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

TESHA GAMINO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SPIN MASTER, INC., and THE MAYA
GROUP, INC.,

Defendants.

Case No.: 5:23-cv-02242

CLASS ACTION COMPLAINT

1. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law (Cal. Bus. & Prof. Code § 17500)
3. Violation of Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)
4. Breach of Warranty
5. Fraudulent Inducement—
Intentional Misrepresentation
6. Negligent Misrepresentation
7. Unjust Enrichment

JURY TRIAL DEMAND

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1 **COMPLAINT**

2 1. Plaintiff Tesha Gamino (“**Plaintiff**”), individually and on behalf of all
3 others similarly situated, as more fully described herein (the “**Class**” and “**Class**
4 **Members**”), bring this class action complaint against Defendants Spin Master, Inc.
5 (“**Spin Master**”) and The Maya Group, Inc. (“**Maya**”) (collectively, “**Defendants**”),
6 and allege the following based upon information and belief, unless otherwise
7 expressly stated as based upon personal knowledge.

8 **I. INTRODUCTION**

9 2. **Overview.** No one should ever lose a child to a toy. That is the founding
10 principle of this lawsuit, and a principle that Defendants wholly ignore through their
11 labeling and advertising of their water beads products. Consumers purchase children’s
12 toys with an eye toward entertainment and education, but the desire to entertain and
13 educate is never intended to sacrifice safety. Parents, teachers, guardians, and other
14 caregivers rely on the manufacturer to accurately and completely disclose significant
15 and hidden dangers posed by the toy when considering whether it is safe for children.
16 Companies, like Defendants, market, manufacture, distribute, and sell children’s toys
17 to make millions off the consumers’ demand for safe and educational toys.¹

18 3. **Water Beads Background.** Water beads are marketed as a children’s toy
19 that have garnered immense popularity over the last decade. Water beads are tiny,
20 spherical, and gelatinous toys that look strikingly similar to candy.² They are often
21 marketed as sensory toys intended for children to squish, squeeze, and move them

22 ¹ Since 2019, children’s toys have amassed at least \$20 Billion each year in retail
23 sales. *Total Retail Sales Revenue of Toys in the United States from 2019 to 2022*,
24 STATISTA, <https://www.statista.com/statistics/195054/total-revenue-of-us-toys-and-games-market-since-2005/> (last visited Oct. 2, 2023). Defendant Spin Master made
25 \$2.02 Billion in 2022, and specifically made over \$200 Million in 2021 in its
26 “Activities, Games & Puzzles and Plush” category, which encompasses Orbeez sales.
27 *Spin Master Reports Preliminary 2021 and Q4 2021 Revenue*, SPIN MASTER,
28 <https://www.spinmaster.com/en-US/corporate/media/press-releases/122889/> (last
visited Oct. 2, 2023).

² *Nobody Should Lose Their Child Over a Toy*, CONSUMER REPORTS (Sept. 28, 2023),
<https://www.consumerreports.org/babies-kids/toys/water-beads-pose-a-serious-safety-risk-to-children-a6431187819/>.

1 around to aid in their fine motor development.³ Water beads’ unique calling-card is
2 that they are made from superabsorbent polymers that expand up to 1,500 times their
3 original size when exposed to water.⁴

4 **4. Hidden Dangers of Water Beads.** What consumers do not know about
5 water beads—and cannot discern from relying on the manufacturers’ safety
6 representations—is that water beads present severe health risks to children that put
7 their lives in danger. Such dangers arise when children ingest or insert water beads
8 into their bodies, which can lead to a host of life-threatening and severe injuries,
9 unless the water beads are identified and surgically removed. The injuries that may
10 be caused by water beads include, but are not limited to, gastrointestinal blockages;
11 nasal cavity, ear canal, and respiratory obstructions; vomiting and severe dehydration;
12 seizures; hearing loss; and death.⁵ To exacerbate these concerns further, water beads
13 are practically invisible on x-rays and are thus extremely difficult for doctors and
14 medical professionals to detect, which can lead to misdiagnoses and detrimental
15 delays in treatment.⁶ These risks are every parent’s worst nightmare. This case is
16 about Defendants, the manufacturers, marketers, advertisers, and sellers of certain
17 water beads products, that chose to forego warning parents and consumers about these
18

19 ³ *Id.*

20 ⁴ *Water Beads: Harmful if Swallowed, Put in Ears*, HEALTHY CHILDREN (Sept. 14,
21 2023), <https://www.healthychildren.org/English/safety-prevention/at-home/Pages/Water-Beads-Harmful.aspx#:~:text=When%20the%20tiny%2C%20hard%20plastic,be%20dried%20out%20and%20reused.>

22 ⁵ American Academy of Pediatrics, *Water Absorbing Polymer Beads*, 35 AAP NEWS
23 1 (2014) (“These soft, colorful products can be mistaken by a child for candy. When
24 swallowed, they can expand inside a child’s body and block the intestines, which can
25 be uncomfortable, cause vomiting, and dehydration, and can be life-threatening.
26 Surgery may be necessary to remove them.”); American Academy of Pediatrics,
27 *Water-Absorbing Polymer Beads*, 34 AAP NEWS 1 (2013) (“When the bead is
28 ingested, it expands and can cause intestinal obstructions inside a child’s body,
resulting in severe pain, vomiting, dehydration or death. The toys do not show up on
an X-ray, and surgery must be used to remove them.”); *Nobody Should Lose Their
Child Over a Toy*, *supra* note 2 (discussing how a 10-month-old died after swallowing
water beads).

⁶ *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

1 severe and life-changing risks to take advantage of their desire for safe, entertaining,
2 and educational children’s toys. Defendants did this despite the alarming rate of
3 several thousand reported water beads-related hospitalizations of children across the
4 country, per year, since at least 2017, including several reported deaths, all stemming
5 from the known or reasonably knowable risks of obstructions and latent or non-
6 detections. Unfortunately, the water beads products are not nearly as safe as
7 Defendants deliberately lead people to believe, causing consumers to overpay
8 millions and forego safer alternatives, all while putting hundreds of thousands of
9 children in danger. In this way, Defendants have not only bilked millions of dollars
10 from consumers in ill-gotten gains, but Defendants have put the health and welfare of
11 thousands of children at risk.

12 5. **Material Dangers and Omissions.** In an effort to increase profits and
13 gain an unfair advantage over their lawfully acting competitors, Defendants falsely
14 and misleadingly market, advertise, label, and package certain of their water beads by
15 failing to adequately inform consumers that (1) the Products, when ingested or
16 inserted in the body (e.g., nasal cavity, ear canal, respiratory, and gastrointestinal
17 system) can significantly expand beyond their original size, causing severe and life-
18 threatening injuries, such as intestinal blockage or obstruction of the nasal cavity, ear
19 canal, and/or respiratory system (the “**Obstruction Omission**” and/or “**Obstruction**
20 **Danger**”); and (2) that the Products are difficult to detect and diagnose because they
21 are practically invisible on x-rays (the “**Non-Detection Omission**” and/or “**Non-**
22 **Detection Danger**”) (collectively, the “**Material Omissions**” and/or “**Material**
23 **Dangers**”). *See Exhibit 1* (Product Images); *see also, infra* at ¶¶ 20-31. The Material
24 Omissions mislead reasonable consumers into believing that the Products do not pose
25 risks of the Material Dangers, thus lulling reasonable consumers into a false sense of
26 security. Defendants fail to provide adequate safety warnings to consumers regarding
27 the Material Dangers before consumers purchase the Products by stating expressly,
28 clearly, and conspicuously on the Products’ front packaging and labels that the

1 Products pose these severe and life-threatening risks—to wit, the Obstruction Danger
2 and the Non-Detection Danger.

3 **6. The Deception of the Material Omissions and Unlawful Marketing &**
4 **Sale of the Products.** The Material Omissions have misled reasonable consumers,
5 including Plaintiff and the Class, into believing that the Products do not pose the
6 Obstruction Danger and the Non-Detection Danger. However, the Products fail to live
7 up to Defendants’ promises. Contrary to the reasonable consumer’s perception of the
8 Products with the Material Omissions, the Products pose severe health risks to
9 children, specifically the Obstruction Danger and the Non-Detection Danger, that put
10 children’s lives in danger. Through falsely, misleadingly, and deceptively marketing
11 the Products with the Material Omissions, Defendants have sought to take advantage
12 of consumers’ need for children’s toys that are safe. In this way, Defendants have
13 charged consumers a premium for Products that they would not otherwise have paid
14 if Defendants disclosed the Material Dangers. Defendants have done so at the expense
15 of unsuspecting consumers, as well as Defendants’ lawfully acting competitors, over
16 whom Defendants maintain an unfair competitive advantage in the sale of safe
17 children’s toys. Accordingly, Defendants’ Material Omissions are misleading and
18 deceptive, and therefore unlawful.

19 **7. The Products.** The Products at issue are Orbeez Brand water beads toys,
20 sold in the United States, with the Material Omissions on the Products’ labels and/or
21 packaging, in all sizes, variations, packs, sets, and bundles (collectively referred to
22 herein and throughout this complaint as the “**Products**”). The Products include, but
23 are not necessarily limited to:

24 a. (1) *Orbeez Water Beads Packs*, including

25 1) Activity Orb (400 Beads)

26 2) Activity Orb Double Pack (800 Beads)

27 3) Activity Orb Fidget Pack – 4 Mini-Activity Playsets (1,600
28 Beads)

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- 4) Color Pack (1,000 Beads)
- 5) Color Seed Pack (1,000 Beads)
- 6) Glow in the Dark Feature Pack (1,200 Beads)
- 7) Glow in the Dark Water Beads Seeds (50,000 Beads)
- 8) Grown Mega Pack (2,000 Beads)
- 9) Grown Orbeez Bundle (1,600 Beads)
- 10) Grown Orbeez Tube (400 Beads)
- 11) Micro Mix (2,500 Beads)
- 12) Mixin' Slime Set (2,500 Beads)
- 13) Multi-Colored Shimmer Feature Pack (1,300 Beads)
- 14) Multipack (2,000 Beads)
- 15) Rainbow Water Beads Seeds (75,000 Beads)
- 16) Seed Mega Refill (6,000 Beads)

(see **Exhibit 1-1 to 1-16** [Product Images for Orbeez *Water Beads Packs*]);

b. (2) Orbeez *Water Beads Playsets*, including

- 17) Color Meez Activity Kit (1,200 Beads)
- 18) Hand Spa (1,000 Beads)
- 19) Relaxing Hand Spa (600 Beads)
- 20) Sensation Station - Glow in the Dark Water Beads (2,000 Beads)
- 21) Sensation Station (2,000 Beads)
- 22) Soothing Foot Spa (2,000 Beads)

(see **Exhibit 1-17 to 1-22** [Product Images for Orbeez *Water Beads Playsets*]);

c. (3) Orbeez *Water Beads Art*, including

- 23) Crush'n Design Set – Butterfly and Fairy (300 Beads)
- 24) Kaleidoscope (1,500 Beads)
- 25) Orbeez Art (2,500 Beads)

(see **Exhibit 1-23 to 1-25** [Product Images for Orbeez *Water Beads Art*]);

d. (4) Orbeez *Water Beads Play Creatures*, including

- 1 26) Crushkins Pets (1,200 Beads)
- 2 27) Crushkins Safari (1,200 Beads)
- 3 28) Zorbeez Creature Chumper – Big Ben (1,500 Beads)
- 4 29) Zorbeez Monster Oozers – Fish Faced Fred (850 Beads)
- 5 30) Zorbeez Monster Oozers – Shaggy Shredder Sam (850 Beads)
- 6 31) Zorbeez Monster Oozers – Spaced Out Max (850 Beads)

7 (see **Exhibit 1-26 to 1-31** [Product Images for Orbeez *Water Beads Play Creatures*]).

8 **8. Primary Dual Objectives.** Plaintiff brings this action individually and in
9 a representative capacity on behalf of those similarly situated consumers, such as
10 parents, guardians, friends, other family members (aunts, uncles, etc.), teachers,
11 daycare providers, after school care providers, nannies, babysitters, and other
12 childcare providers, who purchased the Products during the relevant Class Period
13 (Class and/or Subclass defined *infra* at ¶ 52) for dual primary objectives. **One**,
14 Plaintiff seeks, on Plaintiff’s individual behalf and on behalf of the Class/Subclass, a
15 monetary recovery of the price premium they have overpaid for Products as a result
16 of the Material Omissions, as consistent with permissible law (including, for example,
17 damages, restitution, disgorgement, and any applicable penalties/punitive damages
18 solely as to those causes of action so permitted). **Two**, Plaintiff seeks, on Plaintiff’s
19 individual behalf and on behalf of the Class/Subclass, injunctive relief to stop
20 Defendants’ unlawful manufacture, marketing, and sale of the Products with the
21 Material Omissions to avoid or mitigate the risk of deceiving the public into believing
22 that the Products do not pose the Obstruction Danger and the Non-Detection Danger,
23 by requiring Defendants to change their business practices, which may include one or
24 more of the following: disclosure of the Material Omissions on the Products’ labels
25 and/or packaging; disclosure of the Material Omissions in the Products’ advertising;
26 modification of the Products so that they no longer pose severe and life threatening
27 dangers to children; and/or discontinuance of the Products’ manufacture, marketing,
28 and/or sale.

1 **II. JURISDICTION**

2 9. This Court has original jurisdiction over the action pursuant to the Class
3 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class
4 consists of 100 or more members; the amount in controversy exceeds \$5,000,000,
5 exclusive of costs and interest; and minimal diversity exists. This Court also has
6 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

7 **III. VENUE**

8 10. Venue is proper in this District under 28 U.S.C. § 1391 because a
9 substantial part of the events and omissions giving rise to Plaintiff's claims occurred
10 in this District. Specifically, Plaintiff, as identified below, purchased the unlawful
11 Products in this District, and Defendants have marketed, advertised, and sold the
12 Products within this District with the Material Omissions. In addition, Defendant
13 Spin Master, Inc. maintains a principal place of business and headquarters in the City
14 of Los Angeles, California; and Defendant The Maya Group, Inc., maintains a
15 principal place of business and headquarters in the City of Huntington Beach,
16 California. Thus, all Defendants maintain a principal place of business and
17 headquarters within this District and are therefore residents of this District.

18 **IV. PARTIES**

19 **A. Plaintiff**

20 11. **Plaintiff Tesha Gamino.** The following is alleged based upon Plaintiff
21 Gamino's personal knowledge:

- 22 a. **Residence.** Plaintiff Gamino is a resident of the County of Riverside,
23 in the State of California.
- 24 b. **Purchase Details.** Plaintiff Gamino purchased the (a) the Orbeez
25 Color Meez Activity Kit (1,200 Beads) (*see* Exhibit 1-17) and
26 (b) Orbeez Color Seed Pack (1,000 Beads) (*see* Exhibit 1-5)
27 (collectively, the "**Gamino Purchased Products**"). Plaintiff Gamino
28 purchased the Orbeez Color Meez Activity Kit (1,200 Beads) for
approximately \$10.00 at a store located in Riverside County in the
State of California in or around Winter 2020. *See* **Exhibit 1-17**
(Exemplar Color Meez Activity Kit Image). Between in or around Fall
2022 and in or around January 2023, Plaintiff Gamino purchased
approximately 10 packs of the Orbeez Color Seed Pack (1,000 Beads)

1 for approximately \$5.00 per pack at a store located in Riverside
2 County in the State of California. *See Exhibit 1-5* (Exemplar Color
3 Seed Pack Image).

- 4 c. **Reliance on Material Omissions to Form Reasonable Safety Perception.** In making the purchases, Plaintiff Gamino reviewed the
5 Gamino Purchased Products' packaging and labels. Plaintiff Gamino
6 did not notice any safety warnings regarding either the Obstruction
7 Danger or the Non-Detection Danger. This led Plaintiff Gamino to
8 believe that the Gamino Purchased Products does not pose a risk of
9 the Material Dangers.
- 10 d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff
11 Gamino did not know that the Products posed a risk of the Obstruction
12 Danger and the Non-Detection Danger.
- 13 e. **No Notice of Contradictions.** Plaintiff Gamino did not notice any
14 disclaimer, qualifier, or other explanatory statement or information on
15 the Gamino Purchased Products' labels or packaging that disclosed the
16 Material Omissions or otherwise suggested that the Products pose a
17 risk of the Obstruction Danger and/or the Non-Detection Danger.
- 18 f. **Causation/Damages.** Plaintiff Gamino would not have purchased the
19 Products or would not have paid as much for the Gamino Purchased
20 Products, had Plaintiff known of the Material Omissions—i.e., that the
21 Products pose a risk of the Obstruction Danger and/or the Non-
22 Detection Danger.
- 23 g. **Desire to Repurchase.** Plaintiff Gamino continues to see the Products
24 available for purchase and desires to purchase them again if the
25 Products were safe—i.e., if the Products did not pose the Obstruction
26 Danger and/or the Non-Detection Danger.
- 27 h. **Lack of Personal Knowledge/Expertise to Determine Truth.**
28 Plaintiff Gamino is not personally familiar with the science behind the
Products as Plaintiff does not possess any specialized knowledge,
skill, experience, or education in water beads, the safety risks related
to water beads and/or children's toys, and/or the diagnosis and
treatment of health conditions related to water beads and/or children's
toys. Thus, Plaintiff Gamino is unable to determine whether the
Products present Material Dangers—i.e., whether the Products do or
do not pose a risk of the Obstruction Danger or the Non-Detection
Danger.
- i. **Inability to Rely.** Plaintiff Gamino is, and continues to be, unable to
rely on the Material Omissions on the Products' labels and packaging
to evaluate the safety of the Products with respect to the Material
Dangers.

