

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. _____

JENNIFER BELL, JENNIFER BUFFAN,)
KAYLEE CASILLAS, JAMES)
DOUGLAS JR., CHARLETA)
HATCHETT, JADA HOGGARD,)
JERMAINE JACKSON, JAVONNEY)
and EMMANUEL KISSI, MICHAEL)
ROZENTAL, KELSEY SCALES)
REBECCA SCHUSTER, EMILY)
HOLMES TURNER and BLAKE)
TURNER, TAMMY and THOMAS)
WAGNER, and NANCY and DAVID)
WILLIAMSON, *individually and on*)
behalf of themselves and all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
WANABANA LLC and WANABANA)
USA LLC,)

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Defendants.

Plaintiffs Jennifer Bell, Jennifer Buffan, Kaylee Casillas, James Douglas Jr., Charleta Hatchett, Jada Hoggard, Jermaine Jackson, Javonney and Emmanuel Kissi, Michael Rozental, Rebecca Schuster, Emily Holmes Turner and Blake Turner, Tammy and Thomas Wagner, and Nancy and David Williamson (collectively “Plaintiffs”), on behalf of themselves and a class of all others similarly situated as defined *infra*, for this Consolidated Class Action Complaint against WanaBana LLC and WanaBana USA LLC (collectively “WanaBana” or “Defendants”).

INTRODUCTION.

1. Plaintiffs, individually and on behalf of all others similarly situated, bring this Class Action Complaint against Defendants for their reckless, and/or intentional practice of failing to disclose the presence of dangerous materials, including lead, in their apple sauce and fruit puree pouches, including the WanaBana Apple Cinnamon Fruit Puree (the “Products”).¹
2. This action seeks both injunctive and monetary relief on behalf of the proposed Classes as defined *infra*, including requiring full disclosure of all such substances on the Products’ packaging and restoring monies to the members of the proposed Classes, who would not have purchased the Products had they known they contained (or were at risk of containing) dangerous materials or would not have paid premium prices for the Products had they known the Products contain dangerous materials like lead.
3. Plaintiffs allege the following based upon personal knowledge, as well as investigation by their counsel as to themselves, and as to all other matters, upon information and belief. Plaintiffs believe substantial evidentiary support exists for the allegations set forth herein, which will become available after a reasonable opportunity for discovery.

THE PARTIES.

4. **Plaintiff Jennifer Bell** and **Plaintiffs Nancy and David Williamson** are all citizens and residents of **the State of North Carolina**. Plaintiff Bell and the Williamson Plaintiffs (the “Williamsons”) purchased the Products for personal purposes. Bell and the Williamsons purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Bell and the Williamsons believed and reasonably relied on Defendants’

¹ Plaintiffs are not alleging nor are they seeking damages for any personal injuries to themselves, their Minor Child (as defined below), or putative class members. Those claims are being excluded from this Complaint. Plaintiffs retain the right to seek personal injury damages resulting from the lead exposure caused by Defendants at a later date.

representations, which they saw on the Products' packaging. Bell and the Williamsons stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. Bell and the Williamsons would not have purchased the Products if they had known that they were contaminated. Bell and the Williamsons suffered economic damages related to the purchase of the Products. Lab tests demonstrated that Bell's child and the Williamsons' child each had high levels of lead in their bodies.

5. **Plaintiff Jennifer Buffan** is a citizen and resident of **the State of Washington**. Plaintiff Buffan purchased the Products for personal purposes. Buffan purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Buffan believed and reasonably relied on Defendants' representations, which she saw on the Products' packaging. Buffan stopped purchasing and consuming Defendants' Products when she learned the Products were contaminated. Buffan would not have purchased the Products if she had known that they were contaminated. Buffan suffered economic damages related to the purchase of the Products.
6. **Plaintiff Kaylee Casillas** is a citizen and resident of **the State of Illinois**. Plaintiff Casillas purchased the Products for personal purposes. Casillas purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Casillas believed and reasonably relied on Defendants' representations, which she saw on the Products' packaging. Casillas stopped purchasing and consuming Defendants' Products when she learned the Products were contaminated. Casillas would not have purchased the Products if she had known that they were contaminated. Casillas suffered economic damages related to the purchase of the Products.

7. **Plaintiffs James Douglas Jr. and Jada Hoggard** are citizens and residents of **the State of Georgia**. Plaintiffs Douglas and Hoggard purchased the Products for personal purposes. Douglas and Hoggard purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Douglas and Hoggard believed and reasonably relied on Defendants' representations, which they saw on the Products' packaging. Douglas and Hoggard stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. Douglas and Hoggard would not have purchased the Products if they had known that they were contaminated. Douglas and Hoggard suffered economic damages related to the purchase of the Products. Lab tests demonstrated that Douglas and Hoggard's child had high levels of lead in their body.
8. **Plaintiffs Charleta Hatchett and Jermaine Jackson** are citizens and residents of **the State of Michigan**. Plaintiffs Hatchett and Jackson purchased the Products for personal purposes. Hatchett and Jackson purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Hatchett and Jackson believed and reasonably relied on Defendants' representations, which they saw on the Products' packaging. Hatchett and Jackson stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. Hatchett and Jackson would not have purchased the Products if they had known that they were contaminated. Hatchett and Jackson suffered economic damages related to the purchase of the Products. Lab tests demonstrated that Hatchett and Jackson's child had high levels of lead in their body.
9. **Plaintiffs Emily Holmes Turner and Blake Turner** are citizens and residents of **the State of Florida**. The Turner Plaintiffs (the "Turners") purchased the Products for personal purposes. The Turners purchased the Products because they were advertised as being a

