What Inspires Cava CEO Brtt Schulman,” (Oct. 2017),  
25 <https://www.qsrmagazine.com/start-finish-what-inspires-execs/what-inspires-cava-ceo-brett-schulman> (last accessed Feb. 28, 2023).

26 <sup>20</sup> *Id.*

27 <sup>21</sup> Gary Stern, “Cava: Healthy Mediterranean Chain Expanding And Acquiring,”  
28 *Forbes* (Nov. 15, 2019), <https://www.forbes.com/sites/garystern/2019/11/15/cava-healthy-mediterranean-chain-expanding-and-acquiring/?sh=3987bf901434> (last  
accessed Feb. 28, 2023).



1           38. Mr. Schulmann has also stated that “At Cava . . . We want to show  
2 consumers that sustainable behavior can be the norm, easy, enjoyable and cost  
3 less.”<sup>22</sup>

4           39. Any doubt about Cava’s attempt to boost its health and sustainable bona  
5 fides is dispelled by the in-depth profile of Cava written by Menus of Change, run by  
6 the Culinary Institute of America. The organization wrote that “Cava Grill . . .  
7 targets health-conscious consumers,” and “emphasizes local sourcing and the quality  
8 of what it sources. The chain sells diners on transparency, simplicity, and purity.”<sup>23</sup>

9           40. Plaintiffs saw and relied on Defendant’s marketing, including its in-  
10 store signage and website material outlined above in making their purchases.  
11 Plaintiffs believed that Defendant genuinely prioritized health, sustainability, and  
12 transparency, and did not expect that Defendant, who proudly touted these qualities,  
13 to hide the biggest secret of all: the existence of unsafe levels of organic fluorine  
14 which is indicative of cancer causing PFAS in its packaging.

15           **B. PFAS In Defendant’s Food Packaging Is Harmful To Humans And**  
16           **The Environment**

17           **1. Several Tests Demonstrate That Defendant’s Salad & Grain**  
18           **Bowls Contain Heightened Levels of Organic Fluorine,**  
19           **Indicating PFAS**

20           41. In February 2020, Mind the Store and Toxic-Free Future conducted a  
21 study of the levels of organic fluorine and PFAS in food packaging for various  
22 restaurants, including Defendant.<sup>24</sup>

23           42. Researchers stated that “[w]e found that health-conscious customers  
24 might feel good about getting a full serving of veggies, the packaging it comes in is

25 <sup>22</sup> Suzanna Blake, “How Some Operators are Striving for Better Sustainability  
26 Standards,” (Jan. 2022), <https://www.qsrmagazine.com/content/how-some-operators-are-striving-better-sustainability-standards> (last accessed Feb. 28, 2023).

27 <sup>23</sup> Menus of Change, “Cava Grill,” <https://www.menusofchange.org/case-studies/cavagrill> (last accessed Feb. 28, 2023).

28 <sup>24</sup> Jen Dickman, “Packaged in Pollution: Are food chains using PFAS in packaging?”  
Safer Chemical Healthy Families, <https://saferchemicals.org/packaged-in-pollution/>.

1 anything but healthy. Nearly all samples tested from Cava [and other ‘healthy’  
2 chains] appeared to be PFAS-treated.”

3 43. Researchers further wrote “Think you’re eating healthy? Think again.  
4 Toxic PFAS persists in packaging from health-conscious chains.”









16 44. The first test of Defendant’s salad and grains bowl revealed that the  
17 packaging contained 660 parts per million of organic fluorine.

18 45. The second test of Defendant’s salad and grains bowl revealed that the  
19 packaging contained 945 ppm of organic fluorine.

20  
21  
22  
23  
24  
25  
26  
27  
28

**Nearly half of tested food packaging items likely contained PFAS chemicals**

Number of samples that tested above the fluorine screening level out of the total number tested in each category			Burger or sandwich		Fries, other fried items, or desserts		Salads, warm bowls, or other meals	
			WRAPPER	CARDBOARD CONTAINER	PAPER BAG	PAPERBOARD CONTAINER	MOLDED FIBER BOWL	MOLDED FIBER TRAY
	7,000+ <sup>1</sup> stores	<b>3</b> out of 8	● ○ ○ ○ <sup>2</sup>		● ●	○ ○ ○		
	15,000+ <sup>1</sup> stores	<b>3</b> out of 9	○ ○ ○ ○ <sup>2</sup>	●	● ●	○ ○ ○		
	6,000+ <sup>1</sup> stores	<b>1</b> out of 4	○ <sup>2</sup>		●	○ ○		
	100+ stores	<b>4</b> out of 4	●		●		● <sup>2</sup>	●
	300+ <sup>1</sup> stores	<b>1</b> out of 2	○				● <sup>2</sup>	
	100+ stores	<b>2</b> out of 2					● ● <sup>2</sup>	
<b>TOTAL</b>		<b>14</b> out of 29	● ● ● ● ○ ○ ○ ○ <sup>2</sup>	●	● ● ● ●	○ ○ ○ ○ ○ ○ ○ ○	● ● ● ● <sup>2</sup>	●

<sup>1</sup> Number of stores in the U.S. and Canada.  
<sup>2</sup> We collected and tested more than one of the same kind of wrapper or bowl from different locations in the U.S., but are reporting each set as 1 to reflect the number of unique items. For details, see our methodology page.

46. To avoid consumer backlash, Defendant immediately announced on August 5, 2020, the day before these test results were made public, that “we are actively working to ensure our sustainable packaging continues to be responsibly sourced, compostable, functional, and now PFAS free.”

47. In response, Defendant received credit from Mind the Store and Toxic-Free Future for removing PFAS from its packaging.

48. Implicit in Defendant’s response is its acknowledgment that testing for organic fluorine is a valid method to test for PFAS. Afterall, even Defendant equated Mind the Store and Toxic-Free Future’s findings of organic fluorine with a finding of PFAS.

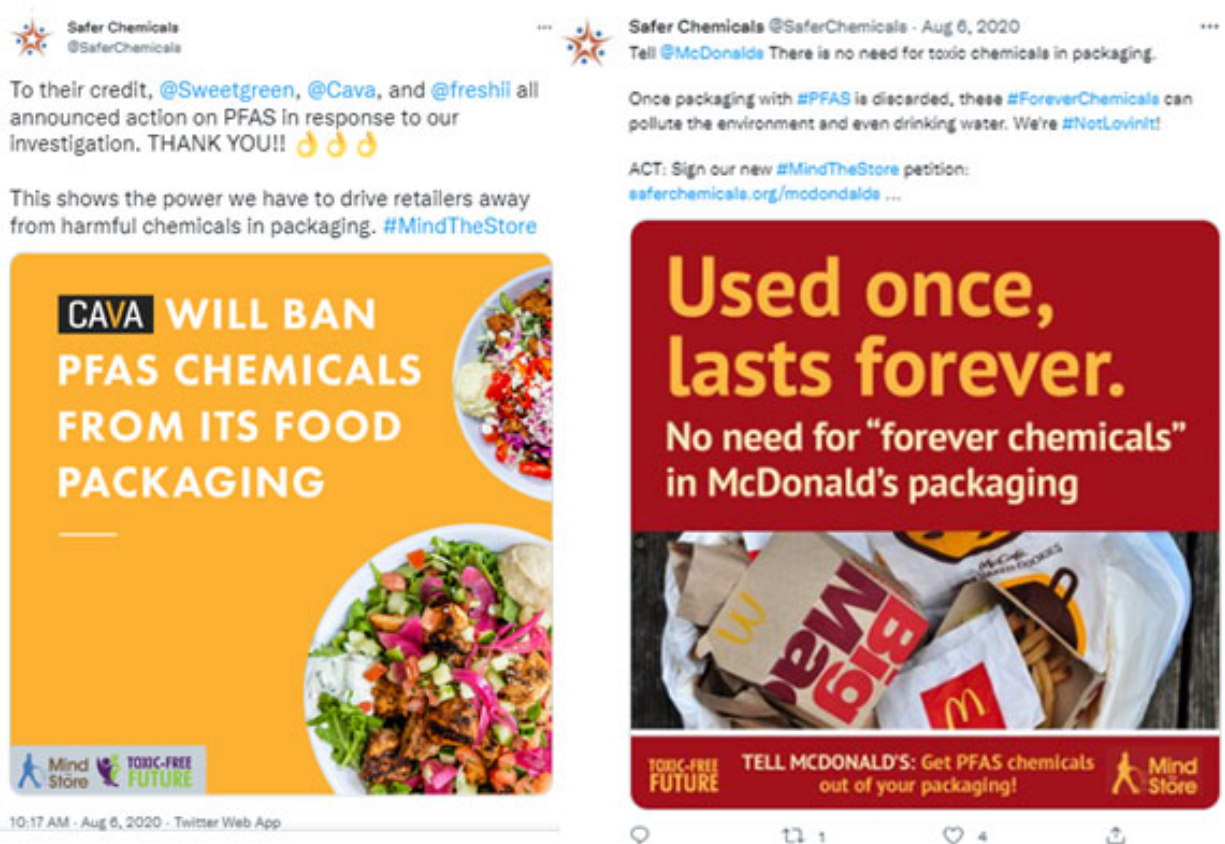
49. By receiving the positive credit, Defendant avoided the consumer backlash endured by other restaurants, such as McDonald’s, that were found to have



1 high levels of organic fluorine—but none as high as Defendant—and that had not  
 2 made similar public commitments.