12. **Plaintiff's Future Harm.** Defendants continue to market and sell the
Products with the Material Omissions. Plaintiff would like to purchase the Products
in the future if they lived up to the reasonable consumer's perception of the Products
as free of the Material Dangers. However, Plaintiff is an average consumer. The

1 average consumer is not sophisticated in, for example, the dangers of water beads
2 made from superabsorbent polymers, similar to and including the Products, the ability
3 of x-rays to detect water beads or similar products, and/or the extent of the health
4 risks associated with water beads once ingested or inserted in the human body. Since
5 Plaintiff would like to purchase the Products again to obtain the benefits of a safe
6 children’s toy—despite the fact that the Products were once marred by misleading
7 advertising or warranties—Plaintiff would likely and reasonably, but incorrectly,
8 assume the Products are true to and conform with the reasonable consumer’s
9 perception of the Products as free from the Material Dangers based on a review of the
10 Products’ labels, packaging, and advertisements that contain the Material Omissions.
11 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that
12 Defendants have fixed the Products to avoid the Material Dangers, such that Plaintiff
13 may buy them again, believing they are no longer falsely advertised and warranted.
14 In this regard, Plaintiff is currently and in the future deprived of the ability to rely on
15 the Material Omissions in deciding to purchase the Products.

16 **B. Defendants**

17 13. **Defendant Spin Master, Inc. (“Defendant Spin Master”)** is a
18 corporation that has headquarters and a principal place of business in the City of Los
19 Angeles, State of California. Defendant Spin Master was doing business in the State
20 of California at all relevant times, including the Class Period. Directly and through its
21 agents, Defendant Spin Master has substantial contacts with and receives substantial
22 benefits and income from and through the State of California. Defendant Spin Master
23 is one of the owners, marketers, manufacturers, distributors, and/or sellers of the
24 Products, and is one of the companies that created and/or authorized the labels,
25 packaging, and advertising of the Products with the Material Omissions. Defendant
26 Spin Master and its agents promoted, marketed, and sold the Products at issue
27 throughout the United States, including in particular the State of California and this
28 County or District. The unfair, unlawful, deceptive, and misleading Material

1 Omissions on the Products were prepared, authorized, ratified, and/or approved by
2 Defendant Spin Master and its agents to deceive and mislead consumers in the State
3 of California and United States into purchasing the Products. Additionally, Defendant
4 Spin Master knew or should have known of the Material Omissions, but it failed to
5 adequately disclose them at the time Plaintiff and all Class Members purchased the
6 Products, notwithstanding Defendant Spin Master's duty to do so. Further, Defendant
7 Spin Master had the right and authority, at all relevant times, to disclose the Material
8 Omissions, including the time leading up to and through the incident giving rise to
9 the claims asserted herein (including, Plaintiff's purchases described *supra* at ¶ 11 in
10 addition to all Class Members' purchases).

11 **14. Defendant The Maya Group, Inc. ("Defendant Maya")** is a
12 corporation that has headquarters and a principal place of business in the City of
13 Huntington Beach, State of California. Defendant Maya was doing business in the
14 State of California at all relevant times, including the Class Period. Directly and
15 through its agents, Defendant Maya has substantial contacts with and receives
16 substantial benefits and income from and through the State of California. Defendant
17 Maya is one of the owners, marketers, manufacturers, distributors, and/or sellers of
18 the Products, and is one of the companies that created and/or authorized the labels,
19 packaging, and advertising of the Products with the Material Omissions. Defendant
20 Maya and its agents promoted, marketed, and sold the Products at issue throughout
21 the United States, including in particular the State of California and this County or
22 District. The unfair, unlawful, deceptive, and misleading Material Omissions on the
23 Products were prepared, authorized, ratified, and/or approved by Defendant and its
24 agents to deceive and mislead consumers in the State of California and United States
25 into purchasing the Products. Additionally, Defendant Maya knew or should have
26 known of the Material Omissions, but it failed to adequately disclose them at the time
27 Plaintiff and all Class Members purchased the Products, notwithstanding Defendant
28 Maya's duty to do so. Further, Defendant Maya had the right and authority, at all

1 relevant times, to disclose the Material Omissions, including the time leading up to
 2 and through the incident giving rise to the claims asserted herein (including,
 3 Plaintiff's purchases described *supra* at ¶ 11 in addition to all Class Members'
 4 purchases).

5 **V. FACTUAL ALLEGATIONS**

6 **A. Water Beads Background**

7 **15. Water Beads Composition and Expansion Properties.** Water beads are
 8 made from superabsorbent polymers.⁷ The vast majority of water beads manufactured
 9 today are made from petroleum, polyacrylate, acrylics, and the chemical acrylamide.⁸
 10 Acrylamide is a chemical often found in foods cooked at high temperatures and has
 11 been found to cause cancer in animals exposed to high doses.⁹ Acrylamide is also
 12 used to produce industrial plastics, and is found in cigarette smoke.¹⁰ In water beads
 13 manufacturing, the result of the chemical reaction of acrylamide is a large chain of
 14 molecules forming a super absorbent polymer.¹¹ These superabsorbent polymers,
 15 when exposed to water (or other fluids), expand to exponentially greater sizes—
 16 sometimes up to 1,500 times their original size.¹² For example, water beads can
 17 expand from the size of a small marble to the size of a golf ball when exposed to
 18 water.¹³ Bodily fluids activate water beads' expansion properties. The fluid in the
 19 duodenum, the first part of the small intestine, has a high pH value, which increases
 20 water beads' expansion.¹⁴ Respiratory mucus also triggers expansion as it is 95-

21
 22 ⁷ *Are Water Beads Toxic?*, POISON CONTROL, <https://www.poison.org/articles/are-water-beads-toxic> (last visited Oct. 10, 2023).

23 ⁸ *Id.*; *Water Beads: Harmful if Swallowed, Put in Ears*, *supra* note 4.

24 ⁹ *Acrylamide Questions and Answers*, FDA (Sept. 25, 2022) <https://www.fda.gov/food/process-contaminants-food/acrylamide-questions-and-answers>.

25 ¹⁰ *Id.*

26 ¹¹ *Are Water Beads Toxic?*, *supra* note 7.

27 ¹² *Id.*

28 ¹³ *Id.*

¹⁴ Hye Bo Kim, et al., *A Case of Ingested Water Beads Diagnosed with Point-of-Care Ultrasound*, 7 CLIN. EXP. EMERG. MED. 330, 330-333 (2020) (available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7808832/>).

1 percent water.¹⁵ Depending on their original size when dry, water beads, for example,
 2 can expand from the size of an ice-cream sprinkle to the size of a marble or from the
 3 size of a marble to the size of a golf ball.¹⁶

4 **16. Water Beads Purpose and Target Market.** Water beads are marketed
 5 and used as learning and motor development children's toys for children five years-
 6 old and older.¹⁷ Water beads are promoted as helping children develop their sensory
 7 skills, fine motor skills, color recognition, and creativity.¹⁸ Additionally, water beads
 8 are often promoted as developmental toys to help children with autism and other
 9 developmental conditions.¹⁹ Their marketed use is for children to roll, squeeze,
 10 squish, bounce, or crush them in their hands.²⁰ Some manufacturers, including
 11 Defendants, even advertise that children should play with water beads by filling an
 12 entire pool with them.²¹

13 **17. Regulatory Recognition of the Danger of Expanding Materials**
 14 **Children's Toys.** Children's toys that expand, such as water beads, must meet certain
 15 safety requirements under federal law. The Consumer Product Safety Improvement
 16 Act made the standards set forth by the American Society for Testing and Materials
 17 (ASTM), specifically ASTM F963, a mandatory consumer product safety standard.²²
 18 Within ASTM F963, are testing requirements for toys classified as expanding
 19 materials, which test objects' ability to pass through a 20 mm gap to simulate a three-
 20

21 ¹⁵ Nasser Alharbi & Maryam Dabbour, *Aspiration of Superabsorbent Polymer Beads*
 22 *Resulting in Focal Lung Damage: A Case Report*, 20 BMC PEDIATRICS 262-267
 (2020) (available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7257448/>).

23 ¹⁶ *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

24 ¹⁷ *Water Beads – Everything You Need to Know*, 7 DAYS OF PLAY,
 25 <https://7daysofplay.com/water-beads-guide/#:~:text=cautions%20before%20using.-,The%20Educational%20Benefits,concepts%20to%20your%20little%20ones> (last
 26 visited Oct. 10, 2023).

27 ¹⁸ *Id.*

28 ¹⁹ *Water Beads: Harmful if Swallowed, Put in Ears*, *supra* note 4.

²⁰ *Orbeez, The One and Only, Glow in the Dark Water Beads, 50,000 Beads, Safety-*
Tested Sensory Toys for Kids Aged 5 and Up, ORBEEZ,
https://orbeezone.com/en_us/products/778988343425 (last visited Oct. 10, 2023).

²¹ *Id.*

²² 16 C.F.R. § 1250.2.

1 year-old’s small intestine, which is necessarily larger than an infant or toddler’s small
 2 intestines that has been found to be as small as 12mm in diameter on average.²³ ASTM
 3 F963 recognizes that expanding material toys, such as water beads, present serious
 4 risks of injury and death.²⁴ ASTM F963, however, fails to adequately guard against
 5 these risks as it does not account for children under the age of 3 who are likewise
 6 exposed to the toys and whose intestines are far narrower than 20 mm in diameter.²⁵

7 **18. Regulators Warn Current Testing Standards Are Not Sufficient.**

8 Numerous incident reports involving water beads since the adoption of ASTM F963
 9 further illustrate that merely complying with the current standard does not sufficiently
 10 protect children from these toys’ dangers.²⁶ The Consumer Product Safety
 11 Commission (CPSC), a federal entity aimed at educating consumers, establishing
 12 voluntary and mandatory standards, and enforcing those standards for consumer
 13 products, concluded that the expanding materials requirement under ASTM F963 is
 14 not stringent enough, given the 248 water beads related incident reports and the
 15 estimated 4,500 emergency room visits all occurred after the adoption of ASTM
 16 F963.²⁷ Specifically, CPSC staff members wrote ASTM International:

17
 18 ²³ *Id.*; ASTM INT’L, F963-17 – STANDARD CONSUMER SAFETY SPECIFICATION FOR
 19 TOY SAFETY, § 4.40 Expanding Materials, pp. 42 (2017); E.M. Haworth, et al.,
 20 *Radiological measurement of small bowel calibre in normal subjects according to*
 21 *age*, 18 *Clinical Radiology* 417, 417-421 (1967), available at
 22 <https://www.sciencedirect.com/science/article/abs/pii/S0009926067800515>
 23 (accessed Oct. 25, 2023) (“The calculated standard measurement for children increased
 24 from 12 mm. at 6 months to 21 mm. at 8 years and 23 mm. at 15 years of age”).

25 ²⁴ ASTM INT’L, F963-17 *supra* note 23 at § A12.3, pp. 107.

26 ²⁵ *See* E.M. Haworth, et al., *Radiological Measurement of Small Bowel Calibre in*
 27 *Normal Subjects According to Age*, 18 *CLINICAL RADIOLOGY* 417, 417-421 (1967),
 28 available at
 29 [https://www.sciencedirect.com/science/article/abs/pii/S0009926067800515#:~:text=](https://www.sciencedirect.com/science/article/abs/pii/S0009926067800515#:~:text=The%20calculated%20standard%20measurement%20for,at%2015%20years%20of%20age)
 30 [The%20calculated%20standard%20measurement%20for,at%2015%20years%20of](https://www.sciencedirect.com/science/article/abs/pii/S0009926067800515#:~:text=The%20calculated%20standard%20measurement%20for,at%2015%20years%20of%20age)
 31 [%20age](https://www.sciencedirect.com/science/article/abs/pii/S0009926067800515#:~:text=The%20calculated%20standard%20measurement%20for,at%2015%20years%20of%20age) (accessed Oct. 25, 2023) (The calculated standard measurement for children
 32 increased from 12 mm at 6 months to 21 mm at 8 years and 23 mm at 15 years of
 33 age).

34 ²⁶ Benjamin Mordecai (CPSC), *Letter to ASTM: Expanding Materials* (February 7,
 35 2023) (available at [https://www.cpsc.gov/s3fs-public/2-7-23-Letter-to-ASTM-](https://www.cpsc.gov/s3fs-public/2-7-23-Letter-to-ASTM-Expanding-Materials.pdf?VersionId=J6C99JbHigMfjRMQRBP_NO85vcvftuq9)
 36 [Expanding-Materials.pdf?VersionId=J6C99JbHigMfjRMQRBP_NO85vcvftuq9](https://www.cpsc.gov/s3fs-public/2-7-23-Letter-to-ASTM-Expanding-Materials.pdf?VersionId=J6C99JbHigMfjRMQRBP_NO85vcvftuq9)).

37 ²⁷ *Id.*

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CPSC staff is aware of an increasing number of incidents involving water beads. Water beads may swell if ingested, aspirated, or inserted into the nose or ears, causing occlusions to the respiratory airway or gastrointestinal tract. Many incidents of water bead ingestion lead to bowel obstruction, requiring surgical intervention, while ear insertion of water beads leads to surgery, damage to the structures of the ear, and hearing loss. Even after inception of the 2016 expanding material requirements in ASTM F963, there have been at least 248 known cases as reported to the National Electronic Injury Surveillance System (NEISS) from 1/1/2017 to 11/22/2022. Of the 248 NEISS incident reports related to water beads:

- 112 . . . involved ingestion;
- 100 involved ear canal insertion;
- 35 involved nasal cavity insertion; and
- 1 involved eye injury

The NEISS-reported incidents produce a national estimate for the period 2017-2021 of 4,500 emergency department visits associated with water beads. Staff is aware of 62 specific incidents occurring from 1/1/2017 to 11/22/2022, as reported in the Consumer Product Safety Risk Management System (CPSRMS). Of the 62 CPSRMS incidents (some of which may duplicate reports from NEISS):

- 53 . . . involved ingestion;
- 5 involved ear canal insertion; and
- 4 involved nasal cavity insertion.

....

CPSC staff requests that the toy safety F15.22 subcommittee schedule a meeting to discuss the data and develop more stringent performance requirements to address these incidents. The dimensions on which CPSC staff seeks consultation include whether (1) F963's 20 mm gap is too large (particularly given the younger ages seen in incident data, as young as 10 months old), and (2) the 20 N force applied is too strong. We caution, however, that such changes may address only gastrointestinal blockage and not ear or nose insertion hazard patterns, or other as yet unidentified hazards related to this product.

Id.

19. **Outcry from Parents and Doctors Over the Dangers of Water Beads.**

Consumers, and parents in particular, have been denouncing water beads for over a decade. For example, Ashley Haugen, runs a non-profit organization, That Water Bead Lady, to educate the public about the dangers of children playing with water beads.²⁸ Her daughter tragically ingested water beads that required surgical removal from her intestines. *Id.* Despite their removal, her daughter was diagnosed with Toxic

²⁸ *Water Beads Toxic? Read Kiple's Story*, THAT WATER BEAD LADY, <https://thatwaterbeadlady.org/kipleys-story> (last visited Oct. 10, 2023).