premium, healthy fruit puree pouch. The Turners believed and reasonably relied on Defendants' representations, which they saw on the Products' packaging. The Turners stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. The Turners would not have purchased the Products if they had known that they were contaminated. The Turners suffered economic damages related to the purchase of the Products.

10. Plaintiffs Javonney and Emmanuel Kissi are citizens and residents of **the State of Pennsylvania**. The Kissi Plaintiffs (the "Kissis") purchased the Products for personal purposes. The Kissis purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. The Kissis believed and reasonably relied on Defendants' representations, which they saw on the Products' packaging. The Kissis stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. The Kissis would not have purchased the Products if they had known that they were contaminated. The Kissis suffered economic damages related to the purchase of the Products.

11. Plaintiffs Michael Rozental and Rebecca Schuster are citizens and residents of **the State of New York**. Plaintiffs Rozental and Schuster purchased the Products for personal purposes. Rozental and Schuster purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Rozental and Schuster believed and reasonably relied on Defendants' representations, which they saw on the Products' packaging. Rozental and Schuster stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. Rozental and Schuster would not have purchased

the Products if they had known that they were contaminated. Rozental and Schuster suffered economic damages related to the purchase of the Products.

12. Plaintiff Kelsey Scales is a citizen and resident of **the State of Louisiana**. Plaintiff Scales purchased the Products for personal purposes. Scales purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. Scales believed and reasonably relied on Defendants' representations, which she saw on the Products' packaging. Scales stopped purchasing and consuming Defendants' Products when she learned the Products were contaminated. Scales would not have purchased the Products if she had known that they were contaminated. Scales suffered economic damages related to the purchase of the Products.

13. Plaintiffs Tammy and Thomas Wagner are citizens and residents of **the State of Oregon**. The Wagner Plaintiffs (the "Wagners") purchased the Products for personal purposes. The Wagners purchased the Products because they were advertised as being a premium, healthy fruit puree pouch. The Wagners believed and reasonably relied on Defendants' representations, which they saw on the Products' packaging. The Wagners stopped purchasing and consuming Defendants' Products when they learned the Products were contaminated. The Wagners would not have purchased the Products if they had known that they were contaminated. The Wagners suffered economic damages related to the purchase of the Products. Lab tests demonstrated that the Wagners' child had high levels of lead in their body.

14. Defendant WanaBana LLC is a national limited liability corporation organized and existing under the laws of Florida. Its principal office is located at 9405 N. Miami Avenue, in Miami Shores, Florida.

15. **Defendant WanaBana USA LLC** is a Florida limited liability corporation with its principal office located at 1413 Ponce de Leon Avenue, Suite 301, in San Juan, Puerto Rico.

JURISDICTION & VENUE.

16. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and (d)(6) because:

- a. There are no less than 100 class members;
- b. There is an aggregate amount in controversy exceeding \$5,000,000.00, exclusive of interest and costs; and
- c. At least one of the Plaintiffs and one of the Defendants are citizens of different states, thus there is minimal diversity.

This Court also has supplemental jurisdiction over state law claims under 28 U.S.C. § 1367.

17. **Personal Jurisdiction.** This Court has personal jurisdiction over WanaBana LLC and WanaBana USA LLC because both Defendants:

- a. Are registered to do business in the State of Florida;
- b. Regularly conduct business in Florida;
- c. Have made deceptive and/or false representations, omissions, and advertisements regarding the Products to consumers who reside in Florida;
- d. Sold their Products in Florida; and
- e. Have otherwise made or established contacts in Florida sufficient to permit the exercise of personal jurisdiction.

Similarly, the courts in each state named in the State Subclasses (defined *infra*) have personal jurisdiction over WanaBana LLC and WanaBana USA LLC because both Defendants:

- a. Regularly conduct business in those states;
- b. Have deceptively or falsely advertised the Products to consumers in those states;
- c. Sold their Products in those states; and
- d. Have otherwise made or established contacts in those states sufficient to permit the exercise of personal jurisdiction.

Moreover, Defendants committed tortious acts in each of the named states, including Florida, and every Plaintiff's claims arise out of such acts.