3 50. For example, Mind the Store launched an online petition to have  
 4 McDonald’s remove PFAS from its packaging.

5 51. An example of the differing publicity these two restaurants received is  
 6 set out below:



21 52. Defendant’s announcement allowed it to save face, but its promises  
 22 amounted to little.

23 53. On March 24, 2022, Consumer Reports released its study, “Dangerous  
 24 PFAS Chemicals Are in Your Food Packaging.”<sup>25</sup>


25  
 26  
 27  
 28

<sup>25</sup> Kevin Loria, “Dangerous PFAS Chemicals Are in Your Food Packaging,” *Consumer Reports* (Mar. 24, 2022), <https://www.consumerreports.org/pfas-food-packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/> (last accessed Feb. 28, 2023).

1 54. Consumer Reports noted that “[t]o see how often PFAS are still found  
 2 in food containers, Consumer Reports tested more than 100 food packaging products  
 3 from restaurants and grocery chains.”<sup>26</sup>

4 55. Consumer Reports wrote that “Chains that promote healthier fare such  
 5 as Cava . . . also had some packaging that contained PFAS[.]”<sup>27</sup>

6 56. Despite Defendant’s representations noted above, that it’s Products do  
 7 not contain PFAS—which, according to Michael Hansen, PhD, senior scientist at  
 8 Consumer Reports, “no company should tell consumers that their products are 100  
 9 percent free of PFAS”<sup>28</sup>—Defendant’s Products still contained a significant amount  
 10 of organic fluorine, indicating intentional use of PFAS. These results are as follows:

Cava			
	Fiber tray for kids meal	■ ■	548.0
	Fiber bowl for grains, salad	■ ■	508.3
	Wrapper for mini Pita, pita Sandwich	■ ■	280.0
	Bag for pita chips	■ ■	260.0
	Wrapper for pitas	■ ■	202.0
	Wrapper for sides		13.3

11  
12  
13  
14  
15  
16  
17  
18  
19  
20 57. Subsequent testing commissioned by Plaintiffs’ counsel in July of 2022  
 21 and found 1147 ppm of organic fluorine in the fiber bowl lid and 1044 ppm of  
 22 organic fluorine in the salad/grain bowl itself.

23 **2. Organic Fluorine Testing Represents A Scientifically Valid**  
 24 **Method of Testing For PFAS**

25 58. As noted by Consumer Reports, “test[ing] products for their total  
 26 organic fluorine content . . . is the simplest way to assess a material’s total PFAS

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

28 <sup>27</sup> *Id.*

<sup>28</sup> *Id.*

1 content. That’s because all PFAS contain organic fluorine, and there are few other  
2 sources of the compound.”<sup>29</sup>

3 59. Indeed, this approach “is exactly what the food packaging industry does  
4 to determine whether PFAS w[ere] ‘intentionally added’ and can be composted or  
5 not.”<sup>30</sup>

6 60. The Biodegradable Products Institute (“BPI”) has adopted 100ppm as a  
7 threshold. Likewise, the Supply Chain Solutions Center (“SPSC”) notes that it  
8 “recommends that companies systematically screen [their products] using a total  
9 fluorine method and investigate levels over 100 [ppm], which indicates intentional  
10 use.”<sup>31</sup>

11 61. SCSC notes that “[t]he total fluorine method measures all forms of  
12 PFAS in the fibers and does not identify individual PFAS. It is an effective  
13 screening tool to detect intentionally added PFAS, and results should prompt a  
14 discussion with the supplier[.]”<sup>32</sup>

15 62. The Cancer Free Economy Network supports this conclusion, stating  
16 that “there are few standardized PFAS test methods.” Accordingly, researchers may  
17 rely on “total fluorine tests [which] are indirect methods designed to measure a  
18 representative element indicative of PFAS.”<sup>33</sup>

19  
20 \_\_\_\_\_  
<sup>29</sup> *Id.*

21 <sup>30</sup> Ketura Persellin, “Study: PFAS Exposure Through Skin Causes Harm Similar to  
22 Ingestion,” Environmental Working Group (Jan. 13, 2022),  
23 <https://www.ewg.org/news-insights/news/study-pfas-exposure-through-skin-causes-harm-similar-ingestion> (last accessed Feb. 28, 2023).

24 <sup>31</sup> Supply Chain Solutions Center, “Testing for PFAS in food packaging,”  
25 <https://supplychain.edf.org/resources/testing-for-pfas-in-food-packaging/#:~:text=The%20total%20fluorine%20method%20provides,certification%20program%20> (last accessed Feb. 28, 2023).

26 <sup>32</sup> *Id.*

27 <sup>33</sup> Cancer Free Economy Network, “A Short Guide To Common Testing Methods  
28 For Per- And Polyfluoroalkyl Substances (PFAS),”  
[https://www.bizngo.org/images/ee\\_images/uploads/resources/CFE\\_PFAS\\_Testing\\_FactSheet\\_Final.pdf](https://www.bizngo.org/images/ee_images/uploads/resources/CFE_PFAS_Testing_FactSheet_Final.pdf) (last accessed Feb. 28, 2023).

1           63. Rainier Lohmann, Director of University of Rhode Island’s Lohmann  
2 Lab supports these conclusions, stating that “[i]f a product is showing really high  
3 fluorine levels, companies really can’t claim they didn’t use PFAS.”

4           64. Finally, at least one court has also determined that fluorine testing is an  
5 appropriate measure for testing for the presence of PFAS. *See GMO Free USA v.*  
6 *Cover Girl Cosmetics, et al.*, Case No. 2021 CA 004786 B (D.C. Sup. Ct. June 1,  
7 2022) (“TFUSA plausibly alleges that the product contains PFAS based on its  
8 fluorine testing.”).

### 9                           **3. PFAS Migrate From Food Packaging to Food**

10           65. On March 3, 2020, a consortium of scientists released a report in  
11 *Environmental Health* called “Impacts of food contact chemicals on human health: a  
12 consensus statement.”<sup>34</sup>

13           66. The scientists stated therein that “[w]e describe areas of certainty, like  
14 the fact that chemicals migrate from food contact articles into food.”

15           67. The scientists explained that “[t]his phenomenon is known as migration  
16 and has been studied since the 1950s.”

17           68. The scientists determined that “new-generation PFAS [like those found  
18 in food packaging] are more mobile than the old generation PFAS, they migrate  
19 more readily into food.”

20           69. The scientists explained that “[c]urrent safety assessment of food  
21 contact chemicals is ineffective at protecting human health.”

---

22 <sup>34</sup> Jane Muncke, Anna-Maria Anderrson, Thomas Backhaus, Justin M. Boucher,  
23 Bethanie Carney Almroth, Arturo Castillo Castillo, Jonathan Chevier, Barbara A.  
24 Demeneix, Jorge A. Emmanuel, Jean-Baptiste Fini, David Gee, Birgit Geueke,  
25 Ksenia Groh, Jerrold J. Heindel, Jane Houlihan, Christopher D. Kassotis, Carol F.  
26 Kwiatowski, Lisa Y. Lefferts, Maricel V. Maffini, Olwenn V. Martin, John Peterson  
27 Myers, Angel Nadal, Cristina Nerin, Katherine E. Pelch, Seth Rojello Fernandez,  
28 Robert M. Sargis, Ana M. Soto, Leonardo Trasande, Laura N. Vanderberg, Martin  
Wagner, Chanqing Wu, R. Thomas Zoeller, and Martin Scheringer, “Impacts of food  
contact chemicals on human health a consensus statement,” *Environmental Health*,  
2020 19:25, <https://ehjournal.biomedcentral.com/track/pdf/10.1186/s12940-020-0572-5.pdf> (last accessed Feb. 28, 2023).

1           70. The scientists also explained that “reducing exposure to hazardous  
2 contact chemicals contributes to the prevention of associated chronic conditions in  
3 the human population.”

4           71. The scientists stated that “[t]o summarize, we are concerned that current  
5 chemical risk assessment for food contact chemicals does not sufficiently protect  
6 public health.”