1 Brain Encephalopathy as a result of the water beads that she ingested. *Id.* Ashley
 2 Haugen spoke with the CPSC about her and her daughter’s experience with water
 3 beads in February 2023, pointedly stating: “there’s no reason to market water beads
 4 as toys and, if they are marketed as toys, they can be made of other types of safer
 5 ingredients, including food.”²⁹ Sadly, Ashley Haugen is not the only parent whose
 6 child has experienced serious health complications from water beads. Countless
 7 parents and medical professionals, through blogs and news outlet interviews, have
 8 implored government actors and manufacturers to properly warn of the severe dangers
 9 with water beads or halt the sale of them altogether in order to prevent children from
 10 being injured and losing their lives.³⁰ The call for help from parents and caregivers
 11 alike can be summarized in one statement: No one should lose their child over a toy.³¹
 12 Doctors have also spoken out against water beads to reporters. In 2021, doctors spoke
 13 to a local news reporter in Minnesota citing the danger of water beads stating that “[i]f
 14 one gets into a child’s ear, which some children like to put stuff into their ears, it can
 15 expand if it gets wet and it gets stuck and there have been reports of rupturing their
 16 ear drum or even permanently losing their hearing from that.”³² Another doctor spoke
 17 to local news reporters in 2021 in Texas classifying water beads as “an attractive

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 19 ²⁹ CPSC, *Log of Meeting Directorate for Health Sciences: CPSC Staff Meeting with*
 20 *That Water Bead Lady* (Feb. 24, 2023) (available at [https://www.cpsc.gov/s3fs-](https://www.cpsc.gov/s3fs-public/CPSC-staff-meeting-with-That-Water-Bead-Lady.pdf?VersionId=J.KDbJTafS02Gqmo.5rOmsDbnmiCHYg6)
 21 [public/CPSC-staff-meeting-with-That-Water-Bead-](https://www.cpsc.gov/s3fs-public/CPSC-staff-meeting-with-That-Water-Bead-Lady.pdf?VersionId=J.KDbJTafS02Gqmo.5rOmsDbnmiCHYg6)
 22 [Lady.pdf?VersionId=J.KDbJTafS02Gqmo.5rOmsDbnmiCHYg6](https://www.cpsc.gov/s3fs-public/CPSC-staff-meeting-with-That-Water-Bead-Lady.pdf?VersionId=J.KDbJTafS02Gqmo.5rOmsDbnmiCHYg6)).

23 ³⁰ *See, e.g., Doctors Warn Patients About Hazardous Water Bead Toys*, NETMUMS
 24 (Oct. 12, 2017), [https://www.netmums.com/child/doctors-warn-parents-about-](https://www.netmums.com/child/doctors-warn-parents-about-hazardous-water-bead-toys)
 25 [hazardous-water-bead-toys](https://www.netmums.com/child/doctors-warn-parents-about-hazardous-water-bead-toys); Madeline Cox, *Our 6yo’s Present Was Labelled ‘Non-*
 26 *Toxic’ – But it Poisoned Her Baby Sister: A Tik Tok Mum Warns About the Dangers*
 27 *of Water Beads After Her 10-Month-Old Baby Now Lives with a Brain Injury*, KID
 28 SPOT (Dec. 8, 2021), [https://www.kidspot.com.au/news/our-6yos-present-was-](https://www.kidspot.com.au/news/our-6yos-present-was-labelled-nontoxic-but-it-poisoned-her-baby-sister/news-story/dfc4cf37f1fa4055097e921a8b31fca1)
 29 [labelled-nontoxic-but-it-poisoned-her-baby-sister/news-](https://www.kidspot.com.au/news/our-6yos-present-was-labelled-nontoxic-but-it-poisoned-her-baby-sister/news-story/dfc4cf37f1fa4055097e921a8b31fca1)
 30 [story/dfc4cf37f1fa4055097e921a8b31fca1](https://www.kidspot.com.au/news/our-6yos-present-was-labelled-nontoxic-but-it-poisoned-her-baby-sister/news-story/dfc4cf37f1fa4055097e921a8b31fca1); Meghan Holohan, *Moms Have Been*
 31 *Warning About Water Bead Dangers. Now There’s a Massive Recall*, TODAY (Sept.
 32 14, 2023) [https://www.today.com/parents/moms/water-bead-mom-warning-](https://www.today.com/parents/moms/water-bead-mom-warning-rcna73155)
 33 [rcna73155](https://www.today.com/parents/moms/water-bead-mom-warning-rcna73155); *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

34 ³¹ *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

35 ³² Sarah Danik, *Doctors Warn Parents of Dangers of Water-Absorbing Beads*, FOX 9
 36 KMSP (May 19, 2021, 10:30 PM), [https://www.fox9.com/news/doctors-warn-](https://www.fox9.com/news/doctors-warn-parents-of-dangers-of-water-absorbing-beads)
 37 [parents-of-dangers-of-water-absorbing-beads](https://www.fox9.com/news/doctors-warn-parents-of-dangers-of-water-absorbing-beads).

1 danger,” emphasizing that water beads “are so colorful and attractive to children” that
 2 “when I saw a picture of them, I wanted to put one in my mouth and taste it, too.”³³
 3 The doctor went on to describe how in one week they had two children come in who
 4 had swallowed water beads that required major surgery to remove them from their
 5 intestines.³⁴ The doctor then explained the danger of water beads by stating that
 6 “[w]hen they’re swallowed, they aren’t dangerous . . . [b]ut as they sit in the intestine,
 7 they grow and can cause a blockage.”³⁵ As the foregoing illustrates, doctors and
 8 parents alike have been attempting for years to get manufacturers’ and the public’s
 9 attention about the severe dangers posed by water beads.

10 **B. Dangerous Health Hazards Associated with Water Beads & Their**
 11 **Impact on Children’s Health and Well-Being**

12 20. **Health Hazards Associated with Expanding Water Beads—Intestinal**
 13 **Blockage.** Water beads have inflicted a laundry list of severe health complications on
 14 children who encounter or play with them. The dangers stem from water beads’
 15 expansion properties once inside the body and the difficulty in detecting them.³⁶ As
 16 explained above, water beads expand when exposed to water and other fluids.³⁷ Once
 17 they are inside the body, they are exposed to bodily fluids or moisture, and they
 18 expand, causing bodily harm.³⁸ Studies show water beads expand from, for example,
 19 2.0 mm to 9.5 mm when dry to 7.5 mm to 40.0 mm in water.³⁹ This expansion can
 20

21 ³³ Lauren Zakalik, *Cook Children’s Reports 2 Children Ended Up in Surgery Last*
 22 *week After Ingesting Popular Toy Known as ‘Water Beads’*, ABC 8 WFAA (June 17,
 23 2021, 6:47 PM), <https://www.wfaa.com/article/news/health/cook-childrens-2-surgery-last-week-ingesting-popular-toy-water-beads/287-95b5188e-1bac-4182-b252-feaf85408c89#:~:text=%22But%20as%20they%20sit%20in,hazards%2C%20not%20just%20water%20beads.>

24 ³⁴ *Id.*

25 ³⁵ *Id.*

26 ³⁶ *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

27 ³⁷ *Are Water Beads Toxic?*, *supra* note 7.

28 ³⁸ *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

³⁹ *A Case of Ingested Water Beads Diagnosed with Point-of-Care Ultrasound*, *supra* note 14.

1 obstruct the small bowel or intestines,⁴⁰ where the diameter of intestines of infants
 2 average 12mm, eight year-olds' average 23mm, and fifteen year-olds' average
 3 23mm.⁴¹ Even smaller water beads that do not expand to 12 or 23mm can cause
 4 intestinal blockage as many studies indicate that swallowing multiple smaller water
 5 beads can cause blockage.⁴² Water beads are also more likely to exceed their
 6 maximum expansion size in water when they are ingested and pass into the
 7 intestines.⁴³ That is because they grow even larger when the fluid's pH increases.⁴⁴
 8 The first part of the small intestine, called the duodenum, in particular has a high pH
 9 which further expands the water beads.⁴⁵ The result is intestinal blockage which can
 10 cause severe discomfort, persistent and excessive vomiting, dehydration, and, if the
 11 water beads are not quickly detected and surgically removed, death.⁴⁶ The treatment
 12 for intestinal blockage due to water beads can often involve an endoscopic procedure
 13 where doctors attempt to retrieve the water beads using endoscopic crushing to break
 14 up the water beads, followed by an endoscopic retrieval net to remove the water
 15 beads.⁴⁷

16 _____
 17 ⁴⁰ *Id.* (noting bowel size of 25 to 30mm).

18 ⁴¹ E.M. Haworth, et al., *Radiological measurement of small bowel calibre in normal*
 19 *subjects according to age*, 18 *Clinical Radiology* 417, 417-421 (1967), available at
 20 <https://www.sciencedirect.com/science/article/abs/pii/S0009926067800515>
 21 (accessed Oct. 25, 2023) (“The calculated standard measurement for children
 22 increased from 12 mm. at 6 months to 21 mm. at 8 years and 23 mm. at 15 years of
 23 age”).

24 ⁴² *Id.*; Weniko Care, *Bowel Obstruction Following Ingestion of Superabsorbent*
 25 *Polymers Beads: Literature Review*, 60 *CLINICAL TOXICOLOGY (PA)* 159-167 (2022)
 26 (available at <https://pubmed.ncbi.nlm.nih.gov/34651526/>).

27 ⁴³ *A Case of Ingested Water Beads Diagnosed with Point-of-Care Ultrasound*, *supra*
 28 note 14.

⁴⁴ *Id.*

⁴⁵ *Id.*

29 ⁴⁶ *Chair Hoehn-Saric Statement on the Dangers That Water Beads Pose to Young*
 30 *Children*, CONSUMER PROD. SAFETY COMM'N (Sept. 14, 2023),
 31 [https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-](https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Chair-Hoehn-Saric-Statement-on-the-Dangers-that-Water-Beads-Pose-to-Young-Children#:~:text=If%20a%20water%20bead%20is,of%20death%20to%20the%20child.)
 32 [Saric/Statement/Chair-Hoehn-Saric-Statement-on-the-Dangers-that-Water-Beads-](https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Chair-Hoehn-Saric-Statement-on-the-Dangers-that-Water-Beads-Pose-to-Young-Children#:~:text=If%20a%20water%20bead%20is,of%20death%20to%20the%20child.)
 33 [Pose-to-Young-](https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Chair-Hoehn-Saric-Statement-on-the-Dangers-that-Water-Beads-Pose-to-Young-Children#:~:text=If%20a%20water%20bead%20is,of%20death%20to%20the%20child.)
 34 [Children#:~:text=If%20a%20water%20bead%20is,of%20death%20to%20the%20child.](https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Chair-Hoehn-Saric-Statement-on-the-Dangers-that-Water-Beads-Pose-to-Young-Children#:~:text=If%20a%20water%20bead%20is,of%20death%20to%20the%20child.)

35 ⁴⁷ *A Case of Ingested Water Beads Diagnosed with Point-of-Care Ultrasound*, *supra*
 36 note 14.

1 21. **Bowel Obstruction Study.** One study analyzed a set of 43 cases of bowel
 2 obstruction caused by water beads.⁴⁸ In this study, the reported symptoms were
 3 vomiting for all 43 patients, constipation (11 patients), diarrhea (1 patient), abdominal
 4 pain (1 patient), dehydration (14 patients).⁴⁹ Two patients also had a fever, and three
 5 patients developed seizures.⁵⁰ In only 10 of the 43 cases did parents or relatives inform
 6 doctors that they suspected the child ingested a water bead.⁵¹ Indeed, radiography
 7 (also known as x-rays) “never showed evidence of foreign body ingestion.”⁵²
 8 Ultrasounds allowed doctors to visualize a bead in the abdominal in only 28 patients,
 9 but nonetheless only led to the correct diagnosis of intestinal blockage in just 15 of
 10 those patients.⁵³ To remove the water beads, endoscopy was used for 2 patients and
 11 the rest of the 41 patients required open surgery.⁵⁴ Indeed, 3 patients required a second
 12 surgery to remove water beads that were not adequately removed during the first
 13 surgery.⁵⁵ The time between the onset of symptoms and the removal of the water
 14 beads for the 43 patients ranged from 1 to 7 days.⁵⁶ And, unfortunately, 2 of the 43
 15 patients died as a result of swallowing water beads.⁵⁷

16 22. **Ear Canal Obstruction Studies.** Ear canal obstruction is another way
 17 water beads can wreak havoc on children’s well-being. Studies have found that most
 18 patients presenting with water beads lodged in their ears require surgical
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22 ⁴⁸ *Bowel Obstruction Following Ingestion of Superabsorbent Polymers Beads: Literature Review, supra* note 42.

23 ⁴⁹ *Id.*

24 ⁵⁰ *Id.*

25 ⁵¹ *Id.*

26 ⁵² *Id.*

27 ⁵³ *Id.*

28 ⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

1 intervention.⁵⁸ Doctors have also said that if water beads become lodged in one's ear,
2 then the ear drum could be ruptured, and one could experience permanent hearing
3 loss.⁵⁹

4 **23. Nasal Cavity Obstruction Studies.** Water beads can also become lodged
5 in children's noses causing a host of health complications. Studies have shown that
6 children who presented with water beads lodged in their nasal cavity experienced
7 severe symptoms, and when water beads were lodged for prolonged periods children
8 suffered from agitation, high fevers, and loss of appetite.⁶⁰ Treatment for nasal cavity
9 obstruction from water beads involve children undergoing nasal endoscopy surgery
10 where the children typically go under general anesthesia.⁶¹

11 **24. Respiratory System Obstruction Studies.** Studies have shown that
12 water beads can also obstruct and become lodged in the lungs, which contain
13 respiratory mucus consisting of 95% water that further expands the water beads.⁶²
14 This causes severe respiratory problems, including focal lung bronchiectasis. *Id.*

15 **25. NEISS Database.** The frequency at which children suffer water bead
16 related injuries is alarming. The CPSC tracks reports of product related injuries
17 through the National Electronic Injury Surveillance System (NEISS). The NEISS is
18 a database maintained online that is designed to be accessible to the public and, in
19 particular, to manufacturers. In a letter dated February 7, 2023, the CPSC discussed
20 water bead related injuries reported to NEISS from January 1, 2017 to November 22,
21

22 ⁵⁸ Habib G. Zalzal, MD, *Managing the Destructive Foreign Body: Water Beads in the*
23 *Ear (A Case Series) and Literature Review*, 132 ANNALS OF OTOTOLOGY, RHINOLOGY
& LARYNGOLOGY 1090, 1090-1095 (2023) (available at
24 <https://journals.sagepub.com/doi/abs/10.1177/00034894221133768>).

25 ⁵⁹ *Doctors Warn Parents of Dangers of Water-Absorbing Beads*, *supra* note 32.

26 ⁶⁰ Sai-hong Han, et al., *Superabsorbent Polymer Balls as Foreign Bodies in the Nasal*
Cavities of Children: Our Clinical Experience, 21 BMC PEDIATRICS 273-277 (2021)
27 (available at [https://bmcpediatr.biomedcentral.com/articles/10.1186/s12887-021-](https://bmcpediatr.biomedcentral.com/articles/10.1186/s12887-021-02740-x)
02740-x).

28 ⁶¹ *Id.*

⁶² *Aspiration of Superabsorbent Polymer Beads Resulting in Focal Lung Damage: A*
Case Report, *supra* note 15.

1 2022.⁶³ In that time period, 248 incident reports were filed in relation to water beads.⁶⁴
 2 112 were injuries from ingestion, 100 were from ear canal insertion, 35 involved nasal
 3 cavity insertion, and 1 involved an eye injury.⁶⁵ The CPSC goes on to state that, based
 4 on these numbers, that an estimated 4,500 emergency department visits occurred from
 5 2017 through 2021 involving water bead related injuries.⁶⁶

6 **26. Incident of Child Suffering from Hearing Loss from Water Beads.** A
 7 study published in 2016 details a young girl's severe health complications arising
 8 from a water bead lodged in her ear canal.⁶⁷ The girl presented to doctors with
 9 significant hearing issues, which the doctors treated unsuccessfully for over 10
 10 weeks.⁶⁸ During this time, no water bead was detected or reported or even thought to
 11 be the cause of the hearing complications.⁶⁹ It was not until an MRI was conducted
 12 that the water bead was revealed.⁷⁰ Surgery was then performed to remove the water
 13 bead, which had grown to 9.8 mm inside of her ear.⁷¹ Even after removal of the water
 14 bead from the young girl's ear, she developed a profound hearing loss as a result of
 15 the water bead having been lodged in her ear.⁷²

16 **27. Incident of Child Suffering from Lung Damage Resulting from**
 17 **Water Beads.** A report published in 2020 details a three-year-old boy's tragic
 18 encounter with water beads.⁷³ The boy suffered from a persistent cough, which was
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 20

21 ⁶³ CPSC, *Letter to ASTM: Expanding Materials*, *supra* note 26.

22 ⁶⁴ *Id.*

23 ⁶⁵ *Id.*

24 ⁶⁶ *Id.*

25 ⁶⁷ Megan Sterling, DO, Jonathan Murnick, MD, PhD, Pamela Mudd, MD, MBA,
 26 *Destructive Otologic Foreign Body: Dangers of the Expanding Bead*, 142 JAMA
 27 OTOLARYNGOLOGY-HEAD & NECK SURGERY 919, 919-920 (2016) (available at
 28 <https://jamanetwork.com/journals/jamaotolaryngology/fullarticle/2541395>).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Aspiration of Superabsorbent Polymer Beads Resulting in Focal Lung Damage: A Case Report*, *supra* note 15.