7           72. The scientists stated that “[t]here is clear scientific evidence that  
8 chemicals migrate from food contact artifacts, and it is likely that the majority of the  
9 human population is affected by these exposures.” Other researchers agree.<sup>35</sup>

#### 10                           **4. PFAS Are Incompatible With Human Health**

11           73. According to leading scientists, PFAS must be treated as a single class  
12 rather than treated individually: “While a class-based approach to chemical  
13 management can pose challenges to the traditional paradigm of individual chemical  
14 risk assessment, the extreme persistence and potential for harm from thousands of  
15 PFAS . . . . demands a more efficient and effective approach. Examples of cases in  
16 which substances with common characteristics are currently managed as a class  
17 include organophosphate pesticides, organochlorine pesticides, and organohalogen  
18 flame retardants.”<sup>36</sup>

19           74. The scientists explained that “[t]o date, managing the risk of PFAS has  
20 focused primarily on one chemical at a time, or a small group of PFAS. This  
21  
22

---

23 <sup>35</sup> See, e.g., Iowa State University, “New study calls for mitigation, monitoring of  
24 common grease-proofing food packaging chemicals,” *News Service* (Oct. 19, 2021),  
<https://www.news.iastate.edu/news/2021/10/19/pfas2021> (last accessed Feb. 28,  
2023).

25 <sup>36</sup> Carol F. Kwiatkowski, David Q. Andrews, Linda S. Birnbaum, Thomas A. Bruton,  
26 Jamie C. DeWitt, Detlef R. U. Knappe, Maricel V. Maffini, Mark F. Miller,  
27 Katherine E. Pelch, Anna Reade, Anna Soehl, Xenia Trier, Marta Venier, Charlotte  
28 C. Wagner, Zhanyun Wang, and Arlene Blum, “Scientific Basis for Managing PFAS  
as a Chemical Class,” *Environmental Science & Technology Letters* (June 30, 2020),  
<https://pubs.acs.org/doi/10.1021/acs.estlett.0c00255> (last accessed Feb. 28, 2023).



1 approach has not been effective at controlling widespread exposure to this large  
2 group of chemicals with known and potential hazards.”

3 75. The scientists stated that “assessing only small subgroups systematically  
4 ignores the majority of PFAS and underestimates the overall risk, particularly when  
5 many of the chemicals are unknown.”

6 76. The scientists concluded that “[m]ore comprehensive solutions are  
7 needed, given that traditional approaches have failed to control widespread exposure  
8 to PFAS and resulted in inadequate public health protection.”

9 77. In another publication, scientists wrote that “[w]hile in-depth  
10 information for each compound would be ideal for scientific understanding, it is not  
11 necessary for regulating or managing PFAS. Most importantly, it leads to undue and  
12 harmful delays in protecting human and ecological health.”<sup>37</sup>

13 78. Other scientists agree, finding that “[w]e know that among the few  
14 PFAS that have been well studied, common or shared adverse effects have been  
15 observed.”<sup>38</sup>

16 79. The scientists wrote that “[w]e are of the opinion that highly persistent  
17 PFAS are incompatible with green chemistry<sup>[39]</sup> principles and future visions of  
18 sustainable development.”

19 <sup>37</sup> Carol F. Kwiatkowski, David Q. Andrews, Linda S. Birnbaum, Thomas A. Bruton,  
20 Jamie C. DeWitt, Detlef R. U. Knappe, Maricel V. Maffini, Mark F. Miller,  
21 Katherine E. Pelch, Anna Reade, Anna Soehl, Xenia Trier, Marta Venier, Charlotte  
22 C. Wagner, Zhanyun Wang, and Arlene Blum, “Response to ‘Comment on Scientific  
23 Basis for Managing PFAS as a Chemical Class,” *Environmental Science &  
Technology Letters* 2021, 195-197  
<https://pubs.acs.org/doi/pdf/10.1021/acs.estlett.1c00049> (last accessed Feb. 28,  
2023).

24 <sup>38</sup> Ian T. Cousins, Jamie C. DewWitt, Juliane Gluge, Gretta Goldenman, Dorte  
25 Herzke, Rainier Lohmann, Carla A. Ng, Martin Scheringer, and Zhanyun Wang,  
26 “The High Persistence of PFAS is Sufficient for their Management as a Chemical  
Class,” *Environ Sci. Process Impacts*, 2020 Dec. 16; 22(12): 2307-2312,  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7784706/> (Feb. 28, 2023).

27 <sup>39</sup> According to the EPA, “[g]reen chemistry is the design of chemical products and  
28 processes that reduce or eliminate the use or generation of hazardous substances.  
Green chemistry applies across the life cycle of a chemical product, including its

1           80. The scientists wrote that “[e]ven if some PFAS are considered of low  
2 health concern, there may be starting materials, breakdown products and/or other  
3 PFAS by-products of higher concern released during their lifecycle (e.g. in the case  
4 of certain fluoropolymers) or they may be of high climate / environmental concern  
5 (e.g. in the case of perfluoroalkanes and perfluoro-tert-amines).”

6           81. The scientists stated that “despite their diversity, PFAS do share one  
7 common structural feature that make them highly problematic, namely the presence  
8 of perfluoroalkyl moieties, resulting in their shared resistance to environmental and  
9 metabolic degradation.”

10           82. The scientists explained that the “concerns regarding the high  
11 persistence of chemicals” include “[i]ncreasing concentrations [that] will result in  
12 increased exposures and therefore increased probabilities for known and unknown  
13 health effects, be it by individual PFAS and/or in a mixture with other substances.”

14           83. Indeed, the health effects associated with PFAS are well known.  
15 According to the Erika Schreder, Director of Science at Toxic-Free Future,  
16 “laboratory-based and epidemiological research has linked PFAS exposure to a  
17 number of serious health concerns. Primary among them are cancer and effects on  
18 lipid metabolism, but they also include immune suppression, thyroid disease, and  
19 harm to reproduction.”<sup>40</sup>

20           84. Several authorities support these conclusions as well as others.

21           85. The U.S. Agency for Toxic Substances and Disease Registry (ATSDR)  
22 recently updated its toxicological profile for PFAS. In the new draft document, the  
23 agency identified associations between human exposure to PFAS and the following  
24 health concerns: pregnancy-induced hypertension/per-eclampsia, liver damage,

25  
26 design, manufacture, use, and ultimate disposal.” See  
<https://www.epa.gov/greenchemistry/basics-green-chemistry> (Feb. 28, 2023).

27 <sup>40</sup> Erika Schreder and Jennifer Dickman, *Take Out Toxics: PFAS Chemicals in Food*  
28 *Packaging*, <https://48h57c2131ua3c3fmq1ne58b-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Take-Out-Toxics-Full-Report.pdf>.



1 increase in serum lipids, particularly total cholesterol, increased risk of thyroid  
2 disease, decreased antibody responses to vaccines, and risk of asthma.<sup>41</sup>

3 86. In laboratory animals, PFAS exposure leads to liver, developmental and  
4 immune toxicity, and cancer. The effects seen at the lowest exposure levels,  
5 identified by ATSDR, include changes to nervous system development, decreased  
6 survival of young, suppressed immune response, liver degeneration, and decreased  
7 fetal and birth weights.<sup>42</sup>

8 87. According to Dr. Linda S. Birnbaum, Scholar in Residence at Duke  
9 University, Scientist Emeritus and Former Director of the National Institute of  
10 Environmental Health Sciences (NIEH) and National Toxicology Program: “[t]hese  
11 toxic chemicals are linked to serious health problems like cancer, liver damage,  
12 decreased fertility, and asthma . . . . PFAS can [also] weaken our immune system,  
13 making us more vulnerable to infectious diseases like COVID-19.”<sup>43</sup>

14 88. Others support these conclusions. In a 2019 study, for example, the  
15 U.S. Department of Health and Human Services’ National Toxicology Program  
16 found that PFAS have adverse effects on human organ systems, with the greatest  
17 impact seen in the liver and thyroid hormone.<sup>44</sup>

18 89. The following figure from the European Environmental Agency  
19 (“EEA”) shows the “[e]ffects of PFAS on human health.”<sup>45</sup>

20  
21  
22  
23  
24 <sup>41</sup> *Id.*

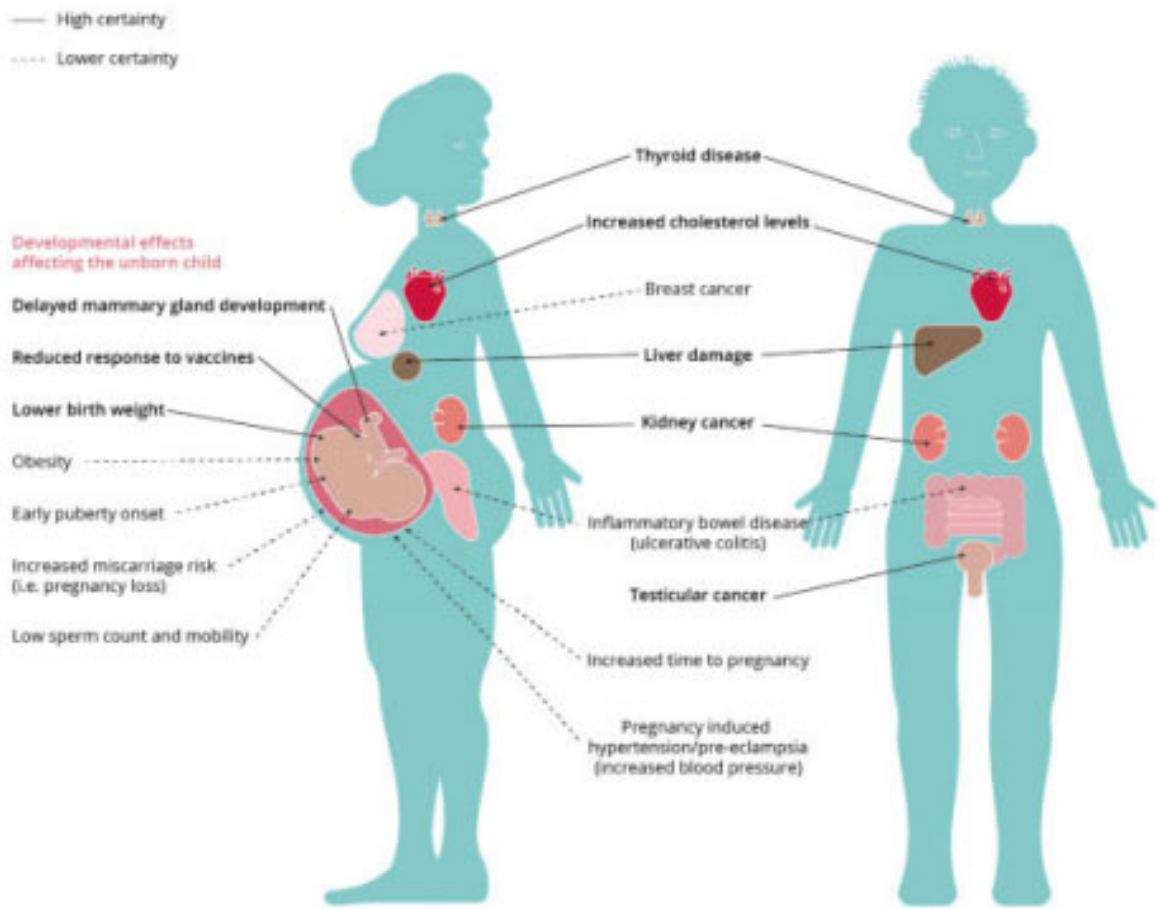
25 <sup>42</sup> *Id.*

26 <sup>43</sup> *Id.*

27 <sup>44</sup> Environmental Protection Agency, PFAS Explained,  
28 <https://www.epa.gov/pfas/pfas-explained> (last accessed Feb. 28, 2023).

<sup>45</sup> European Environment Agency, “Emerging Chemical Risks in Europe – ‘PFAS’”  
(Dec. 12, 2019), <https://www.eea.europa.eu/publications/emerging-chemicals-risks-in-europe> (last accessed Aug. 18, 2022).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



90. The Center for Disease Control’s Agency for Toxic Substances and Disease Registry has also recognized that exposure to high levels of PFAS may impact the immune system and reduce antibody responses to vaccines.<sup>46</sup>

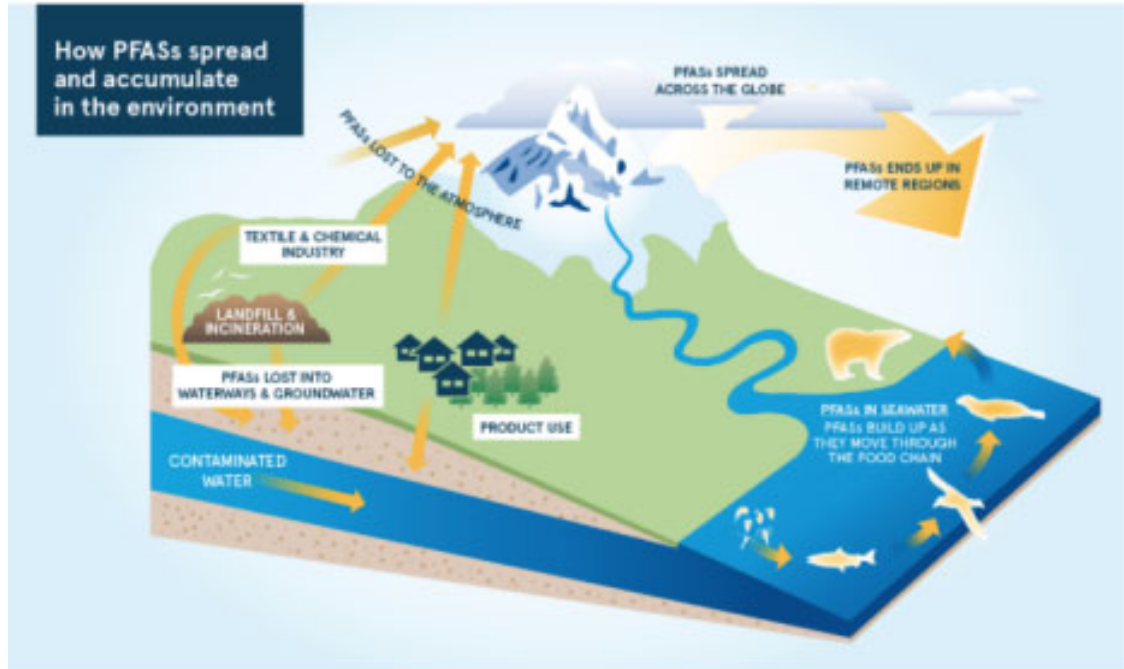
91. In total, this research demonstrates that the risk of severe health complications arising from exposure to PFAS is both credible and substantial.

92. As noted, the harmful risks also extend to the environment where, once introduced, they quickly spread around the globe through multiple pathways, as demonstrated by the figure below.<sup>47</sup>

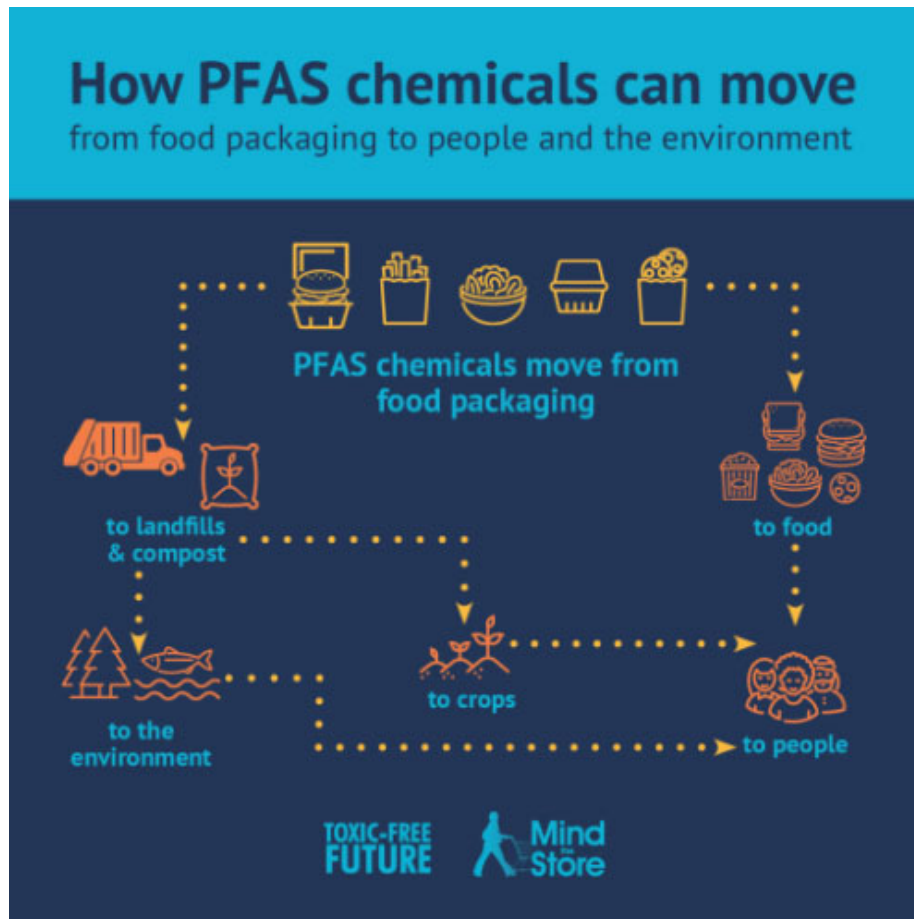
<sup>46</sup> Agency for Toxic Substances and Disease Registry, “What are the health effects of PFAS” <https://www.atsdr.cdc.gov/pfas/health-effects/index.html> (June 24, 2020) (last accessed Feb. 28, 2023).