1 the result of recurrent chest infections.⁷⁴ The boy was hospitalized on four separate
 2 occasions during one year.⁷⁵ Some hospitalizations required admission to the
 3 intensive care unit.⁷⁶ For over one year of treatment, involving multiple tests and x-
 4 rays, the doctors and medical professionals could not identify the root cause of the
 5 boy’s health complication.⁷⁷ It was not until doctors performed a bronchoscopy
 6 surgery, requiring the boy to be put under general anesthesia that the doctors
 7 discovered the culprit of the boy’s severe health issues: a water bead.⁷⁸ The report
 8 states that the “patient’s parents were certain that the foreign body represented an
 9 Orbeez ball.”⁷⁹ The doctors tried removing the water bead utilizing a retrieval basket
 10 and a flexible scope, but the water bead was broken up into smaller pieces.⁸⁰ This
 11 required individual removal of each fragment of the water bead.⁸¹ The report
 12 highlights how the delayed onset of symptoms coupled with the inability of x-rays to
 13 detect water beads can drastically delay doctors and medical professionals from
 14 identifying water beads as the cause of the health complication.⁸² The report also
 15 notes that the respiratory mucus is 95-percent water—meaning that once a water bead
 16 is swallowed and exposed to such bodily fluids, that it will likely expand.⁸³ The report
 17 concludes by proposing to recall all brands of water beads from the market.⁸⁴

18 **28. Incident of Child Diagnosed with Toxic Brain Encephalopathy**
 19 **Caused by Water Bead Ingestion.** As mentioned previously, Ashley Haugen
 20 founded the non-profit organization That Water Bead Lady following her daughter’s
 21 tragic and traumatic experience with water beads.⁸⁵ Ashley Haugen took her young

22 ⁷⁴ *Id.*

23 ⁷⁵ *Id.*

24 ⁷⁶ *Id.*

25 ⁷⁷ *Id.*

26 ⁷⁸ *Id.*

27 ⁷⁹ *Id.*

28 ⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ THAT WATER BEAD LADY, *supra* note 28.

1 daughter to the hospital after she was projectile vomiting.⁸⁶ Doctors ran countless
 2 tests but could not determine what was causing the girl's health complications.⁸⁷ The
 3 doctors concluded that in order to determine what was causing the girl's vomiting,
 4 they would need to perform an exploratory surgery that had the risk of the girl losing
 5 a bowel (which would require a colostomy bag the rest of her life) and had the risk of
 6 death.⁸⁸ The exploratory surgery was successful and the doctors found the cause of
 7 the girl's vomiting: a water bead.⁸⁹ The doctors were able to retrieve the water bead
 8 and the girl's vomiting ceased.⁹⁰ But following the procedure, the girl was not herself
 9 as she rejected her favorite foods, would not answer to her name, and had issues
 10 being in control of her body's coordination, including speech.⁹¹ The girl's mother
 11 took her to another doctor and was informed that the girl had suffered Toxic Brain
 12 Encephalopathy (a disruption in brain function caused by toxic exposure) caused by
 13 acrylamide monomer poisoning from the water bead.⁹² The girl continues to receive
 14 treatment, but her mother knows that her daughter is forever changed.⁹³

15 **29. Incident of Child Suffering from Intestinal Blockage Due to Water**
 16 **Beads Where X-Rays Could Not Detect the Water Beads.** A published report in
 17 the journal of Clinical and Experimental Emergency Medicine from 2020 details a
 18 young girl's severe health complications resulting from ingesting water beads.⁹⁴ The
 19 girl was brought to the emergency department after she had been vomiting repeatedly
 20 for nine hours.⁹⁵ The doctors conducted an x-ray test which yielded no findings of
 21

22 ⁸⁶ *Id.*

23 ⁸⁷ *Id.*

24 ⁸⁸ *Id.*

25 ⁸⁹ *Id.*

26 ⁹⁰ *Id.*

27 ⁹¹ *Id.*

28 ⁹² *Id.*

⁹³ *Id.*

⁹⁴ *A Case of Ingested Water Beads Diagnosed with Point-of-Care Ultrasound, supra*
 note 14.

⁹⁵ *Id.*

1 what could be causing the vomiting.⁹⁶ The girl vomited six more times in the
 2 emergency department, and in two of the vomiting episodes water beads
 3 approximately 3 mm in size were found in the vomitus.⁹⁷ The doctors then performed
 4 an ultrasound which revealed seven 10 to 15 mm water beads obstructing the
 5 intestines.⁹⁸ The doctors then retrieved the water beads through endoscopic surgery,
 6 which resulted in eleven water beads being removed.⁹⁹

7 **30. Another Incident of Child Suffering from Intestinal Blockage Due to**
 8 **Water Beads Where X-Rays Could Not Detect the Water Beads.** A Today.com
 9 article details a mother's horrific recounting of her daughter's emergency department
 10 visit for water bead ingestion.¹⁰⁰ The mother detailed how her daughter started
 11 vomiting one day, the vomiting slowly worsened, and eventually she began vomiting
 12 every thirty minutes.¹⁰¹ It was at this point that the mother took her daughter to the
 13 hospital where the doctors gave her anti-vomiting medication.¹⁰² The mother and
 14 daughter returned home as the vomiting subsided but within seven hours the
 15 medication wore off and the vomiting continued.¹⁰³ The two rushed back to the
 16 emergency department where she was transported to a larger hospital to examine
 17 her.¹⁰⁴ The doctors performed an x-ray and saw nothing that explained the daughter's
 18 vomiting.¹⁰⁵ Finally, a computed tomography (a CT scan) was performed and the
 19 doctors could barely make out that there was something radiolucent and transparent
 20 causing a blockage.¹⁰⁶ The doctors suggested surgery to identify and remove the
 21

22 ⁹⁶ *Id.*

23 ⁹⁷ *Id.*

24 ⁹⁸ *Id.*

25 ⁹⁹ *Id.*

26 ¹⁰⁰ *Moms Have Been Warning About Water Bead Dangers. Now There's a Massive*
 27 *Recall, supra* note 30.

28 ¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

1 objects.¹⁰⁷ The mother recounted that all her daughter could do before the surgery was
 2 blinking and remarked that it was “just scary.”¹⁰⁸ The doctors performed a three-hour
 3 surgery and found a singular water bead that was the cause of the daughter’s severe
 4 vomiting.¹⁰⁹ At the time of the article, the mother stated that her daughter “has a scar
 5 from hip to hip” and that her daughter is still very weak.¹¹⁰

6 **31. Incident of Child Tragically Dying from Ingesting a Water Bead.** In
 7 2022, a mother and father, who had five children, bought their oldest child a pack of
 8 water beads.¹¹¹ In July 2023, their 10-month-old daughter began exhibiting symptoms
 9 often related to a stomach-bug.¹¹² The next morning, her mother tragically found her
 10 dead in her crib.¹¹³ It was determined that the girl died as a result of swallowing water
 11 beads.¹¹⁴ The water beads involved in this tragic incident were recalled.¹¹⁵ The
 12 mother, who is also a teacher, stated that if she had known just how dangerous water
 13 beads could be she “never would’ve allowed [her] older kids to play with them. They
 14 never would’ve been in my house.”¹¹⁶ She went on to say “[a]t the minimum, water
 15 beads need to have the appropriate warnings about the life-threatening dangers, which
 16 is not limited choking.”¹¹⁷

17 **32. Creator of Orbeez Shows Remorse Over the Harm Inflicted by**
 18 **Water Beads.** Ron Brawer, a veteran of the toy industry, came up with the idea for
 19

21 ¹⁰⁷ *Id.*

22 ¹⁰⁸ *Id.*

23 ¹⁰⁹ *Id.*

24 ¹¹⁰ *Id.*

25 ¹¹¹ *Nobody Should Lose Their Child Over a Toy, supra note 2.*

26 ¹¹² *Id.*

27 ¹¹³ *Id.*

28 ¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Christine Rousselle, *Mom Calls for Change After Her 10-month-old Baby Dies from Swallowing a Water Bead*, N.Y. POST (Aug. 23, 2023, 10:15 AM), <https://nypost.com/2023/08/23/wisconsin-mom-calls-for-change-after-her-10-month-old-baby-dies-from-swallowing-a-water-bead/>.

¹¹⁷ *Id.*

1 water beads to be used as children’s toys.¹¹⁸ Brawer was the executive who created
 2 Orbeez brand water beads and brought them to market in 2010, for Defendant
 3 Maya.¹¹⁹ Brawer left the toy industry years ago, and in 2019, Defendant Spin Master
 4 bought the Orbeez brand and Products from Defendant Maya.¹²⁰ When reports
 5 recently surfaced that a child died as a result of swallowing water beads, Consumer
 6 Reports reached out to Brawer for his perspective on the danger of water beads.¹²¹
 7 Brawer stated: “If there are kids getting hurt by these things these days, then obviously
 8 I’m sorry to hear that I wouldn’t have created this if I thought there was any
 9 chance anybody was going to get seriously hurt.”¹²²

10 **C. Materiality of Material Omissions, Reasonable Consumer’s**
 11 **Perception, and the Failure of the Products to Fulfill Defendants’**
 12 **Promises**

13 **33. Consumer Demand for Water Beads and Safe Children’s Toys.** In a
 14 period of just two years (between September 2021 and July 2023) water beads were
 15 purchased 3.4 million times on Amazon alone.¹²³ Water beads are also sold at various
 16 large retailers, including Walmart and Target.¹²⁴ Additionally, water beads are sold at
 17 smaller retailers such as teachers’ supply stores since water beads can often be found
 18 as a classroom toy in many schools.¹²⁵ Consumers greatly value product safety when
 19 making purchase decisions on children’s toys. One study indicates that safety is the
 20 fourth most important factor for mothers purchasing toys, behind only educational
 21
 22

23 ¹¹⁸ *Id.*; Ronald D. White, *Toy-Making is Serious Business in Southern California*, LA
 24 TIMES (Dec. 22, 2012), <https://www.latimes.com/business/la-xpm-2012-dec-22-la-fi-socal-enterprise-toys-20121223-story.html>.

25 ¹¹⁹ *Nobody Should Lose Their Child Over a Toy*, *supra* note 2.

26 ¹²⁰ *Id.*

27 ¹²¹ *Id.*

28 ¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

1 qualities, child’s personality, and child’s skill.¹²⁶ The study opined that product safety
2 would be an even higher consideration if not for parents “large amount of trust in
3 existing U.S. Consumer Product Safety Commission regulations.”¹²⁷ Defendants take
4 advantage of consumers need for safe children’s toys, combined with their demand
5 for water beads, by materially omitting the Obstruction Danger and the Non-
6 Detection Danger from their water beads products. Thus, influencing reasonable
7 consumers to believe the Products meet their demand for safe children’s toys, when
8 they, in fact, pose severe and life-threatening dangers.

9 **34. Material Omission on Products’ Labels and Packaging.** Defendants
10 trade on the consumers’ desire for safe children’s toys to convince consumers that the
11 Products present neither the Obstruction Danger nor the Non-Detection Danger.

12 **35. Design/Purpose.** The Products are water beads which are marketed as a
13 safe children’s toy designed for sensory development. *See Exhibit 1* (Product
14 Images).

15 **36. Uniform Name and Product Identification.** Defendants uniformly
16 name and prominently label the Products as “ORBEEZ.” *Id.*

17 **37. Material Omissions.** Defendants fail to disclose the Obstruction Danger
18 and the Non-Detection Danger anywhere on the Products’ packaging or labeling,
19 including in particular on the front-facing panels to inform consumers that the
20 Products pose, contrary to their design, and Reinforcing Labeling Claims, severe
21 health and potentially life-threatening dangers. *Id.*

22 **38. Reinforcing Labeling and Advertising Claims.** Defendants reinforce
23 the Material Omissions, through its labeling, advertising imagery, and product design.
24 Defendants include imagery in their advertising and labeling of the Products that
25

26 ¹²⁶ Melissa N. Richards et al., *Toy Buying Today: Considerations, Information*
27 *Seeking, and Thoughts about Manufacturer Suggested Age*, 68 J. APPL. DEV.
28 PYSCHOL. 1, 6 (2021) (available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7219796/>).

¹²⁷ *Id.*

1 depicts children playing with Orbeez brand water beads by throwing them
2 haphazardly around. Given that Defendants sell the Products in packs of thousands,
3 it is highly likely, and practically inevitable, that some of the water beads end up on
4 the floor and in dangerous reach of young children and infants. Furthermore, the
5 Products are very small and even the most attentive parents and caregivers are bound
6 to lose track of some of the Products in their homes and in children’s play areas as the
7 Products are prone to scattering and are easily lost in carpets and cracks in the floor.
8 The Products also look strikingly similar to candy and thus, by their very nature, invite
9 children to try to swallow the Products. Defendants further emphasize the
10 attractiveness to children to eat the Products by using such terms as “juicy” when
11 describing the Products on its website.¹²⁸ These common features of the Products are
12 advertised through imagery on the packaging and through in the inherent nature of
13 the Products.

14 39. Defendant’s Brand Strategy of Providing “Safe” Water Beads.

15 Defendant Spin Master utilizes a long-standing brand strategy to prop up the Products
16 as “safe.” Defendant’s website illustrates this strategy as it states for each product
17 containing Orbeez brand water beads that “ORBEEZ ARE SAFETY TESTED” and
18 that Orbeez are “SAFE FOR KIDS.”¹²⁹

19 40. Indeed, the Material Omissions are not included on each Product’s
20 primary display panel of the front label or packaging. *See Exhibit 1* (Product Images).
21 Defendants deceive reasonable consumers, like Plaintiff, and lull them into a false
22 sense of security that any dangers not disclosed on the front label or packaging are

23 _____
24 ¹²⁸ “These wet and juicy, colourful orbs are the sensory experience you’ll want to play
with again and again!” THE ONE & ONLY ORBEEZ, https://orbeezone.com/en_us (last
visited Oct. 18, 2023).

25 ¹²⁹ “Orbeez are safety tested and won’t fade, making them great kids toys, and the
26 perfect addition to a sensory bin for kids.” *Orbeez, The One and Only, Glow in the
Dark Water Beads, 50,000 Beads, Safety-Tested Sensory Toys for Kids Aged 5 and
Up, THE ONE & ONLY ORBEEZ,*
27 https://orbeezone.com/en_us/products/778988343425 (last visited Oct. 18, 2023).
28 “SAFE FOR KIDS: Orbeez have been tested to meet international toy safety
regulations and are safety-tested for play.” *Id.*

1 not present with the Products. *Id.* The net-effect or net impression on consumers who
2 view the Products with the Material Omissions is that the Products do not pose severe
3 and life-threatening dangers, including the Obstruction Danger and the Non-
4 Detection Danger.

5 41. **Orbeez Brand Water Beads Pose Severe Dangers.** The Products,
6 Orbeez brand water beads, like any other water beads, pose severe and life-
7 threatening dangers, including the Obstruction Danger and the Non-Detection
8 Danger. Like other water beads, the Products are superabsorbent polymers that can
9 expand well-beyond their starting size once exposed to water and other fluids. Once
10 ingested or inserted in the body, the Products can cause intestinal blockage or other
11 injuries to the nasal cavity, ear canal, and/or respiratory system. Additionally, the
12 Products are practically invisible on x-rays, thus making the Products difficult to
13 detect, which can lead to detrimental delay in treatment and misdiagnoses. As a result,
14 the Products put the health and lives of children at risk of life-threatening and
15 debilitating health conditions.

16 **D. Plaintiff and Reasonable Consumers Were Misled by the Material**
17 **Omissions into Buying the Products, to Their Detriment**

18 42. **Reasonable Consumer's Perception.** The Material Omissions lead
19 reasonable consumers, like Plaintiff, into believing that the Products do not present a
20 risk of Obstruction Danger and Non-Detection Danger.

21 43. **Materiality.** The Material Omissions are material to reasonable
22 consumers, including Plaintiff, in deciding to buy the Products—meaning, that the
23 Material Dangers are important to consumers in deciding whether or not the Products
24 are safe enough to buy and use for their primary purpose as a children's toy.

25 44. **Reliance.** The Class, including Plaintiff, reasonably relied on the Material
26 Omissions in deciding to purchase the Products.

1 45. **Falsity.** The Material Omissions are deceptive because they mislead
2 consumers into believing that the Products do not pose a risk of the Obstruction
3 Danger or the Non-Detection Danger.

4 46. **Consumers Lack Knowledge of Falsity.** The Class members, including
5 Plaintiff, who purchased the Products does not know and had no reason to know, at
6 the time of purchase, that the Products pose a risk of the Material Dangers. Nothing
7 on the Products' labeling or packaging adequately, expressly, unambiguously, or
8 conspicuously informs consumers of the Material Dangers—specifically, that the
9 Products pose a risk of Obstruction Danger and the Non-Detection Danger. *See*
10 **Exhibit 1** (Product Images). That is because the Products' labeling and packaging do
11 not contain a clear, unambiguous, and conspicuously displayed statement, that
12 reasonable consumers are likely to notice, read, and understand to mean that, contrary
13 to the Material Omissions and the Products' design as a children's toy, that the
14 Products pose a risk of the Material Dangers.

15 47. **Defendants' Knowledge.** Defendants knew, or should have known, that
16 the Material Omissions are false, misleading, deceptive, and unlawful, at the time that
17 Defendants manufactured, marketed, advertised, labeled, and sold the Products using
18 the Material Omissions to Plaintiff and the Class. Defendants intentionally and
19 deliberately used the Material Omissions, alongside the Products' design/purpose, to
20 cause Plaintiff and similarly situated consumers to buy the Products believing that the
21 Products do not pose the Obstruction Danger and the Non-Detection Danger.