<sup>47</sup> PFAS Free, “What are PFAS?” <https://www.pfasfree.org.uk/about-pfas> (last accessed Feb. 28, 2023).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



93. Mind the Store and Toxic-Free Future provide a similar graphic related specifically to PFAS in food packaging:



1           94. And, following their introduction, PFAS cause many of the same  
2 problems for other animals as they do for humans, including harm to the immune  
3 system, kidney and liver function of several animals from dolphins to sea otters to  
4 polar bears, often making their way to dinner tables of people who did not even  
5 purchase the Product.<sup>48</sup>

6           95. All of these harms outweigh the simple reason PFAS are used in food  
7 packaging in the first place which is simply to act “as a barrier to keep grease from  
8 escaping” and “from leaking into people’s hands.”<sup>49</sup>

9           96. But PFAS are not necessary for this intended outcome. Indeed,  
10 numerous of Defendant’s competitors’ products have been tested by researchers and  
11 found to contain no levels of organic fluorine.<sup>50</sup> Accordingly, Defendant would have  
12 had knowledge that it could produce the Product packaging without the heightened  
13 levels of fluorine and PFAS inherent in its current composition.

14           97. Yet, Defendant chose not to, and instead misrepresented this  
15 information to consumers, to increase revenues by the cost savings associated with  
16 the use of these chemicals.

17           98. This has not been without consequence to consumers, as fluorine and  
18 PFAS in food packaging migrates<sup>51</sup> onto the food, exposing consumers to both of  
19 these via ingestion.<sup>52</sup>

---

21 <sup>48</sup> *Id.*

22 <sup>49</sup> Iowa State University, “New study calls for mitigation, monitoring of common  
23 grease-proofing food packaging chemicals,” *News Service* (Oct. 19, 2021),  
<https://www.news.iastate.edu/news/2021/10/19/pfas2021> (last accessed Feb. 28,  
2023).

24 <sup>50</sup> *See supra* n. 5.

25 <sup>51</sup> T.H. Begley, “Migration of fluorochemical paper additives from food-contact  
26 paper into foods and food simulants,” *Food Additives & Contaminants: Part A*, 25:3,  
284-390, <https://www.tandfonline.com/doi/abs/10.1080/02652030701513784> (last  
accessed Feb. 28, 2023).

27 <sup>52</sup> *See Nat’l Toxicology Program, Per- and Polyfluoroalkyl Substances (PFAS)*,  
28 <https://ntp.niehs.gov/whatwestudy/topics/pfas/index/html> (Aug. 3, 2021) (last  
accessed Aug. 18, 2022).

1 99. Thus, Defendant’s conduct has been substantially injurious to  
2 consumers, and is actionable.

3 **C. Defendant’s Misrepresentation Are Actionable**

4 100. Plaintiffs and the Class were injured by the full purchase price of the  
5 Products because the Products are worthless, as they are marketed as safe and  
6 sustainable when they are not in fact safe and sustainable.

7 101. Plaintiffs and Class Members bargained for products that are safe for  
8 consumption and sustainable, and were deprived of the basis of their bargain when  
9 Defendant sold them a product in packaging containing dangerous substances with  
10 well-known health and environmental consequences.

11 102. No reasonable consumer would expect that a product marketed as safe  
12 and sustainable would pose a risk to their health, safety, and wellbeing, or that it  
13 would contain dangerous levels of organic fluorine (indicator of PFAS), which are  
14 indisputably linked to harmful health effects in humans and the environment.  
15 Accordingly, Plaintiffs and Class Members suffered economic injuries as a result of  
16 purchasing the Products.

17 103. As the Products expose consumers to organic fluorine/PFAS that pose a  
18 risk to consumers’ health, the Products are not fit for consumption by humans.  
19 Plaintiffs and the Class are further entitled to damages for the injury sustained in  
20 being exposed to high levels of organic fluorine and toxic PFAS; damages related to  
21 Defendant’s conduct, and injunctive relief.

22 104. Moreover, because these facts relate to a critical safety-related  
23 deficiency in the Products, Defendant was under a continuous duty to disclose to  
24 Plaintiffs and Class Members the true standard, quality, and grade of the Products  
25 and to disclose that the Products contained substances known to have adverse health  
26 effects. Nonetheless, Defendant affirmatively misrepresented the Product, as  
27 discussed herein.

28

1           105. Although Defendant is in the best position to know what content it  
2 placed on its website and in marketing materials during the relevant timeframe, and  
3 the knowledge that Defendant had regarding the organic fluorine/PFAS and its  
4 failure to disclose the existence of organic fluorine/PFAS in the Product to  
5 consumers, to the extent necessary, Plaintiffs satisfy the requirements of Rule 9(b)  
6 by alleging the following facts with particularity:

7           106. **WHO:** Defendant made material misrepresentations of fact about the  
8 Product through in-store, website representations, and marketing statements, which  
9 include the statements that the Products are healthy, safe and sustainable. These  
10 representations constitute material misrepresentations regarding harmful chemicals  
11 in the Products packaging which is essential and integral to delivering the Products  
12 to the consumer.

13           107. **WHAT:** Defendant's conduct here was, and continues to be, fraudulent  
14 because they misrepresented the Products as safe, healthy, and sustainable despite  
15 the fact that the Products contain organic fluorine indicative of PFAS that are widely  
16 known to have significant health repercussions. Thus, Defendant's conduct deceived  
17 Plaintiffs and Class Members into believing that the Products are healthy, safe, and  
18 sustainable, when they are not. Defendant knew or should have known that this  
19 information is material to reasonable consumers, including Plaintiffs and Class  
20 Members in making their purchasing decisions, yet they continued to pervasively  
21 market the Product in this manner.

22           108. **WHEN:** Defendant made material misrepresentations during the  
23 putative class periods, including prior to and at the time Plaintiffs and Class  
24 Members purchased the Products, despite its knowledge that the Products packaging  
25 contained harmful substances.

26           109. **WHERE:** Defendant's marketing message was uniform and pervasive,  
27 carried through material misrepresentations in in-store, website representations, and  
28 marketing statements.



1           110. **HOW:** Defendant made material misrepresentations regarding the  
2 Product, including the presence of heightened levels of organic fluorine, indicating  
3 PFAS.

4           111. **WHY:** Defendant made the material misrepresentations detailed herein  
5 for the express purpose of inducing Plaintiffs, Class Members, and all reasonable  
6 consumers to purchase and/or pay for the Products, the effect of which was that  
7 Defendant profited by selling the Products to hundreds of thousands of consumers.

8           112. **INJURY:** Plaintiffs and Class Members purchased, paid a premium, or  
9 otherwise paid more for the Product when they otherwise would not have absent  
10 Defendant's misrepresentations.

11   **CLASS ALLEGATIONS**

12           113. Plaintiffs bring this class action pursuant to 23(b)(2), 23(b)(3), and  
13 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of a  
14 class defined as all persons in California who purchased the Products (the "Class").  
15 Excluded from the Class are persons who made such purchases for purposes of  
16 resale.

17           114. As a result of additional information obtained through further  
18 investigation and discovery, the above-described Classes may be modified or  
19 narrowed as appropriate, including through the use of multi-state subclasses.

20           115. At this time, Plaintiffs do not know the exact number of members of the  
21 aforementioned Class ("Class Members"). However, given the nature of the claims  
22 and the number of Defendant's restaurants in California selling Defendant's Product,  
23 Plaintiffs believe that Class Members are so numerous that joinder of all members is  
24 impracticable.

25           116. There is a well-defined community of interest in the questions of law  
26 and facts involved in this case. Questions of law and facts common to Class  
27 Members predominate over questions that may affect individual Class Members  
28 include:



- 1 (a) whether Defendant misrepresented material facts concerning the
- 2 Products;
- 3 (b) whether Defendant’s conduct was unfair and/or deceptive;
- 4 (c) whether Defendant has been unjustly enriched as a result of the
- 5 unlawful conduct alleged in this Complaint such that it would be
- 6 inequitable for Defendant to retain the benefits conferred upon it
- 7 by Plaintiffs and the Class;
- 8 (d) whether Plaintiffs and the Class sustained damages with respect
- 9 to the common law claims asserted, and if so, the proper measure
- 10 for their damages.