- 22 a. **Knowledge of Reasonable Consumers' Perception.** Defendants
23 knew or should have known that the Material Omissions would
24 lead reasonable consumers into believing that the Products are safe
25 in that they do not pose a risk of the Obstruction Danger and the
26 Non-Detection Danger. Not only have Defendants utilized a long-
27 standing brand strategy to identify the Products as safe children's
28 toys, but Defendants also have an obligation under section 5 of the
Federal Trade Commission Act, codified at 15 U.S.C. §§ 45, to
evaluate their marketing claims from the perspective of the
reasonable consumer. That means Defendants were statutorily
obligated to consider whether the Material Omissions, be it in
isolation or conjunction with their marketing strategy, would
mislead reasonable consumers into believing that the Products are

1 safe and do not pose the Obstruction Danger and the Non-Detection
 2 Danger. Thus, Defendants either knew that the Material Omissions
 3 are misleading before it marketed the Products to the Class,
 including Plaintiff, or Defendants would have known that that they
 were deceptive had it complied with their statutory obligations.

4 b. **Knowledge of Falsity.** Defendants manufactured and marketed the
 5 Products with the Material Omissions, but Defendants opted to
 6 make Products that pose a risk of the Material Dangers.
 7 Specifically, Defendants advertised, labeled, and packaged the
 8 Products with the Obstruction Omission and the Non-Detection
 Omission, but chose to manufacture Products that pose a risk of the
 Obstruction Danger and the Non-Detection Danger.

9 (1) *First*, Defendants, as manufacturers of children's toys
 10 like the Products, are required under 16 C.F.R. §
 11 1250.2 to comply with safety provisions of ASTM
 F963-17. Defendants are also required to certify in a
 12 written Children's Product Certificate the results of
 required third-party testing under ASTM F963-17.

13 (2) *Second*, Defendants are also required to certify that
 14 the children's products conform to product safety
 15 rules.¹³⁰ To adequately attest to the Products' safety,
 16 Defendants should have stayed informed of the
 17 Products' safety risks, including keeping apprised of
 18 scientific literature and the regulatory databases that
 compile hundreds of complaints and incident reports
 regarding the Obstruction Danger and Non-Detection
 Danger for water beads, dating back to 2017 and
 beyond.

19 (3) *Third*, the Child Product Safety Council, Consumer
 20 Product Safety Council, and numerous federal and
 21 state laws regulating the safety of consumer goods
 and, in particular, children's toys, impose statutory
 22 obligations on Defendants and provide regulatory
 23 guidance for Defendants, as manufacturers of
 children's toys, to evaluate the safety of their products
 and children's toys for reasonably foreseeable uses
 and misuses. Water beads look like candy, making
 24 them attractive to children and likely to be swallowed.
 25 Water beads are also tiny and are sold in large
 26 quantities (hundreds or thousands), making them
 difficult to monitor and keep out of reach of children

27 ¹³⁰ *Children's Product Certificate (CPC)*, CONSUMER PROD. SAFETY COMM'N,
 28 <https://www.cpsc.gov/Testing-Certification/Childrens-Product-Certificate-CPC> (last
 visited Oct. 18, 2023).

1 and infants. Young children, particularly infants and
2 toddlers, are well known to place objects in their
3 mouth (referred to as PICA behavior), making them
4 likely to be swallowed or aspirated. Likewise, they
5 frequently place objects in their ears, nose, and
6 otherwise do not recognize the danger of doing so.
7 Had Defendants exercised reasonable care and
8 complied with their statutory obligations to identify
9 and evaluate reasonably foreseeable risks entailed in
10 the use or misuse of water beads—such as children,
11 including infants, swallowing water beads, aspirating
12 water beads, or inserting water beads into their ears or
13 nose, notwithstanding the most vigilant parent or
14 caregiver supervision, Defendants would have
15 recognized the heightened and reasonably foreseeable
16 danger of water beads being ingested, aspirated, or
17 inserted into infants and children’s bodies.

18 (4) **Fourth**, Defendants knew or should have known that
19 the water beads expand when exposed to moisture and
20 liquids with a high pH as Defendants marketed the
21 water beads for that very purpose. Accordingly,
22 Defendants knew or should have known that the
23 Products pose a risk of the Obstruction Danger based
24 on the reasonably foreseeable misuses and
25 deliberately designed expansion of water beads.

26 (5) **Fifth**, Defendants knew or should have known that the
27 water beads pose a risk of the Non-Detection Danger
28 as the swelling of water beads from surrounding
bodily fluids, by design, make them difficult to detect
on scans and radiographs. Defendants cannot feign
ignorance as a multitude of complaints and incident
reports from an exceptionally high number of
hospitalizations have been repeatedly logged in the
publicly available databases, dating back to 2017 and
earlier, that are not only designed to provide a
resource for manufacturers to comply with their
statutory duties, but also document repeated incidents
of the Obstruction Danger and Non-Detection Danger
coming to fruition. For example, the NEISS system
tracks incidents involving children’s toys, and it can
be filtered to focus on water beads related incidents,
or the type of injury (i.e., ingestion or insertion
related), and (as reported by the CPSC) it contains
water bead related incident reports dating all the way

1 back to January 2017.¹³¹ The NEISS system was
 2 therefore tracking water bead related incidents that
 3 Defendants should have kept apprised of since at least
 4 as far back as 2017.

5 (6) *Sixth*, child and product safety advocacy groups and
 6 doctors have repeatedly and publicly warned water
 7 beads manufacturers of the severe and life-threatening
 8 dangers of water beads, including the Obstruction and
 9 Non-Detection Dangers. Defendants knew or should
 10 have known about reports from governmental bodies
 11 focused on product safety (such as the Consumer
 12 Product Safety Commission), institutions dedicated to
 13 children’s safety (such as the American Academy of
 14 Pediatrics), various children safety organizations
 15 (such as HealthyChildrens.org), and various news
 16 outlets that report on consumers’ interactions with
 17 products. This includes, for example, the American
 18 Academy of Pediatrics (AAP) published report in
 19 2013, regarding the recall of certain water beads
 20 products that emphasized that the water beads “can
 21 cause intestinal obstructions inside a child’s body,
 22 resulting in severe pain, vomiting, dehydration, or
 23 death. The toys do not show up on an X-ray, and
 24 surgery must be used to remove them.”¹³² The AAP
 25 put out a similar recall report in 2014, stating that
 26 “[t]hese soft, colorful products can be mistaken by a
 27 child for candy. When swallowed, they can expand
 28 inside a child’s body and block the intestines, which
 can be uncomfortable, cause vomiting and
 dehydration, and can be life-threatening.”¹³³ In 2016
 the AAP published an article quoting a pediatric
 gastroenterologist saying that water beads “can grow
 bigger as they pass through the intestines, ultimately
 paving the way for obstruction.”¹³⁴ That article also
 stated that the “beads may not be visible on X-
 rays.”¹³⁵ In 2020, an article was published in a journal
 for the Clinical and Experimental Emergency
 Medicine that detailed how “ingestion of water beads

¹³¹ CPSC, *Letter to ASTM: Expanding Materials*, *supra* note 26.

¹³² American Academy of Pediatrics (2013), *supra* note 5.

¹³³ American Academy of Pediatrics (2014), *supra* note 5.

¹³⁴ Trisha Koriath, *Parent Plus: Water-Absorbing Beads Can be Harmful if Swallowed, Put in Ear*, AMERICAN ACAD. PEDIATRICS (Mar. 22, 2016), <https://publications.aap.org/aapnews/news/12513/Parent-Plus-Water-absorbing-beads-can-be-harmful?autologincheck=redirected>.

¹³⁵ *Id.*

1 is prone to delayed diagnosis and consequent
 2 intestinal obstruction.”¹³⁶ In February 2023, the CPSC
 3 published a letter which detailed the frequent water
 4 bead related injuries tracked by its NEISS system,
 5 stating that “[m]any incidents of water bead ingestion
 6 lead to bowel obstruction, requiring surgical
 7 intervention, while ear insertion of water beads leads
 8 to surgery, damage to the structures of the ear, and
 9 hearing loss.”¹³⁷ Across the world, consumer
 10 governmental bodies have expressed concerns about
 11 water beads’ dangers, as evidenced by the Australian
 12 Competition and Consumer Commission in 2015
 13 stating that “[o]nce ingested, just one ball can expand
 14 inside a child’s a body and cause intestinal
 15 obstruction, vomiting, severe discomfort and
 16 dehydration and may need to be surgically removed.
 17 We urge businesses who are supplying these products
 18 as toys to immediately stop.”¹³⁸ There have also been
 19 an abundance of news articles detailing parents’ and
 20 doctors’ concerns about the safety of water beads
 dating before and during the Class Period.¹³⁹ These
 sources are just a sampling of the multitude of
 resources that were available to Defendants before
 and during the Class Period. Thus, Defendants knew
 or should have known of the Products’ Obstruction
 Danger and the Non-Detection Danger at the outset of
 the Class Period, giving rise to Defendants’ duty to
 disclose the Material Dangers to the Class, including
 Plaintiff, before she purchased the Products. These are
 not random or isolated reports. A mere search online
 for “water beads safety,” “water beads injuries,” or
 similar terms, reveal a vast number of reports from
 reputable organizations, some of which are outlined

21 ¹³⁶ *A Case of Ingested Water Beads Diagnosed with Point-of-Care Ultrasound*, *supra*
 note 14.

22 ¹³⁷ CPSC, *Letter to ASTM: Expanding Materials*, *supra* note 26.

23 ¹³⁸ *ACCC Warns of Dangers of Water Expanding Balls to Kids*, AUSTRL.
 24 COMPETITION & CONSUMER COMM’N (Mar. 6, 2015),
 25 <https://www.accc.gov.au/media-release/accc-warns-of-dangers-of-water-expanding-balls-to-kids#:~:text=%E2%80%9COnce%20ingested%2C%20just%20one%20ball,removed%2C%E2%80%9D%20Ms%20Rickard%20said.>

26 ¹³⁹ *Cook Children’s Reports 2 Children Ended Up in Surgery Last week After*
 27 *Ingesting Popular Toy Known as ‘Water Beads’*, *supra* note 33; *Doctors Warn*
 28 *Parents of Dangers of Water-Absorbing Beads*, *supra* note 32; *Water Beads: Harmful*
if Swallowed, Put in Ears, *supra* note 4; *THAT WATER BEAD LADY*, *supra* note 28;
Nobody Should Lose Their Child Over a Toy, *supra* note 2; *Moms Have Been Warning*
About Water Bead Dangers. Now There’s a Massive Recall, *supra* note 30.

1 above, that repeatedly discuss and warn of the
 2 Material Dangers of water beads. If Defendants had
 3 exercised a modicum of effort to comply with their
 4 statutory obligation to evaluate the safety of their
 5 children's toys, particularly given the Products'
 6 reasonably foreseeable risks of misuse and their
 7 intended design to absorb and expand in moisture,
 8 Defendants would have known of the Material
 9 Dangers.

10 c. **Knowledge of Materiality.** Defendants knew or should have
 11 known of the Material Omissions' importance to consumers.

12 (1) **First**, safety is of paramount importance in any
 13 consumer's decision to buy children's toys.¹⁴⁰
 14 Further, the importance of safety and warnings
 15 escalate the more likely young children will be
 16 exposed or drawn to the toys (here, tiny candy-like
 17 water beads).¹⁴¹ Indeed, the importance of safety
 18 skyrockets when the toy's design makes them difficult
 19 to supervise and keep out reach of small children
 20 (here, tiny sprinkle- or marble-sized toys sold in packs
 21 of hundreds and thousands). Indeed, the importance of
 22 children's toys safety is illustrated by federal
 23 standards and regulations, such as ASTM F963
 24 (acknowledging the danger of expanding materials
 25 toys, such as water beads), 16 C.F.R. § 1500.18,
 26 (banning certain children's toys from the market for
 27 being too dangerous), and 16 C.F.R. § 1250 (requiring
 28 third-party testing for children's toys compliant with
 ASTM F963-17). Beyond federal standards and
 regulations, common sense dictates that consumers
 value toys that do not pose unknown life-threatening
 dangers to children.

(2) **Second**, Defendants were aware of the importance of
 safety to consumers because Defendants touted the
 purported safety of the Products through their
 advertising and labeling with such statements as "safe
 for kids" or "safety tested."¹⁴² The use of such
 statements to market the Products demonstrates that
 Defendants were aware that safety concerns about the
 Products were important to consumers.

(3) **Third**, it is a matter of common sense that safety for

¹⁴⁰ *Toy Buying Today: Considerations, Information Seeking, and Thoughts about
 Manufacturer Suggested, supra* note 126.

¹⁴¹ *See id.* at 9 (discussing how the safety implications are greater for younger
 children).

¹⁴² *THE ONE & ONLY ORBEEZ, supra* note 129; *Orbeez, The One and Only, Glow in
 the Dark Water Beads, 50,000 Beads, Safety-Tested Sensory Toys for Kids Aged 5
 and Up, supra* note 129.

1 children's toys, like the Products, are important to
 2 consumers. In particular, Defendants knew or should
 3 have known that the risk of life-threatening and severe
 4 injuries, such as the Material Dangers, would affect
 5 whether consumers purchased the Products.

- 6 d. **Defendants' Continued Deception, Despite Its Knowledge.**
 7 Defendants, as manufacturers and marketers of the Products, had
 8 exclusive control over the disclosure of the Material Omissions on
 9 the Products' labels, packaging, and advertisements—i.e.,
 10 Defendants readily and easily could have disclosed the Material
 11 Dangers on the Products' advertisements, packaging, and labels.
 12 However, despite Defendants' knowledge that the Material
 13 Omissions lead consumers to believe that the Products do not pose
 14 a risk of the Obstruction Danger or Non-Detection Danger,
 15 Defendants' knowledge that the Products do pose a risk of the
 16 Obstruction and Non-Detection Dangers, and Defendants'
 17 knowledge that the Material Omissions are important to consumers
 18 in deciding to buy the Products (as outlined above), Defendants
 19 deliberately chose to market the Products with the Material
 20 Omissions thereby misleading consumers into buying or
 21 overpaying for the Products. Thus, Defendants knew, or should
 22 have known, at all relevant times, that the Material Omissions
 23 mislead reasonable consumers, such as Plaintiff and the Class, into
 24 buying the Products to attain the product-attributes that Defendants
 25 falsely advertised and warranted—to wit, that the Products do not
 26 pose a risk of the Material Dangers.

27 48. **Duty to Disclose Material Omission.** At all relevant times, Defendants
 28 had an obligation to disclose the Material Omissions—that the Products do pose a
 risk of the Obstruction Danger and the Non-Detection Danger—to consumers,
 including Plaintiff and the Class, prior to their purchase of the Products. Defendants
 not only knew or should have known that reasonable consumers would perceive
 Material Omissions to mean that the Products do not pose a risk of the Obstruction
 Danger and the Non-Detection Danger, but Defendants also knew or should have
 known that this attribute was material to consumers in deciding to buy the Products.
 Defendants further knew or should have known that the reasonable consumer's
 perception of the Material Omissions is false—i.e., that the Products do pose a risk of
 the Obstruction Danger and the Non-Detection Danger.

49. **Detriment.** Plaintiff and similarly situated consumers would not have
 purchased the Products or would not have overpaid a price premium for them, if they
 had known that the Material Omissions were false because, contrary the deceptive

1 safety perception engendered by the Material Omissions as claimed, promised,
 2 warranted, advertised, and/or represented, the Products pose a risk of the Material
 3 Dangers. Accordingly, based on Defendants’ Material Omissions, reasonable
 4 consumers, including Plaintiff, purchased Products that she would not have
 5 purchased, and/or overpaid for Products free of the Material Dangers, to their
 6 detriment.

7 **E. The Products are Substantially Similar**

8 50. As described herein, Plaintiff purchased the Gamino Purchased Products.
 9 The additional Products identified *supra* at ¶ 7 (collectively, the “**Unpurchased**
 10 **Products**”) are substantially similar to the Purchased Products.

- 11 a. **Defendants.** All Products are manufactured, sold, marketed,
 12 advertised, labeled, and packaged by Defendants.
- 13 b. **Brand.** All Products are sold under the same brand name: Orbeez.
- 14 c. **Marketing Demographics.** All Products are marketed directly to
 15 consumers for use as children’s toys.
- 16 d. **Purpose.** All Products are water beads products designed and
 17 marketed to be safe children’s toys.
- 18 e. **Use.** All Products are used in the same manner—children play with
 19 them, and water can be added to expand the water beads.
- 20 f. **Misrepresentations and omissions.** All Products contain one or
 21 more Material Omissions on their packaging and labeling.
- 22 g. **Packaging.** All Products are packaged in packaging that is similar in
 23 all material aspects.
- 24 h. **Key Attributes.** All Products pose severe and life-threatening
 25 dangers—specifically, the Obstruction Danger and the Non-Detection
 26 Danger.
- 27 i. **Misleading Effect.** The misleading effect of the Material Omissions
 28 on consumers is the same for all Products—consumers over-pay or
 otherwise buy children’s toys that are free of the Obstruction Danger
 and Non-Detection Danger, but all consumers receive children’s toys
 that pose a risk of the Obstruction Danger and Non-Detection Danger.
 Had consumers known of the Material Dangers, they would not have
 bought the Products or would not have paid as much for them.