11 117. Plaintiffs’ claims are typical of those of the Class because Plaintiffs, like  
12 all Class Members, purchased, in a typical consumer setting, Defendant’s Product,  
13 and Plaintiffs sustained damages from Defendant’s wrongful conduct.

14 118. Plaintiffs are adequate representative of the Class because their interests  
15 do not conflict with the interests of the Class Members they seek to represent, have  
16 retained competent counsel experienced in prosecuting class actions, and intend to  
17 prosecute this action vigorously. The interests of the Class Members will be fairly  
18 and adequately protected by Plaintiffs and their counsel.

19 119. The class mechanism is superior to other available means for the fair  
20 and efficient adjudication of the claims of Class Members. Each individual Class  
21 Member may lack the resources to undergo the burden and expense of individual  
22 prosecution of the complex and extensive litigation necessary to establish  
23 Defendant’s liability. Individualized litigation increases the delay and expense to all  
24 parties and multiplies the burden on the judicial system presented by the complex  
25 legal and factual issues of this case. Individualized litigation also presents a  
26 potential for inconsistent or contradictory judgments. In contrast, the class action  
27 device presents far fewer management difficulties and provides the benefits of single  
28 adjudication, economy of scale, and comprehensive supervision by a single court on

1 the issue of Defendant’s liability. Class treatment of the liability issues will ensure  
2 that all claims and claimants are before this Court for consistent adjudication of  
3 liability issues.

4 **COUNT I**  
5 **(Violation of California’s Unfair Competition Law,**  
6 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

7 120. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
8 above.

9 121. Plaintiffs bring this claim individually and on behalf of the Class against  
10 Defendant.

11 122. California Business and Professions Code § 17200 prohibits “any  
12 unlawful, unfair, or fraudulent business act or practice.” For the reasons discussed  
13 above, Defendant has engaged in unlawful, unfair, and fraudulent business acts or  
14 practices in violation of California Business & Professions Code § 17200.

15 123. By committing the acts and practices alleged herein, Defendant has  
16 violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§  
17 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and  
18 unfair conduct.

19 124. Defendant has violated the UCL’s proscription against engaging in  
20 **Unlawful Business Practices** as a result of its violations of the CLRA, Cal. Civ.  
21 Code § 1770(a)(5), (a)(7), and (a)(9) as alleged below, violations of California’s  
22 Song-Beverly Act, and violations of California’s False Advertising Law, in addition  
23 to breaches of warranty and violations of common law.

24 125. As more fully described above, Defendant’s misleading marketing,  
25 advertising, packaging, and labeling of the Product is likely to deceive reasonable  
26 consumers. In addition, Defendant have committed unlawful business practices by,  
27 inter alia, making the representations material facts, as set forth more fully herein,  
28 and violating the common law.

1           126. Plaintiffs and Class Members reserve the right to allege other violations  
2 of law which constitute other unlawful business acts or practices.

3           127. Defendant has also violated the UCL’s proscription against engaging in  
4 **Unfair Business Practices**. Defendant’s acts, misrepresentations, and practices as  
5 alleged herein also constitute “unfair” business acts and practices within the meaning  
6 of Business & Professions Code § 17200 *et seq.* in that its conduct is substantially  
7 injurious to consumers, offends public policy, and is immoral, unethical, oppressive,  
8 and unscrupulous as the gravity of the conduct outweighs any alleged benefits  
9 attributable to such conduct.

10           128. There were reasonably available alternatives to further Defendant’s  
11 legitimate business interests, other than the conduct described herein as noted above.

12           129. Defendant has further violated the UCL’s proscription against engaging  
13 in **Fraudulent Business Practices**. Defendant’s claims and misleading statements  
14 with respect to the Product, as more fully set forth above, were false, misleading  
15 and/or likely to deceive the consuming public within the meaning of Business &  
16 Professions Code § 17200.

17           130. Plaintiffs and the other Class Members suffered a substantial injury by  
18 virtue of buying the Products that they would not have purchased absent Defendant’s  
19 unlawful, fraudulent, and unfair marketing, advertising, packaging, and  
20 misrepresentations about the defective nature of the Products, as discussed  
21 throughout.

22           131. There is no benefit to consumers or competition from deceptively  
23 marketing material facts about the true nature of the Product.

24           132. Plaintiffs and the other Class Members had no way of reasonably  
25 knowing that the Products they purchased were not as marketed, advertised,  
26 packaged, or labeled. Thus, they could not have reasonably avoided the injury each  
27 of them suffered.

28



1           140. Defendant violated Civil Code § 1770(a)(5), (a)(7), and (a)(9) by  
2 holding out the Product as healthy, safe and sustainable, when in fact the Products  
3 are not healthy, safe, and sustainable and are instead, dangerous, and useless.

4           141. The Products are not safe because they contain an extraordinary level of  
5 fluorine and PFAS in the packaging which is essential and integral to the delivery of  
6 the Products to consumers that subject unsuspecting consumers to significant health  
7 risks.

8           142. Defendant knew that its representations were false. Specifically,  
9 Defendant displayed the Products and described the Products as healthy, safe and  
10 sustainable, including on the product packaging, on its website, and in its marketing,  
11 despite the fact that the Products were unsafe and detrimental to human health and  
12 the environment.

13           143. Plaintiffs and the Class Members have suffered harm as a result of these  
14 violations of the CLRA because they have incurred charges and/or paid monies for  
15 the Product that they otherwise would not have incurred or paid, and were  
16 unknowingly exposed to a significant and substantial health risk.

17           144. On April 8, 2022, prior to the filing of this Complaint, Plaintiffs'  
18 counsel sent Defendant a CLRA notice letter, which complies in all respects with  
19 California Civil Code § 1782(a). The letter was sent via certified mail, return receipt  
20 requested, advising Defendant that it was in violation of the CLRA and demanding  
21 that they cease and desist from such violations and make full restitution by refunding  
22 the monies received therefrom. The letter stated that it was sent on behalf of all  
23 other similarly situated purchasers. Because of the gravity of the harm alleged,  
24 Plaintiffs had chosen not to wait for Defendant's response. Plaintiffs also chose not  
25 to wait for Defendant's response because Defendant has long known about its  
26 conduct as described herein. Thus, Plaintiff's letter would not have served the  
27 purpose of the letter.

28

1           145. For those reasons, Plaintiffs filed their Complaint on April 27, 2022,  
2 seeking injunctive relief only under the CLRA. Defendant did not correct its  
3 practices.

4           146. Accordingly, Plaintiffs and the Class Members seek, in addition to  
5 injunctive relief, monetary damages from Defendant as permitted by Civil Code §  
6 1782(a).

7           147. Here, equitable relief is appropriate because Plaintiffs may lack an  
8 adequate remedy at law, if, for instance, damages resulting from their purchases of  
9 the Products is determined to be an amount less than the premium price of the  
10 Products. Without compensation for the full premium price of the Products,  
11 Plaintiffs would be left without the parity in purchasing power to which they are  
12 entitled.

13           148. Injunctive relief is also appropriate, and indeed necessary, to require  
14 Defendant to provide full and accurate disclosures regarding the Products so that  
15 Plaintiffs and Class members can reasonably rely on Defendant's representations as  
16 well as those of Defendant's competitors who may then have an incentive to follow  
17 Defendant's deceptive practices, further misleading consumers.

18           149. Restitution and/or injunctive relief may also be more certain, prompt,  
19 and efficient than other legal remedies requested herein. The return of the full  
20 premium price, and an injunction requiring either (1) adequate disclosure of the  
21 organic fluorine and PFAS in the Products' packaging; (2) the removal of such  
22 chemicals from the Products' packaging, or (3) aligning Defendant's representations  
23 with its practices, or aligning its practices with its representations will ensure that  
24 Plaintiffs are in the same place they would have been in had Defendant's wrongful  
25 conduct not occurred, i.e., the position to make informed decisions about the  
26 purchase price of the Products absent Defendant's misrepresentations with the full  
27 purchase price at their disposal.

28



**COUNT III**

**(Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code § 1790, *et seq.* and California Commercial Code § 2314)**

1  
2  
3 150. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
4 above.

5 151. Plaintiffs bring this claim individually and on behalf of the Class against  
6 Defendant.

7 152. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §  
8 1790. *et seq.*, and California Commercial Code § 2314, every sale of consumer  
9 goods in the State of California is accompanied by both a manufacturer’s and retailer  
10 seller’s implied warranty that the goods are merchantable, as defined in that Act. In  
11 addition, every sale of consumer goods in California is accompanied by both a  
12 manufacturer’s and retail seller’s implied warranty of fitness when the manufacturer  
13 or retailer has reason to know that the goods as represented have a particular purpose  
14 and that the buyer is relying on the manufacturer’s or retailer’s skill or judgment to  
15 furnish suitable goods consistent with that represented purpose.

16 153. The Product at issue here is a “consumer good[.]” within the meaning of  
17 Cal. Civ. Code § 1791(a).

18 154. Plaintiffs and the Class Members who purchased the Product are “retail  
19 buyers” within the meaning of Cal. Civ. Code § 1791.

20 155. Defendant is in the business of manufacturing, assembling, and/or  
21 producing the Product and/or selling the Products to retail buyers, and therefore are a  
22 “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

23 156. Defendant impliedly warranted to retailer buyers that the Product was  
24 merchantable in that they would: (a) pass without objection in the trade or industry  
25 under the contract description, and (b) were fit for the ordinary purposes for which  
26 the Product is used. For a consumer good to be “merchantable” under the Act, it  
27 must satisfy both of these elements. Defendant breached these implied warranties  
28

1 because the Product was unsafe for consumption after exposure to Defendant’s  
2 packaging. Therefore, the Products would not pass without objection in the trade or  
3 industry and were not fit for the ordinary purpose for which they are used.

4 157. Plaintiffs and Class Members purchased the Products in reliance upon  
5 Defendant’s skill and judgment in properly packaging and labeling the Product.

6 158. The Products were not altered by Plaintiffs or the Class Members.

7 159. The Products were defective at the time of sale when they it the  
8 exclusive control of Defendant.

9 160. Defendant knew that the Products would be purchased and used without  
10 additional testing by Plaintiffs and Class Members.

11 161. As a direct and proximate cause of Defendant’s breach of the implied  
12 warranty, Plaintiffs and Class Members have been injured and harmed because they  
13 would not have purchased the Products if they knew the truth about the Products,  
14 namely, that they were unfit for use and posed a significant safety risk.

15 162. On April 8, 2022, prior to the filing of this Complaint, Plaintiffs’  
16 counsel sent Defendant a notice letter, apprising Defendant of its breach of  
17 warranties. The letter was sent via certified mail, return receipt requested, advising  
18 Defendant that it was in breach of its warranties and demanding that they cease and  
19 desist from such violations. The letter stated that it was sent on behalf of all other  
20 similarly situated purchasers. Because of the gravity of the harm alleged, Plaintiffs  
21 have chosen not to wait for Defendant’s response. Plaintiffs have also chosen not to  
22 wait for Defendant’s response because Defendant has long known about its conduct  
23 as described herein. Accordingly, Plaintiffs’ letter would not have served the  
24 purpose of the letter.

25 163. Plaintiffs and the Class seek compensatory damages, attorney’s fees,  
26 costs, and any other just and proper relief available under law.

27  
28

**COUNT IV**  
**(Violation of California’s False Advertising Law,  
Cal. Bus. & Prof. Code § 17500, *et seq.*)**

1  
2  
3       164. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
4 above.

5       165. Plaintiffs bring this claim individually and on behalf of the Class against  
6 Defendant.

7       166. Defendant’s acts and practices, as described herein, have deceived  
8 and/or are likely to continue to deceive Class Members and the public. As described  
9 above, and throughout this Complaint, Defendant misrepresented the Product as  
10 healthy, safe and sustainable when, in fact, the Product was not healthy, safe or  
11 sustainable.

12       167. By its actions, Defendant disseminated uniform advertising regarding  
13 the Product to and across California. The advertising was, by its very nature, unfair,  
14 deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code §  
15 17500, *et seq.* Such advertisements were intended to and likely did deceive the  
16 consuming public for the reasons detailed herein.

17       168. The above-described false, misleading, and deceptive advertising  
18 Defendant disseminated continues to have a likelihood to deceive in that Defendant  
19 held out the Products as healthy, safe and sustainable when in fact they are not,  
20 thereby posing a significant risk to the health and wellbeing of Plaintiffs and the  
21 Subclass Members as well as to the environment.

22       169. Defendant continues to misrepresent to consumers that the Products was  
23 safe and sustainable. However, as described, this is not the case.

24       170. In making and disseminating these statements, Defendant knew, or  
25 should have known, its advertisements were untrue and misleading in violation of  
26 California law. Plaintiffs and other Class Members based their purchasing decisions  
27 on Defendant’s misrepresentations. The revenue attributable to the Product sold in  
28

1 those false and misleading advertisements likely amounts to tens of millions of  
2 dollars. Plaintiffs and Class Members were injured in fact and lost money and  
3 property as a result.

4 171. The misrepresentations and non-disclosures by Defendant of the  
5 material facts described and detailed herein constitute false and misleading  
6 advertising and, therefore, constitutes a violation of Cal. Bus. & Prof. Code § 17500,  
7 *et seq.*

8 172. As a result of Defendant's wrongful conduct, Plaintiffs and Class  
9 Members lost money in an amount to be proven at trial. Plaintiffs and Class  
10 Members are therefore entitled to restitution as appropriate for this cause of action.

11 173. Plaintiffs and Class Members seek all monetary and non-monetary relief  
12 allowed by law, including restitution of all profits stemming from Defendant's  
13 unfair, unlawful, and fraudulent business practices; declaratory relief; reasonable  
14 attorneys' fees and costs under California Code of Civil Procedure § 1021.5;  
15 injunctive relief; and other appropriate equitable relief.

16 **COUNT V**  
17 **(Fraud)**

18 174. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
19 above.

20 175. Plaintiffs bring this claim individually and on behalf of the Class under  
21 the laws of the State of California.

22 176. At the time Plaintiffs and Class Members purchased the Products,  
23 Defendant misrepresented the Products as healthy, safe and sustainable.

24 177. Defendant affirmatively misrepresented the Products, giving the Product  
25 the appearance of a product that is indeed safe for use.

26 178. Defendant also knew that its misrepresentations regarding the Product  
27 were material, and that a reasonable consumer would rely upon Defendant's  
28 representations in making purchasing decisions.

1 179. Plaintiffs and Class Members did not know—nor could they have  
2 known through reasonable diligence—about the true nature of the Products.

3 180. Plaintiffs and Class Members would have been reasonable in relying on  
4 Defendant’s misrepresentations in making their purchasing decisions.

5 181. Plaintiffs and Class Members had a right to reply upon Defendant’s  
6 representations as Defendant maintained monopolistic control over knowledge of the  
7 true quality of the Products.

8 182. Plaintiffs and Class Members sustained damages as a result of their  
9 reliance on Defendant’s misrepresentations, thus causing Plaintiffs and Class  
10 Members to sustain actual losses and damages in a sum to be determined at trial,  
11 including punitive damages.

12 **COUNT VI**  
13 **(Constructive Fraud)**

14 183. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
15 above.

16 184. Plaintiffs bring this claim individually and on behalf of the Class under  
17 the laws of the State of California.

18 185. At the time Plaintiffs and Class Members purchased the Products,  
19 Defendant misrepresented the Products as discussed herein.

20 186. Defendant affirmatively misrepresented the Products, giving the  
21 Products the appearance of a product that is indeed safe for consumption and  
22 otherwise sustainable.

23 187. Defendant also knew that its misrepresentations regarding the Products  
24 were material, and that a reasonable consumer would rely upon its representations in  
25 making purchasing decisions.

26 188. Plaintiffs and Class Members did not know—nor could they have  
27 known through reasonable diligence—about the true quality of the Products.  
28

1 189. Plaintiffs and Class Members would have been reasonable in relying on  
2 Defendant's misrepresentations in making their purchasing decisions.

3 190. Plaintiffs and Class Members had a right to rely upon Defendant's  
4 representations as, in addition to the fact that the issue pertained to safety, Defendant  
5 maintained monopolistic control over knowledge of the true quality of the Products,  
6 and what information was available regarding the Products.

7 191. Defendant breached its duty to Plaintiffs and Class Members to make  
8 full disclosures of the safety of their Product.

9 192. Plaintiffs and Class Members sustained damages as a result of their  
10 reliance on Defendant's misrepresentations, thus causing Plaintiffs and Class  
11 Members to sustain actual losses and damages in a sum to be determined at trial.

12 **COUNT VII**  
13 **(Fraudulent Inducement)**

14 193. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
15 above.

16 194. Plaintiffs bring this claim individually and on behalf of the Class under  
17 the laws of the State of California.

18 195. Defendant misrepresented the Products as discussed herein.

19 196. Defendant knew, or should have known, that the Products were falsely  
20 portrayed as discussed throughout.

21 197. Defendant also knew that its misrepresentations regarding the Product  
22 was material, and that a reasonable consumer would rely on Defendant's  
23 representations in making purchasing decision.

24 198. Plaintiffs and Class Members did not know—nor could they have  
25 known through reasonable diligence—about the true quality of the Products.