1 **F. No Adequate Remedy at Law**

2 51. **No Adequate Remedy at Law.** Plaintiff and members of the Class are
3 entitled to equitable relief as no adequate remedy at law exists.

- 4 a. **Broader Statutes of Limitations.** The statutes of limitations for the
5 causes of action pled herein vary. The limitations period is four years
6 for claims brought under the UCL, which is one year longer than the
7 statutes of limitations under the FAL and CLRA. In addition, the
8 statutes of limitations vary for certain states' laws for breach of
9 warranty and unjust enrichment/restitution, between approximately 2
10 and 6 years. Thus, California Subclass members who purchased the
11 Products more than 3 years prior to the filing of the complaint will be
12 barred from recovery if equitable relief were not permitted under the
13 UCL. Similarly, Nationwide Class members who purchased the
14 Products prior to the furthest reach-back under the statute of
15 limitations for breach of warranty, will be barred from recovery if
16 equitable relief were not permitted for restitution/unjust enrichment.
- 17 b. **Broader Scope of Conduct.** In addition, the scope of actionable
18 misconduct under the unfair prong of the UCL is broader than the other
19 causes of action asserted herein. It includes, for example, Defendants'
20 overall unfair marketing scheme to promote and brand the Products
21 with the Material Omissions, across a multitude of media platforms,
22 including the Products' labels and packaging, over a long period of
23 time, in order to gain an unfair advantage over competitor products
24 and to take advantage of consumers' desire for products that comport
25 with the Material Omissions. The UCL also creates a cause of action
26 for violations of law (such as statutory or regulatory requirements and
27 court orders related to similar representations and omissions made on
28 the type of products at issue). Thus, Plaintiff and Class members may
be entitled to restitution under the UCL, while not entitled to damages
under other causes of action asserted herein (e.g., the FAL requires
actual or constructive knowledge of the falsity; the CLRA is limited
to certain types of plaintiffs (an individual who seeks or acquires, by
purchase or lease, any goods or services for personal, family, or
household purposes) and other statutorily enumerated conduct).
Similarly, unjust enrichment/restitution is broader than breach of
warranty. For example, in some states, breach of warranty may
require privity of contract or pre-lawsuit notice, which are not
typically required to establish unjust enrichment/restitution. Thus,
Plaintiff and Class members may be entitled to recover under unjust
enrichment/restitution, while not entitled to damages under breach of
warranty, because they purchased the products from third-party
retailers or did not provide adequate notice of a breach prior to the
commencement of this action.
- c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.**
Injunctive relief is appropriate on behalf of Plaintiff and members of
the Class because Defendants continue to misrepresent the Products
with the Material Omissions. Injunctive relief is necessary to prevent
Defendants from continuing to engage in the unfair, fraudulent, and/or
unlawful conduct described herein and to prevent future harm—none
of which can be achieved through available legal remedies (such as

1 monetary damages to compensate past harm). Further, injunctive
2 relief, in the form of affirmative disclosures is necessary to dispel the
3 public misperception about the Products that has resulted from years
4 of Defendants’ unfair, fraudulent, and unlawful marketing efforts.
5 Such disclosures would include, but are not limited to, publicly
6 disseminated statements providing accurate information about the
7 Products’ true nature; and/or requiring prominent qualifications and/or
8 disclaimers on the Products’ front label concerning the Products’ true
9 nature. An injunction requiring affirmative disclosures to dispel the
10 public’s misperception and prevent the ongoing deception and repeat
11 purchases based thereon, is also not available through a legal remedy
12 (such as monetary damages). In addition, Plaintiff is *currently* unable
13 to accurately quantify the damages caused by Defendants’ future
14 harm, because discovery and Plaintiff’s investigation has not yet
15 completed, rendering injunctive relief all the more necessary. For
16 example, because the court has not yet certified any class, the
17 following remains unknown: the scope of the class, the identities of its
18 members, their respective purchasing practices, prices of past/future
19 Product sales, and quantities of past/future Product sales.

- 20 d. **Public Injunction.** Further, because a “public injunction” is available
21 under the UCL, damages will not adequately “benefit the general
22 public” in a manner equivalent to an injunction.
- 23 e. **California vs. Nationwide Class Claims.** Violations of the UCL,
24 FAL, and CLRA are claims asserted on behalf of Plaintiff and the
25 California Subclass against Defendants, while breach of warranty and
26 unjust enrichment/restitution are asserted on behalf of Plaintiff and the
27 Nationwide Class. Dismissal of farther-reaching claims, such as
28 restitution, would bar recovery for non-California members of the
Class. In other words, legal remedies available or adequate under the
California-specific causes of action (such as the UCL, FAL, and
CLRA) have no impact on this Court’s jurisdiction to award equitable
relief under the remaining causes of action asserted on behalf of non-
California putative class members.
- f. **Procedural Posture—Incomplete Discovery & Pre-Certification.**
Lastly, this is an initial pleading in this action, and discovery has not
yet commenced and/or is at its initial stages. No class has been
certified yet. No expert discovery has commenced and/or completed.
The completion of fact/non-expert and expert discovery, as well as the
certification of this case as a class action, are necessary to finalize and
determine the adequacy and availability of all remedies, including
legal and equitable, for Plaintiff’s individual claims and any certified
class or subclass. Plaintiff therefore reserve Plaintiff’s right to amend
this complaint and/or assert additional facts that demonstrate this
Court’s jurisdiction to order equitable remedies where no adequate
legal remedies are available for Plaintiff and/or any certified class or
subclass. Such proof, to the extent necessary, will be presented prior
to the trial of any equitable claims for relief and/or the entry of an order
granting equitable relief.

1 **VI. CLASS ACTION ALLEGATIONS**

2 52. **Class Definition.** Plaintiff brings this action as a class action pursuant to
3 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of themselves and
4 all others similarly situated as members of the Class defined as follows:

5 All residents of the United States who, within the applicable statute of
6 limitations periods, purchased the Products, with the Material Omission
7 on the Products’ labels or packaging, for purposes other than resale
8 (“**Nationwide Class**”); and

9 All residents of California who, within four years prior to the filing of this
10 action, purchased the Products, with the Material Omission on the
11 Products’ labels or packaging, for purposes other than resale (“**California
Subclass**”).

12 (the “Nationwide Class” and “California Subclass” are collectively referred to as the
13 “**Class**”).

14 53. **Class Definition Exclusions.** Excluded from the Class are: (i)
15 Defendants, their assigns, successors, and legal representatives; (ii) any entities in
16 which Defendants have controlling interests; (iii) federal, state, and/or local
17 governments, including, but not limited to, their departments, agencies, divisions,
18 bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial
19 officer presiding over this matter and person within the third degree of consanguinity
20 to such judicial officer.

21 54. **Reservation of Rights to Amend the Class Definition.**, Plaintiff
22 reserves the right to amend or otherwise alter the class definition presented to the
23 Court at the appropriate time in response to facts learned through discovery, legal
24 arguments advanced by Defendants, or otherwise.

25 55. **Numerosity.** Members of the Class are so numerous that joinder of all
26 members is impracticable. Upon information and belief, the Nationwide Class
27 consists of tens of thousands of purchasers (if not more) dispersed throughout the
28 United States, and the California Subclass likewise consists of thousands of
purchasers (if not more) dispersed throughout the State of California. Accordingly, it
would be impracticable to join all members of the Class before the Court.

1 **56. Common Questions Predominate.** There are numerous and substantial
2 questions of law or fact common to all members of the Class that predominate over
3 any individual issues. Included within the common questions of law or fact are:

- 4 a. Whether Defendants engaged in unlawful, unfair or deceptive business
5 practices by advertising and selling the Products;
- 6 b. Whether Defendants' conduct of advertising and selling the Products
7 omitting that they present severe, and potentially life-threatening dangers
8 to children constitutes an unfair method of competition, or unfair or
9 deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- 10 c. Whether Defendants used deceptive representations and omissions in
11 connection with the sale of the Products in violation of Civil Code section
12 1750, *et seq.*;
- 13 d. Whether Defendants represented that the Products have characteristics or
14 quantities that they do not have in violation of Civil Code section 1750,
15 *et seq.*;
- 16 e. Whether Defendants advertised the Products with intent not to sell them
17 as advertised in violation of Civil Code section 1750, *et seq.*;
- 18 f. Whether Defendants' labeling and advertising of the Products are
19 misleading in violation of California Business and Professions Code
20 Sections 17500, *et seq.*;
- 21 g. Whether Defendants knew or by the exercise of reasonable care should
22 have known their labeling and advertising was and is misleading in
23 violation of California Business and Professions Code Sections 17500, *et*
24 *seq.*;
- 25 h. Whether Defendants' conduct is an unfair business practice within the
26 meaning of California Business and Professions Code Sections 17200, *et*
27 *seq.*;
- 28 i. Whether Defendants' conduct is a fraudulent business practice within the
 meaning of California Business and Professions Code Sections 17200, *et*
 seq.;
- j. Whether Defendants' conduct is an unlawful business practice within the
 meaning of California Business and Professions Code Sections 17200, *et*
 seq.;
- k. Whether Plaintiff and the Class paid more money for the Products than
 they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than
 they actually received;
- m. Whether Defendants' conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and

1 o. Whether Defendants were unjustly enriched by their unlawful conduct.

2

3 57. **Predominance.** The common questions of law and fact predominate over
4 questions that affect only individual Class Members.

5 58. **Typicality.** Plaintiff’s claims are typical of the claims of the Class
6 Members they seek to represent because Plaintiff, like the Class Members, purchased
7 Defendants’ misleading and deceptive Products. Defendants’ unlawful, unfair and/or
8 fraudulent actions concern the same business practices described herein irrespective
9 of where they occurred or were experienced. Plaintiff and the Class sustained similar
10 injuries arising out of Defendants’ conduct. Plaintiff’s and Class Members’ claims
11 arise from the same practices and course of conduct and are based on the same legal
12 theories.

13 59. **Adequacy.** Plaintiff is an adequate representative of the Class she seeks
14 to represent because their interests do not conflict with the interests of the Class
15 Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class
16 Members’ interests and have retained counsel experienced and competent in the
17 prosecution of complex class actions, including complex questions that arise in
18 consumer protection litigation.

19 60. **Ascertainability.** Class Members can easily be identified by an
20 examination and analysis of the business records regularly maintained by Defendants,
21 among other records within Defendants’ possession, custody, or control.
22 Additionally, further Class Member data can be obtained through additional third-
23 party retailers who retain customer records and order histories.

24 61. **Superiority and Substantial Benefit.** A class action is superior to other
25 methods for the fair and efficient adjudication of this controversy, since individual
26 joinder of all members of the Class is impracticable and no other group method of
27 adjudication of all claims asserted herein is more efficient and manageable for at least
28 the following reasons:

- 1 a. The claims presented in this case predominate over any questions of law
- 2 or fact, if any exist at all, affecting any individual member of the Class;
- 3 b. Absent a Class, the members of the Class will continue to suffer damage
- 4 and Defendants’ unlawful conduct will continue without remedy while
- 5 Defendants profit from and enjoy their ill-gotten gains;
- 6 c. Given the size of individual Class Members’ claims, few, if any, Class
- 7 Members could afford to or would seek legal redress individually for the
- 8 wrongs Defendants committed against them, and absent Class Members
- 9 have no substantial interest in individually controlling the prosecution of
- 10 individual actions;
- 11 d. When the liability of Defendants has been adjudicated, claims of all
- 12 members of the Class can be administered efficiently and/or determined
- 13 uniformly by the Court; and
- 14 e. This action presents no difficulty that would impede its management by
- 15 the Court as a class action, which is the best available means by which
- 16 Plaintiff and Class Members can seek redress for the harm caused to them
- 17 by Defendants.

18 62. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of

19 the Class, the prosecution of separate actions by individual members would create a

20 risk of inconsistent or varying adjudications with respect to individual members of

21 the Class, which would establish incompatible standards of conduct for Defendants.

22 63. **Injunctive/Declaratory Relief.** The prerequisites to maintaining a class

23 action for injunctive or equitable relief are met as Defendants have acted or refused

24 to act on grounds generally applicable to the Class, thereby making appropriate final

25 injunctive or declaratory relief with respect to the Class as a whole.

26 64. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any

27 difficulties that are likely to be encountered in the management of this action that

28 would preclude its maintenance as a class action.

23 ///

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1 **VII. CAUSES OF ACTION**

2 **COUNT ONE**

3 **Violation of California Unfair Competition Law**

4 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

5 **(*On Behalf of the California Subclass*)**

6 65. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
7 reference all allegations contained in this complaint, as though fully set forth herein.

8 66. **California Subclass.** This cause of action is brought pursuant to
9 California Business and Professions Code Sections 17200, *et seq.*, on behalf of
10 Plaintiff and a California Subclass who purchased the Products within the applicable
11 statute of limitations.

12 67. **The UCL.** California Business and Professions Code Sections 17200, *et*
13 *seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that
14 “unfair competition shall mean and include unlawful, unfair or fraudulent business
15 practices and unfair, deceptive, untrue or misleading advertising.”

16 68. **False Advertising Claims.** Defendants, in their advertising and
17 packaging of the Products, made misleading statements and fraudulent omissions
18 regarding the quality and characteristics of the Products—specifically, the Material
19 Omissions—despite the fact the Products do pose severe and potentially life-
20 threatening dangers, including the Obstruction Danger and the Non-Detection
21 Danger. Such omissions appear on the label and packaging of the Products, which are
22 sold at retail stores and point-of-purchase displays.

23 69. **Defendants’ Deliberately Fraudulent Marketing Scheme.** Defendants
24 do not have any reasonable basis for the omissions about the Products made in
25 Defendants’ advertising and on Defendants’ packaging or labeling because the
26 Products do pose severe and life-threatening dangers, including the Obstruction
27 Danger and the Non-Detection Danger. Defendants knew and know that the Products
28 pose severe and life-threatening dangers, including the Obstruction Danger and Non-

1 Detection Danger, though Defendants intentionally advertised and marketed the
2 Products to deceive reasonable consumers that the Products do not pose such severe
3 dangers.

4 **70. Misleading Advertising Claims Cause Purchase of Products.**

5 Defendants' labeling and advertising of the Products led to, and continues to lead to,
6 reasonable consumers, including Plaintiff, believing that the Products do not pose
7 severe and life-threatening dangers, including the Obstruction Danger and the Non-
8 Detection Danger.

9 **71. Injury in Fact.** Plaintiff and the California Subclass has suffered injury
10 in fact and have lost money or property as a result of and in reliance upon the Material
11 Omissions—namely Plaintiff and the California Subclass lost the purchase price for
12 the Products they bought from the Defendants.

13 **72. Conduct Violates the UCL.** Defendants' conduct, as alleged herein,
14 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.
15 The UCL prohibits unfair competition and provides, in pertinent part, that "unfair
16 competition shall mean and include unlawful, unfair or fraudulent business practices
17 and unfair, deceptive, untrue or misleading advertising." Cal. Bus & Prof. Code
18 § 17200. In addition, Defendants' use of various forms of advertising media to
19 advertise, call attention to, or give publicity to the sale of goods or merchandise that
20 are not as represented in any manner constitutes unfair competition, unfair, deceptive,
21 untrue or misleading advertising, and an unlawful business practice within the
22 meaning of California Business and Professions Code Sections 17200 and 17531,
23 which advertisements have deceived and are likely to deceive the consuming public,
24 in violation of California Business and Professions Code Section 17200.

25 **73. No Reasonably Available Alternatives/Legitimate Business Interests.**

26 Defendants failed to avail themselves of reasonably available, lawful alternatives to
27 further their legitimate business interests.
28

1 74. **Business Practice.** All of the conduct alleged herein occurred and
2 continues to occur in Defendants' business. Defendants' wrongful conduct is part of
3 a pattern, practice and/or generalized course of conduct, which will continue on a
4 daily basis until Defendants voluntarily alters their conduct or Defendants is
5 otherwise ordered to do so.

6 75. **Injunction.** Pursuant to California Business and Professions Code
7 Sections 17203 and 17535, Plaintiff and the members of the California Subclass seek
8 an order of this Court enjoining Defendants from continuing to engage, use, or employ
9 their practice of labeling and advertising the sale and use of the Products. Likewise,
10 Plaintiff and the members of the California Subclass seek an order requiring
11 Defendants to disclose such misrepresentations and omissions, and to preclude
12 Defendants' failure to disclose the existence and significance of said
13 misrepresentations.

14 76. **Causation/Damages.** As a direct and proximate result of Defendants'
15 misconduct in violation of the UCL, Plaintiff and members of the California Subclass
16 were harmed in the amount of the purchase price they paid for the Products. Further,
17 Plaintiff and members of the California Subclass have suffered and continue to suffer
18 economic losses and other damages including, but not limited to, the amounts paid
19 for the Products, and any interest that would have accrued on those monies, in an
20 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for
21 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains
22 to compensate Plaintiff and the California Subclass for said monies, as well as
23 injunctive relief to enjoin Defendants' misconduct to prevent ongoing and future harm
24 that will result.

25 77. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
26 cause of action for violation of the UCL on behalf of Plaintiff and the California
27 Subclass. Defendants' unfair, fraudulent, and unlawful conduct described herein
28 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of

1 punitive damages as permitted by law. Defendants’ misconduct is malicious as
2 Defendants acted with the intent to cause Plaintiff and consumers to pay for Products
3 that they were not, in fact, receiving. Defendants willfully and knowingly disregarded
4 the rights of Plaintiff and consumers as Defendants were, at all times, aware of the
5 probable dangerous consequences of their conduct and deliberately failed to avoid
6 misleading consumers, including Plaintiff. Defendants’ misconduct is oppressive as,
7 at all relevant times, said conduct was so vile, base, and/or contemptible that
8 reasonable people would look down upon it and/or otherwise would despise such
9 corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel
10 and unjust hardship in knowing disregard of their rights. Defendants’ misconduct is
11 fraudulent as Defendants intentionally misrepresented and/or concealed material facts
12 with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting
13 malice, oppression, and/or fraud was committed, authorized, adopted, approved,
14 and/or ratified by officers, directors, and/or managing agents of Defendants.

15 **“Unfair” Prong**

16 78. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when
17 “any injury it causes outweighs any benefits provided to consumers and the injury is
18 one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto*
19 *Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

20 79. **Injury.** Defendants’ action of mislabeling the Products with the Material
21 Omissions does not confer any benefit to consumers; rather, doing so causes injuries
22 to consumers, who do not receive products commensurate with their reasonable
23 expectations, overpay for the Products, receive Products of lesser standards than what
24 they reasonably expected to receive, and are exposed to increased health risks.
25 Consumers cannot avoid any of the injuries caused by Defendants’ deceptive labeling
26 and advertising of the Products. Accordingly, the injuries caused by Defendants’
27 deceptive labeling and advertising outweigh any benefits.
28

1 80. **Balancing Test.** Some courts conduct a balancing test to decide if a
2 challenged activity amounts to unfair conduct under California Business and
3 Professions Code Section 17200. They “weigh the utility of the defendant’s conduct
4 against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada,*
5 *N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

6 81. **No Utility.** Here, Defendants’ conduct of labeling the Products with the
7 Material Omissions when the Products pose severe and life-threatening dangers,
8 including the Obstruction Danger and the Non-Detection Danger, has no utility and
9 financially harms purchasers. Thus, the utility of Defendants’ conduct is vastly
10 outweighed by the gravity of harm.

11 82. **Legislative Declared Policy.** Some courts require that “unfairness must
12 be tethered to some legislative declared policy or proof of some actual or threatened
13 impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735
14 (9th Cir. 2007).

15 83. **Unfair Conduct.** Defendants’ labeling and advertising of the Products,
16 as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unfair
17 conduct. Defendants knew or should have known of their unfair conduct. Defendants’
18 misrepresentations and omissions constitute an unfair business practice within the
19 meaning of California Business and Professions Code Section 17200.

20 84. **Reasonably Available Alternatives.** There existed reasonably available
21 alternatives to further Defendants’ legitimate business interests, other than the
22 conduct described herein. Defendants could have refrained from labeling the Products
23 with the Material Omissions.

24 85. **Defendants’ Wrongful Conduct.** All of the conduct alleged herein
25 occurs and continues to occur in Defendants’ business. Defendants’ wrongful conduct
26 is part of a pattern or generalized course of conduct repeated on thousands of
27 occasions daily.

28

1 86. **Injunction.** Pursuant to California Business and Professions Code
2 Section 17203, Plaintiff and the California Subclass seek an order of this Court
3 enjoining Defendants from continuing to engage, use, or employ their practices of
4 labeling the Products with the Material Omissions.

5 87. **Causation/Damages.** Plaintiff and the California Subclass have suffered
6 injury in fact, have lost money and were exposed to increased health risks as a result
7 of Defendants' unfair conduct. Plaintiff and the California Subclass paid an
8 unwarranted premium for these Products. Specifically, Plaintiff and the California
9 Subclass paid for Products that are safe children's toys that do not pose severe and
10 life-threatening dangers, including the Obstruction Danger and the Non-Detection
11 Danger. Plaintiff and the California Subclass would not have purchased the Products,
12 or would have paid substantially less for the Products, if they had known that the
13 Products' advertising and labeling were deceptive. Accordingly, Plaintiff seeks
14 damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

15 **"Fraudulent" Prong**

16 88. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits
17 said conduct) if it is likely to deceive members of the public. *Bank of the West v.*
18 *Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

19 89. **Fraudulent & Material Omissions.** Defendants used the Material
20 Omissions with the intent to sell the Products to consumers, including Plaintiff and
21 the California Subclass. The Material Omissions are deceptive, and Defendants knew,
22 or should have known, of their deception. The Material Omissions are likely to
23 mislead consumers into purchasing the Products because they are material to the
24 average, ordinary, and reasonable consumer.

25 90. **Fraudulent Business Practice.** As alleged herein, the misrepresentations
26 and omissions by Defendants constitute a fraudulent business practice in violation of
27 California Business and Professions Code Section 17200.
28

1 **97. Violations of CLRA and FAL.** Defendants’ labeling of the Products, as
2 alleged herein, violates California Civil Code Sections 1750, *et seq.* (the “**CLRA**”)
3 and California Business and Professions Code Sections 17500, *et seq.* (the “**FAL**”) as
4 set forth below in the sections regarding those causes of action.

5 **98. Fraud.** Additionally, Defendants’ use of the Material Omissions to sell
6 the Products violates California Civil Code Sections 1572 (actual fraud), 1573
7 (constructive fraud), 1709-1710 (fraudulent deceit), and 1711 (deceit upon the
8 public), as set forth above.

9 **99. Additional Violations.** Defendants’ conduct in making the deceptive
10 omissions described herein constitutes a knowing failure to adopt policies in
11 accordance with and/or adherence to applicable laws, as set forth herein, all of which
12 are binding upon and burdensome to their competitors. This conduct engenders an
13 unfair competitive advantage for Defendants, thereby constituting an unfair,
14 fraudulent and/or unlawful business practice under California Business and
15 Professions Code Sections 17200-17208. Additionally, Defendants’
16 misrepresentations of material facts, as set forth herein, violate California Civil Code
17 Sections 1572, 1573, 1709, 1710, 1711, and 1770, as well as the common law.

18 **100. Unlawful Conduct.** Defendants’ packaging, labeling, and advertising of
19 the Products, as alleged herein, are deceptive, misleading, and unreasonable, and
20 constitute unlawful conduct. Defendants knew or should have known of their
21 unlawful conduct.

22 **101. Reasonably Available Alternatives.** Defendants had reasonably
23 available alternatives to further their legitimate business interests, other than the
24 conduct described herein. Defendants could have refrained from labeling the
25 Products with the Material Omissions.

26 **102. Business Practice.** All of the conduct alleged herein occurs and continues
27 to occur in Defendants’ business. Defendants’ wrongful conduct is part of a pattern
28 or generalized course of conduct.

1 **103. Injunction.** Pursuant to California Business and Professions Code
 2 Section 17203, Plaintiff and the California Subclass seek an order of this Court
 3 enjoining Defendants from continuing to engage, use, or employ their practice of
 4 deceptive advertising of the Products.

5 **104. Causation/Damages.** Plaintiff and the California Subclass have suffered
 6 injury in fact and have lost money as a result of Defendants’ unlawful conduct.
 7 Plaintiff and the California Subclass paid an unwarranted premium for the Products.
 8 Plaintiff and the California Subclass would not have purchased the Products if they
 9 had known that Defendants purposely deceived consumers into believing that the
 10 Products were safe children’s toys. Accordingly, Plaintiff seeks damages, restitution
 11 and/or disgorgement of ill-gotten gains pursuant to the UCL.

COUNT TWO

Violation of California False Advertising Law

(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)

(On Behalf of the California Subclass)

16 **105. Incorporation by reference.** Plaintiff re-alleges and incorporate by
 17 reference all allegations contained in this complaint, as though fully set forth herein.

18 **106. California Subclass.** Plaintiff brings this claim individually and on
 19 behalf of the California Subclass who purchased the Products within the applicable
 20 statute of limitations.

21 **107. FAL Standard.** The False Advertising Law, codified at California
 22 Business and Professions Code Sections 17500, *et seq.*, prohibits “unfair, deceptive,
 23 untrue or misleading advertising[.]”

24 **108. Material Omissions Disseminated to the Public.** Defendants violated
 25 Section 17500 when it advertised and marketed the Products through the unfair,
 26 deceptive, and misleading Material Omissions disseminated to the public through the
 27 Products’ labeling, packaging, and advertising. These representations were deceptive
 28

1 because the Products do not conform to them. The representations were material
2 because they are likely to mislead a reasonable consumer into purchasing the
3 Products.

4 109. **Knowledge.** In making and disseminating the representations alleged
5 herein, Defendants knew or should have known that the representations were untrue
6 or misleading, and acted in violation of Section 17500.

7 110. **Intent to sell.** Defendants' Material Omissions were specifically
8 designed to induce reasonable consumers, like Plaintiff and the California Subclass,
9 to purchase the Products.

10 111. **Causation/Damages.** As a direct and proximate result of Defendants'
11 misconduct in violation of the FAL, Plaintiff and members of the California Subclass
12 were harmed in the amount of the purchase price they paid for the Products and
13 increased health risks to children using the Products. Further, Plaintiff and members
14 of the Class have suffered and continue to suffer economic losses and other damages
15 including, but not limited to, the amounts paid for the Products, and any interest that
16 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
17 Plaintiff seeks a monetary award for violation of the FAL in damages, restitution,
18 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California
19 Subclass for said monies, as well as injunctive relief to enjoin Defendants'
20 misconduct to prevent ongoing and future harm that will result.

21 112. **Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct
22 described herein constitutes malicious, oppressive, and/or fraudulent conduct
23 warranting an award of punitive damages as permitted by law. Defendants'
24 misconduct is malicious as Defendants acted with the intent to cause Plaintiff and
25 consumers to pay for Products that they were not, in fact, receiving. Defendants
26 willfully and knowingly disregarded the rights of Plaintiff and consumers as
27 Defendants were aware of the probable dangerous consequences of their conduct and
28 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants'

1 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
2 and/or contemptible that reasonable people would look down upon it and/or otherwise
3 would despise such corporate misconduct. Said misconduct subjected Plaintiff and
4 consumers to cruel and unjust hardship in knowing disregard of their rights.
5 Defendants' misconduct is fraudulent as Defendants, at all relevant times,
6 intentionally misrepresented and/or concealed material facts with the intent to deceive
7 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,
8 and/or fraud was committed, authorized, adopted, approved, and/or ratified by
9 officers, directors, and/or managing agents of Defendants.

10 COUNT THREE

11 **Violation of California Consumers Legal Remedies Act**

12 **(Cal. Civ. Code §§ 1750, *et seq.*)**

13 **(*On Behalf of the California Subclass*)**

14 113. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
15 reference all allegations contained in this complaint, as though fully set forth herein.

16 114. **California Subclass.** Plaintiff brings this claim individually and on
17 behalf of the California Subclass who purchased the Products within the applicable
18 statute of limitations.

19 115. **CLRA Standard.** The CLRA provides that “unfair methods of
20 competition and unfair or deceptive acts or practices undertaken by any person in a
21 transaction intended to result or which results in the sale or lease of goods or services
22 to any consumer are unlawful.”

23 116. **Goods/Services.** The Products are “goods,” as defined by the CLRA in
24 California Civil Code Section 1761(a).

25 117. **Defendants.** Defendants are “persons,” as defined by the CLRA in
26 California Civil Code Section 1761(c).

27 118. **Consumers.** Plaintiff and members of the California Subclass are
28 “consumers,” as defined by the CLRA in California Civil Code Section 1761(d).

1 119. **Transactions.** The purchase of the Products by Plaintiff and members of
2 the California Subclass are “transactions” as defined by the CLRA under California
3 Civil Code Section 1761(e).

4 120. **Violations of the CLRA.** Defendants violated the following sections of
5 the CLRA by selling the Products to Plaintiff and the California Subclass through the
6 misleading, deceptive, and fraudulent Material Omissions:

- 7 a. Section 1770(a)(5) by representing that the Products have
8 “characteristics, . . . uses [or] benefits . . . which [they] do not have.”
- 9 b. Section 1770(a)(7) by representing that the Products “are of a particular
10 standard, quality, or grade . . . [when] they are of another.”
- 11 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to
12 sell them as advertised.”

13 121. **Knowledge.** Defendants’ uniform and material representations and
14 omission regarding the Products were likely to deceive, and Defendants knew or
15 should have known that their representations and omissions were misleading.

16 122. **Malicious.** Defendants’ conduct is malicious, fraudulent, and wanton in
17 that Defendants intentionally misled and withheld material information from
18 consumers, including Plaintiff, to increase the sale of the Products.

19 123. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the
20 California Subclass could not have reasonably avoided such injury. Plaintiff and
21 members of the California Subclass were unaware of the existence of the facts that
22 Defendants suppressed and failed to disclose, and Plaintiff and members of the
23 California Subclass would not have purchased the Products and/or would have
24 purchased them on different terms had they known the truth.

25 124. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass
26 suffered harm as a result of Defendants’ violations of the CLRA because they relied
27 on the Material Omissions in deciding to purchase the Products. The Material
28 Omissions were a substantial factor. The Material Omissions was material because a

1 reasonable consumer would consider it important in deciding whether to purchase the
2 Products.

3 **125. Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California
4 Civil Code Section 1782, concurrent to the filing of this complaint, Plaintiff’s counsel,
5 acting on behalf of Plaintiff and members of the class, mailed a Demand Letter via
6 U.S. certified mailed return receipt requested addressed to Defendant Spin Master and
7 Defendant Maya at their respective principal places of business registered with the
8 California Secretary of State (Spin Master, Inc.: 5880 West Jefferson Blvd., Suite A,
9 Los Angeles, CA 90016; The Maya Group, Inc.: 4202 Windsor Drive, Huntington
10 Beach, CA 92649) and their registered agents for service of process (Spin Master,
11 Inc.: CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N,
12 Sacramento, CA 95833; The Maya Group, Inc.: Oded Ben-Ezer, 4202 Windsor Drive,
13 Huntington Beach, CA 92649). At the appropriate time, Plaintiff will amend the
14 operative complaint to seek monetary damages pursuant to the CLRA.

15 **126. Causation/Damages.** As a direct and proximate result of Defendants’
16 misconduct in violation of the CLRA, Plaintiff and members of the California
17 Subclass were harmed in the amount of the purchase price they paid for the Products.
18 Further, Plaintiff and members of the Class have suffered and continue to suffer
19 economic losses and other damages including, but not limited to, the amounts paid
20 for the Products, and any interest that would have accrued on those monies, in an
21 amount to be proven at trial.

22 **127. Injunction.** Pursuant to California Civil Code Section 1780, Plaintiff and
23 members of the California Subclass are entitled to seek, and do hereby seek,
24 injunctive relief to put an end to Defendants’ violations of the CLRA and to dispel
25 the public misperception generated, facilitated, and fostered by Defendants’ false
26 advertising campaign. Plaintiff has no adequate remedy at law. Without equitable
27 relief, Defendants’ unfair and deceptive practices will continue to harm Plaintiff and
28 the California Subclass. Accordingly, Plaintiff seeks an injunction to enjoin

1 Defendants from continuing to employ the unlawful methods, acts, and practices
2 alleged herein pursuant to Section 1780(a)(2) and otherwise require Defendants to
3 take corrective action necessary to dispel the public misperception engendered,
4 fostered, and facilitated through Defendants' deceptive labeling of the Products with
5 the Material Omissions.

6 **COUNT FOUR**

7 **Breach of Warranty**

8 ***(On Behalf of the Nationwide Class and California Subclass)***

9 128. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
10 reference all allegations contained in this complaint, as though fully set forth herein.

11 129. **Nationwide Class & California Subclass.** Plaintiff brings this claim
12 individually and on behalf of the Nationwide Class and California Subclass (the
13 Class) who purchased the Products within the applicable statute of limitations.

14 130. **Express Warranty.** By advertising and selling the Products at issue,
15 Defendants made promises and affirmations of fact on the Products' packaging and
16 labeling, and through their marketing and advertising, as described herein. This
17 labeling and advertising constitute express warranties and became part of the basis of
18 the bargain between Plaintiff and members of the Class and Defendants. Through the
19 Material Omissions on the Products' labeling, packaging, and advertising, Defendants
20 expressly warrant that the Products do not pose a risk of the Material Dangers.