26 199. Plaintiffs and Class Members would have been reasonable in relying on  
27 Defendant's misrepresentations in making their purchasing decisions.  
28



1 200. Plaintiffs and Class Members had a right to rely on Defendant’s  
2 representations as Defendant maintained a monopolistic control over the Product,  
3 and what information was available regarding the Product, and because the  
4 representations concerned safety-related attributes of the Products.

5 201. Defendant intended to induce—and did, indeed, induce—Plaintiffs and  
6 Class Members into purchasing the Products based upon its affirmative  
7 representations.

8 202. Plaintiffs and Class Members sustained damages as a result of their  
9 reliance on Defendant’s misrepresentations, thus causing Plaintiffs and Class  
10 Members to sustain actual losses and damages in a sum to be determined at trial.

11 **COUNT VIII**  
12 **(Fraudulent Misrepresentation)**

13 203. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
14 above.

15 204. Plaintiffs bring this claim individually and on behalf of the Class under  
16 the laws of the State of California.

17 205. Defendant falsely represented to Plaintiffs and the Class that the  
18 Products were health, safe for use and otherwise sustainable.

19 206. Defendant intentionally, knowingly, and recklessly made these  
20 misrepresentations to induce Plaintiffs and the Class to purchase the Products.

21 207. Defendant knew or should have known that its representations about the  
22 Products were false in that the Products are not healthy, not safe for consumption,  
23 and not sustainable as discussed throughout. Defendant knowingly allowed its  
24 packaging, labels, advertisements, promotional materials, and websites to  
25 intentionally mislead consumers, such as Plaintiffs and the Class.

26 208. Plaintiffs and the Class did in fact rely on these misrepresentations and  
27 purchased the Product to their detriment. Given the deceptive manner in which  
28

1 Defendant advertised, marketed, represented, and otherwise promoted the Products,  
2 Plaintiffs' and the Class' reliance on Defendant's misrepresentations was justifiable.

3 209. As a direct and proximate result of Defendant's conduct, Plaintiffs and  
4 the Class have suffered actual damages in that they would not have purchased the  
5 Products at all had they known of the safety risks associated with the Products and  
6 that they do not conform to Defendant's advertising and marketing.

7 210. Plaintiffs and the Class seek actual damages, attorney's fees, costs, and  
8 other such relief the Court deems proper.

9 **COUNT IX**  
10 **(Negligent Misrepresentation)**

11 211. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
12 above.

13 212. Plaintiffs bring this claim individually and on behalf of the Class under  
14 the laws of the State of California.

15 213. Defendant had a duty to Plaintiffs and the Class to exercise reasonable  
16 and ordinary care in the developing, testing, manufacture, marketing, detailing,  
17 distribution, and sale of the Products.

18 214. Defendant breached its duty to Plaintiffs and the Class by developing,  
19 testing, manufacturing, marketing, detailing, distributing, and selling the Products to  
20 Plaintiffs and the Class that did not have the qualities, characteristics, and suitability  
21 for use as advertised by Defendant and by failing to promptly remove the Products  
22 from the marketplace or take other appropriate remedial action.

23 215. Defendant knew or should have known that the qualities and  
24 characteristics of the Products were not as advertised, marketed, detailed, or  
25 otherwise represented or suitable for its intended use and were otherwise not as  
26 warranted and represented by Defendant. Specifically, Defendant knew or should  
27 have known that the Product was not safe for use and not sustainable.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

216. As a direct and proximate result of Defendant’s conduct, Plaintiffs and the Class have suffered actual damages in that they would not have purchased the Products at all had they known that the Products were not safe for consumption and that the Products do not conform to the Product’s labeling, packaging, advertising, and statements.

217. Plaintiffs and the Class seek actual damages, attorney’s fees, costs, and any other just and proper relief available.

**COUNT X**  
**(Quasi-Contract / Unjust Enrichment)**

218. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.

219. Plaintiffs bring this claim individually and on behalf of the Class under the laws of the State of California.

220. To the extent required by law, this cause of action is alleged in the alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

221. Plaintiffs and Class Members conferred benefits on Defendant by purchasing the Products.

222. Defendant was unjustly enriched in retaining the revenues derived from Plaintiffs and Class Members’ purchases of the Product. Retention of those moneys under these circumstances is unjust and inequitable because Defendant misrepresented its Products as safe, healthy, and sustainable, when they are not in fact safe, healthy, and sustainable. These misrepresentations caused injuries to Plaintiffs and Class Members because they would not have purchased the Product if the true facts were known.

223. Because Defendant’s retention of the non-gratuitous benefits conferred on them by Plaintiffs and Class Members is unjust and inequitable, Defendant has been unjustly enriched in an amount to be determined at trial.

**COUNT XI**  
**(Breach of Express Warranty)**

1  
2  
3       224. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
4 above.

5       225. Plaintiffs bring this claim individually and on behalf of the Class under  
6 the laws of the State of California.

7       226. Plaintiffs and Class Members formed a contract with Defendant at the  
8 time Plaintiffs and Class Members purchased the Product.

9       227. The terms of the contract include the promises and affirmations of fact  
10 made by Defendant on the Products packaging and through marketing and  
11 advertising, as described above.

12       228. This labeling, marketing, and advertising constitute express warranties  
13 and became part of the basis of the bargain and are part of the standardized contract  
14 between Plaintiffs and Class Members.

15       229. As set forth above, Defendant purports through its advertising, labeling,  
16 marketing, and packaging, to create an express warranty that the Product is safe for  
17 consumption and is otherwise sustainable.

18       230. Plaintiffs and Class Members performed all conditions precedent to  
19 Defendant's liability under this contract when they purchased the Products.

20       231. Defendant breached express warranties about the Products and its  
21 qualities because despite Defendant's warranties that the Products are safe for  
22 consumption and is otherwise sustainable the Product is objectively not in fact safe  
23 for use and not sustainable. Thus, the Product did not confirm to Defendant's  
24 affirmations and promises described above.

25       232. Plaintiffs and each Class Member would not have purchased the Product  
26 had they known the true nature of the Products.

27       233. On April 8, 2022, prior to the filing of this Complaint, Plaintiffs'  
28 counsel sent Defendant a notice letter, apprising Defendant of its breach of

1 warranties. The letter was sent via certified mail, return receipt requested, advising  
2 Defendant that it was in breach of its warranties and demanding that they cease and  
3 desist from such violations. The letter stated that it was sent on behalf of all other  
4 similarly situated purchasers. Because of the gravity of the harm alleged, Plaintiffs  
5 had chosen not to wait for Defendant's response. Plaintiffs have also chosen not to  
6 wait for Defendant's response because Defendant has long known about its conduct  
7 as described herein. Accordingly, Plaintiffs' letter would not have served the  
8 purpose of the letter.

9 234. As a result of Defendant's breach of warranty, Plaintiffs and each Class  
10 Member suffered and continues to suffer financial damage and injury, and are  
11 entitled to all damages, in addition to costs, interest and fees, including attorney's  
12 fees, as allowed by law.

13 **REQUEST FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
15 situated, seeks judgment against Defendant, as follows:

- 16 (a) For an order certifying the Class under Fed. R. Civ. P. 23 and  
17 naming Plaintiffs as representatives of the Class and Plaintiffs'  
18 attorneys as Class Counsel;
- 19 (b) For an order declaring the Defendant's conduct violates the  
20 statutes referenced herein;
- 21 (c) For an order finding in favor of Plaintiffs and the Class on all  
22 counts asserted herein;
- 23 (d) For compensatory, statutory, and punitive damages in amounts to  
24 be determined by the Court and/or jury;
- 25 (e) For prejudgment interest on all amounts awarded;
- 26 (f) For an order of restitution and all other forms of equitable  
27 monetary relief;
- 28 (g) For injunctive relief as pleaded or as the Court may deem proper;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- (h) For medical monitoring as a means to safeguard Plaintiffs’ and Class Members’ health and to mitigate any damages for future medical treatment; and
- (i) For an order awarding Plaintiffs and the Class their reasonable attorneys’ fees and expenses and costs of suit.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: March 1, 2023

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:  /s/ L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)  
 Sean L. Litteral (State Bar No. 331985)  
 1990 North California Boulevard, Suite 940  
 Walnut Creek, CA 94596  
 Telephone: (925) 300-4455  
 Facsimile: (925) 407-2700  
 Email: ltfisher@bursor.com  
 slitteral@bursor.com

**BURSOR & FISHER, P.A.**  
 Joshua D. Arisohn (*pro hac vice* forthcoming)  
 Alec M. Leslie (*pro hac vice* forthcoming)  
 888 Seventh Avenue  
 New York, NY 10019  
 Telephone: (646) 837-7150  
 Facsimile: (212) 989-9163  
 E-Mail: jarisohn@bursor.com  
 aleslie@bursor.com

*Attorneys for Plaintiffs and the Putative Class*