21 131. **Implied Warranty of Merchantability.** By advertising and selling the
22 Products at issue, Defendants, merchants of goods, made promises and affirmations
23 of fact that the Products are merchantable and conform to the promises or affirmations
24 of fact made on the Products' packaging and labeling, and through their marketing
25 and advertising, as described herein. The Material Omissions on the Products' labels,
26 packaging, and advertising, in addition to the implied warranty of merchantability,
27 constitute implied warranties that became part of the basis of the bargain between
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1 Plaintiff and members of the Class and Defendants—to wit, that the Products do not
2 pose a risk of the Material Dangers.

3 132. **Breach of Warranty.** Contrary to Defendants’ warranties, the Products
4 do pose a risk of the Material Dangers and, therefore, Defendants breached their
5 warranties about the Products and their qualities.

6 133. **Causation/Remedies.** As a direct and proximate result of Defendants’
7 breach of warranty, Plaintiff and members of the Class were harmed in the amount of
8 the purchase price they paid for the Products. Further, Plaintiff and members of the
9 Class have suffered and continue to suffer economic losses and other damages
10 including, but not limited to, the amounts paid for the Products, and any interest that
11 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
12 Plaintiff seeks a monetary award for breach of warranty in the form of damages,
13 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
14 Class for said monies, as well as injunctive relief to enjoin Defendants’ misconduct
15 to prevent ongoing and future harm that will result.

16 134. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
17 cause of action for breach of warranty on behalf of Plaintiff and the Class.
18 Defendants’ unfair, fraudulent, and unlawful conduct described herein constitutes
19 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
20 damages as permitted by law. Defendants’ misconduct is malicious as Defendants
21 acted with the intent to cause Plaintiff and consumers to pay for Products that they
22 were not, in fact, receiving. Defendants willfully and knowingly disregarded the
23 rights of Plaintiff and consumers as Defendants were aware of the probable dangerous
24 consequences of their conduct and deliberately failed to avoid misleading consumers,
25 including Plaintiff. Defendants’ misconduct is oppressive as, at all relevant times, said
26 conduct was so vile, base, and/or contemptible that reasonable people would look
27 down upon it and/or otherwise would despise such misconduct. Said misconduct
28 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard

1 of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant
2 times, intentionally misrepresented and/or concealed material facts with the intent to
3 deceive Plaintiff and consumers. The wrongful conduct constituting malice,
4 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
5 ratified by officers, directors, and/or managing agents of Defendants.

6 COUNT FIVE

7 **Fraudulent Inducement – Intentional Misrepresentation**

8 *(On Behalf of the Nationwide Class and California Subclass)*

9 135. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
10 reference all allegations contained in this complaint, as though fully set forth herein.

11 136. **Nationwide Class & California Subclass.** Plaintiff brings this claim
12 individually and on behalf of the Nationwide Class and California Subclass (the
13 Class) who purchased the Products within the applicable statute of limitations.

14 137. **Defendants' Misrepresentation through Omissions.** By labeling and
15 marketing the Products with the Material Omissions, Defendants failed to disclose
16 risk posed the Products.

17 138. **Defendants' Knowledge.** Defendants knew, or should have known, that
18 the Products were deceptively labeled and advertised, and that the knowledge of the
19 Products posed the Obstruction Omission and Non-Detection Dangers.

20 139. **Material Omissions.** Defendants knew, or should have known, that the
21 Obstruction Omission and the Non-Detection Omission on the labeling and
22 advertising of the Products were material, and that a reasonable consumer would rely
23 on the Products' labels, packaging, and advertising to ascertain the safety risks posed
24 by the Products when making purchasing decision.

25 140. **Plaintiff's Knowledge.** Plaintiff and Class Members did not know, nor
26 could they have known through reasonable diligence, that the Products pose the
27 Material Dangers.

1 **141. Reasonable Reliance.** In making their purchasing decisions, Plaintiff and
2 Class Members reasonably relied on Defendants’ false, deceptive, and misleading
3 labeling and advertising because the Products’ packaging, labels, and advertising as
4 children’s toys convey that the Products are safe for children. Additionally, the
5 Material Omissions on the Products’ labels, packaging, and advertising convey that
6 the Products do not pose a risk of the Material Dangers. Lastly, Plaintiff’s and Class
7 Members’ reliance on Defendants’ labeling, packaging, and advertisements was
8 reasonable as the Products, Defendants, and their brand are trusted and hold a
9 reputation for safety, quality, and reliability.

10 **142. Intentional Inducement.** Defendants intended to induce—and did,
11 indeed, induce—Plaintiff and Class Members to purchase the Products in reliance on
12 the Material Omissions on the Products’ labels, packaging, and advertisements,
13 despite the fact that the Products pose serious risks to children, including the Material
14 Dangers.

15 **143. Causation/Remedies.** As a direct and proximate result of Defendants’
16 intentional Material Omissions on the Products’ labels, packaging, and
17 advertisements, Plaintiff and members of the Class purchased the Products and were,
18 thereby, harmed in the amount of the purchase price they paid for the Products or
19 otherwise overpaid for Products that do not pose a risk of the Material Dangers.
20 Further, Plaintiff and members of the Class have suffered and continue to suffer
21 economic losses and other damages, including, but not limited to, the amounts paid
22 or overpaid for the Products, and any interest that would have accrued on those
23 monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary
24 award for fraudulent inducement by intentional misrepresentation in the form of
25 damages, restitution, and/or disgorgement of ill-gotten gates to compensate Plaintiff
26 and the Class for said monies, as well as injunctive relief, including without
27 limitation, public injunctive relief, to enjoin Defendants’ misconduct and to prevent
28 ongoing and future harm that will result.

1 **144. Punitive Damages.** Defendants’ unfair, fraudulent, and unlawful conduct
 2 described herein constitutes malicious, oppressive, and/or fraudulent conduct
 3 warranting an award of punitive damages as permitted by law. Defendants’
 4 misconduct is malicious as Defendants acted with the intent to cause Plaintiff and
 5 consumers to pay for Products that they were not, in fact, receiving. Defendants
 6 willfully and knowingly disregarded the rights of Plaintiff and consumers as
 7 Defendants were aware of the probable dangerous consequences of their conduct and
 8 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants’
 9 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
 10 and/or contemptible that reasonable people would look down upon it and/or otherwise
 11 would despise such corporate misconduct. Said misconduct subjected Plaintiff and
 12 consumers to cruel and unjust hardship in knowing disregard of their rights.
 13 Defendants’ misconduct is fraudulent as Defendants, at all relevant times,
 14 intentionally misrepresented and/or concealed material facts with the intent to deceive
 15 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,
 16 and/or fraud was committed, authorized, adopted, approved, and/or ratified by
 17 officers, directors, and/or managing agents of Defendants.

COUNT SIX

Negligent Misrepresentation

(On Behalf of the Nationwide Class and California Subclass)

21 **145. Incorporation by Reference.** Plaintiff re-alleges and incorporates by
 22 reference all allegations contained in this complaint, as though fully set forth herein.

23 **146. Nationwide Class & California Subclass.** Plaintiff brings this claim
 24 individually and on behalf of the Nationwide Class and California Subclass (the
 25 Class) who purchased the Products within the applicable statute of limitations.

26 **147. Duty.** Defendants had a duty to Plaintiff and the Class to exercise
 27 reasonable and ordinary care in the development, testing, manufacture, marketing,
 28 distribution, and sale of the Products.

1 148. **Breach.** Defendants breached their duty to Plaintiff and the Class by
2 failing to exercise reasonable care in the marketing, labeling, packaging, advertising,
3 and selling of the Products to Plaintiff and the Class without the qualities,
4 characteristics, and suitability for use as advertised by Defendants. Defendants did so
5 by failing to adequately warn Plaintiff and the Class of the Material Dangers, and by
6 failing to promptly remove the Products from the marketplace or otherwise take
7 appropriate remedial action. Specifically, the Products pose serious and life-
8 threatening health risks to children, including the Material Dangers.

9 149. **Defendants' Misrepresentation Through Omissions.** By labeling,
10 packaging, advertising, marketing, and selling the Products with the Obstruction
11 Omission and the Non-Detection Omission, Defendants failed to exercise reasonable
12 care to warn of the Material Dangers posed by the Products and, accordingly,
13 negligently misrepresented the safety of the Products, including misrepresenting that
14 the Products do not pose a risk of the Material Dangers.

15 150. **No Reasonable Grounds.** Defendants knew or should have known that
16 the qualities and characteristics of the Products were not as advertised, labeled,
17 packaged, marketed, or otherwise represented, that the Products were not suitable for
18 their intended use, and that the Products were otherwise not as warranted and
19 represented by Defendants. Specifically, Defendants knew or should have known that
20 the Products pose life-threatening and serious health risks to children, including the
21 Material Dangers. Defendants had no reasonable grounds for concealing or failing to
22 identify the Material Dangers, warn of the Material Dangers, or otherwise advertise,
23 label, package, market, and sell the Products with the Material Omissions.

24 151. **Material Omissions.** Defendants knew, or should have known, that the
25 Obstruction Omission and the Non-Detection Omission on the Products' labels,
26 packaging, and advertising were material to consumers in deciding whether to buy
27 the Products; and that a reasonable consumer would rely on Defendants' labels,
28

1 packaging, and advertising to ascertain the risks posed by the Products when making
2 purchasing decision.

3 **152. Defendants' Knowledge.** Defendants knew or should have known of the
4 Products' Material Dangers; that consumers rely on Defendants to disclose on the
5 Products' labels, packaging, and advertisements all of the Products' life-threatening
6 and serious health risks from reasonably foreseeable use and misuse of the Products,
7 including the Material Dangers; and that the Products' labels, packaging, and
8 advertisements fail to adequately disclose the Material Dangers.

9 **153. Reasonable Reliance.** In making their purchasing decisions, Plaintiff and
10 Class Members reasonably relied on Defendants' Material Omissions on the
11 Products' labels, packaging, and advertising to disclose all of the Products' life-
12 threatening and serious health risks, including the Material Dangers.

13 **154. Intentional Inducement.** Defendants affirmatively misrepresented that
14 the Products are safe for use as children's toys—specifically, that the Products do not
15 pose life-threatening and serious health risks (to wit, the Material Dangers).
16 Defendants deliberately and intentionally omitted the Material Dangers from the
17 Products' labels, packaging, and advertising. Defendants intentionally and
18 deliberately made these affirmative misrepresentations and Material Omissions to
19 induce Plaintiff and Class Members to purchase the Products. Plaintiff and Class
20 Members were induced to buy or overpay for the Products as a result of the Material
21 Omissions.

22 **155. Causation/Remedies.** As a direct and proximate result of Defendants'
23 negligent misrepresentation, Plaintiff and members of the Class were harmed in the
24 amount of the purchase price they paid or overpaid for the Products. Further, Plaintiff
25 and members of the Class have suffered and continue to suffer economic losses and
26 other damages, including, but not limited to, the amounts paid or overpaid for the
27 Products, and any interest that would have accrued on those monies, in an amount to
28 be proven at trial. Accordingly, Plaintiff seeks a monetary award for negligent

1 misrepresentation in the form of damages, restitution, and/or disgorgement of ill-
 2 gotten gains to compensate Plaintiff and the Class for said monies, as well as
 3 injunctive relief, including without limitation, public injunctive relief, to enjoin
 4 Defendants' misconduct to prevent ongoing and future harm that will result.

5 **156. Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct
 6 described herein constitutes malicious, oppressive, and/or fraudulent conduct
 7 warranting an award of punitive damages as permitted by law. Defendants'
 8 misconduct is malicious as Defendants acted with the intent to cause Plaintiff and
 9 consumers to pay for Products that they were not, in fact, receiving. Defendants
 10 willfully and knowingly disregarded the rights of Plaintiff and consumers as
 11 Defendants were aware of the probable dangerous consequences of their conduct and
 12 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants'
 13 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
 14 and/or contemptible that reasonable people would look down upon it and/or otherwise
 15 would despise such corporate misconduct. Said misconduct subjected Plaintiff and
 16 consumers to cruel and unjust hardship in knowing disregard of their rights.
 17 Defendants' misconduct is fraudulent as Defendants, at all relevant times,
 18 intentionally misrepresented and/or concealed material facts with the intent to deceive
 19 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,
 20 and/or fraud was committed, authorized, adopted, approved, and/or ratified by
 21 officers, directors, and/or managing agents of Defendants.

COUNT SEVEN

Unjust Enrichment/Restitution

(On Behalf of the Nationwide Class and California Subclass)

25 **157. Incorporation by Reference.** Plaintiff re-alleges and incorporates by
 26 reference all allegations contained in this complaint, as though fully set forth herein.
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1 **158. Nationwide Class & California Subclass.** Plaintiff brings this claim
2 individually and on behalf of the Nationwide Class and California Subclass (the
3 Class) who purchased the Products within the applicable statute of limitations.

4 **159. Plaintiff/Class Conferred a Benefit.** By purchasing the Products,
5 Plaintiff and members of the Class conferred a benefit on Defendants in the form of
6 the purchase price of the Products.

7 **160. Defendants' Knowledge of Conferred Benefit.** Defendants had
8 knowledge of such benefit and Defendants appreciated the benefit because, were
9 consumers not to purchase the Products, Defendants would not generate revenue from
10 the sales of the Products.

11 **161. Defendants' Unjust Receipt Through Deception.** Defendants' knowing
12 acceptance and retention of the benefit is inequitable and unjust because the benefit
13 was obtained by Defendants' fraudulent, misleading, and deceptive representations
14 and omissions.

15 **162. Causation/Damages.** As a direct and proximate result of Defendants'
16 unjust enrichment, Plaintiff and members of the Class were harmed in the amount of
17 the purchase price they paid for the Products. Further, Plaintiff and members of the
18 Class have suffered and continue to suffer economic losses and other damages
19 including, but not limited to, the amounts paid for the Products, and any interest that
20 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
21 Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or
22 disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies,
23 as well as injunctive relief to enjoin Defendants' misconduct to prevent ongoing and
24 future harm that will result.

25 **163. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
26 cause of action for unjust enrichment on behalf of Plaintiff and the Class. Defendants'
27 unfair, fraudulent, and unlawful conduct described herein constitutes malicious,
28 oppressive, and/or fraudulent conduct warranting an award of punitive damages as

1 permitted by law. Defendants' misconduct is malicious as Defendants acted with the
2 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact,
3 receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and
4 consumers as Defendants were aware of the probable dangerous consequences of
5 their conduct and deliberately failed to avoid misleading consumers, including
6 Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct
7 was so vile, base, and/or contemptible that reasonable people would look down upon
8 it and/or otherwise would despise such corporate misconduct. Said misconduct
9 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard
10 of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant
11 times, intentionally misrepresented and/or concealed material facts with the intent to
12 deceive Plaintiff and consumers. The wrongful conduct constituting malice,
13 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
14 ratified by officers, directors, and/or managing agents of Defendants.

15 **VIII. PRAYER FOR RELIEF**

16 164. WHEREFORE, Plaintiff, individually and on behalf of all others
17 similarly situated, pray for judgment against Defendants as follows:

- 18 a. **Certification:** For an order certifying this action as a class action,
19 appointing Plaintiff as the Class Representative, and appointing
20 Plaintiff's Counsel as Class Counsel;
- 21 b. **Declaratory Relief:** For an order declaring that Defendants' conduct
22 violates the statutes and laws referenced herein consistent with applicable
23 law and pursuant to only those causes of action so permitted;
- 24 c. **Injunction:** For an order requiring Defendants to change their business
25 practices to prevent or mitigate the risk of the consumer deception and
26 violations of law outlined herein. This includes, for example, orders that
27 Defendants immediately cease and desist from selling the unlawful
28 Products in violation of law; that enjoin Defendants from continuing to
market, advertise, distribute, and sell the Products in the unlawful manner
described herein; that require Defendants to engage in an affirmative
advertising campaign to dispel the public misperception of the Products
resulting from Defendants' unlawful conduct; and/or that require
Defendants to take all further and just corrective action, consistent with
applicable law and pursuant to only those causes of action so permitted;
- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary

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compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with applicable law and pursuant to only those causes of action so permitted;

- e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with applicable law and pursuant to only those causes of action so permitted;
- f. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with applicable law and pursuant to only those causes of action so permitted;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with applicable law and pursuant to only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

Dated: October 31, 2023

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

By:

/s/ Katherine A. Bruce
 Ryan J. Clarkson
 Katherine A. Bruce
 Kelsey J. Elling

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

1
2 165. Plaintiff hereby demands a trial by jury on all issues and causes of action
3 so triable.

4 Dated: October 31, 2023

Respectfully submitted,

CLARKSON LAW FIRM, P.C.
By:

7 /s/ Katherine A. Bruce
8 Ryan J. Clarkson
9 Katherine A. Bruce
Kelsey J. Elling

Attorneys for Plaintiff