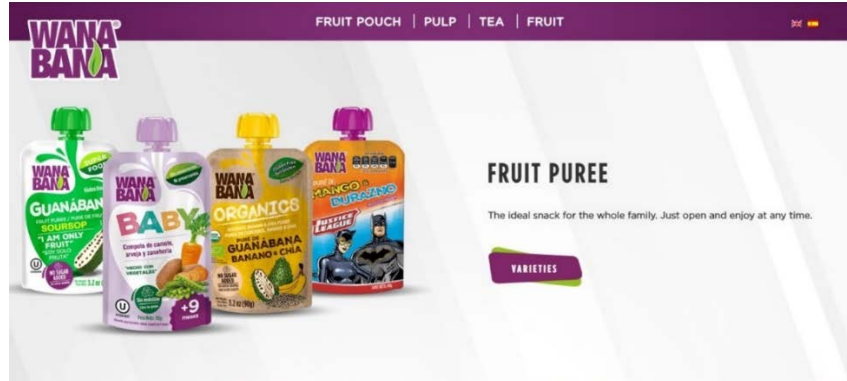
18. Venue. Pursuant to 28 U.S.C. § 1391, venue is proper in this District because:

- a. A substantial part of the events giving rise to this action occurred in this District;
- b. At least one Plaintiff resides in this District; and
- c. Defendants conduct substantial business in this District, have sufficient minimum contacts with this District, and otherwise purposely avail themselves of the market in this District through the promotion, sale, and marketing of the Products in this District.

FACTUAL ALLEGATIONS.

A. DEFENDANTS' MARKETING AND SALES.

19. Defendants make specific representations to consumers that their fruit pouches are high-quality, healthy, and safe products for consumers, including Plaintiffs, to choose for their children, including that they are "[t]he ideal snack for the whole family." WanaBana, *Homepage*, <https://wanabana.com> (last visited Oct. 31, 2023) (*see below*).



20. The product’s selected slogan, “I AM ONLY FRUIT” (see below), is used by WanaBana to impart the feeling that parents are giving their children a premium, healthy fruit puree pouch. See generally WanaBana, *Fruit Pouch*, <https://wanabana.com/fruit-pouch/> (last visited Oct. 31, 2023).



21. WanaBana used nearly the same slogan, “I AM FRUIT,” with the same effect on the contaminated “apple cinnamon” flavor pouches purchased by Plaintiffs. (see below).



22. Consumers, including Plaintiffs, trust manufacturers like WanaBana to sell only products that are safe for themselves and their children, and to sell only products that do not contain or have a material risk of containing dangerous materials like lead.
23. Reasonable consumers, including Plaintiffs, expect the fruit puree products they purchase for their individual and family consumption will not be contaminated or have a material risk of being contaminated with dangerous materials like lead—substances known to accumulate in the body and pose significant and dangerous health consequences.
24. Reasonable consumers purchase the Products as a healthy and nutritious option for them and their children, with their purchasing decisions impacted materially by the entirety of the representations on the Products’ packaging.
25. Product contents, particularly contents that are dangerous like lead, are material to a reasonable consumer’s purchasing decisions.
26. Consumers lack the scientific knowledge necessary to determine whether the Products do in fact contain dangerous materials like lead, or to ascertain the true nature of the ingredients and quality of the Products. Accordingly, reasonable consumers must and do rely on WanaBana to: (1) know what the Products contain; (2) regularly test the Products

to confirm their compositions; and (3) properly and fully disclose those contents to consumers prior to purchase.

27. Upon information and belief, each Defendant is involved in the manufacture, design, testing, packaging, labeling, marketing, advertising, promotion, distribution, and sales of the Products throughout the United States, including in this District.
28. Upon information and belief, each Defendant is equally responsible for the manufacture, design, testing, packaging, labeling, marketing, advertising, promotion, distribution, and sales of the Products throughout the United States, including in this District.
29. Each Defendant failed to disclose on its packaging that the Products contain or have a material risk of containing dangerous materials like lead.
30. No reasonable consumer would expect, suspect, or understand that the Products contain or have a material risk of containing dangerous materials like lead.
31. WanaBana touts on the website the safety and quality of the Products. For example, at the bottom of the homepage (*see* below), WanaBana displays seven certification seals² followed by the statements “We have certifications that guarantee the excellence of our food processes,” and “Ensuring a product with worldwide safety and quality.”



WanaBana, *Homepage*, <https://wanabana.com> (last visited Oct. 31, 2023).

² *From left:* the Orthodox Union, certified Kosher; the Business Alliance for Secure Commerce, certified compliant; the National Sanitation Foundation, certified Good Manufacturing Practice; the British Retail Consortium Global Standards, certified compliant; and certified organic by the European Union, the U.S. Dep’t of Agriculture, and Quality Certification Services – Ecuador.

32. Further, on the website's "Our Story" page, WanaBana states:

We are committed to satisfying our consumers and exceeding the expectations of our customers through the elaboration of products derived from fresh fruits that meet quality, safety, legality, and authenticity parameters focused on continuous improvement in our [business process] management systems...and nationally and internationally recognized quality standards.

To achieve this, we have a team of highly qualified people, controlled processes, and a food safety management system which allows us to guarantee the safety of our products and a continuous improvement of our processes, as well as the prevention of illegal activities, corruption, and bribe.

WanaBana, *Our Story*, <https://wanabana.com/about-us> (last visited Oct. 30, 2023).

33. WanaBana goes on to reiterate that all their products are safe and high-quality throughout the "Our Story" webpage, ending with the representation that their "products not only maintain the fruit's organoleptic and nutritional characteristics, but [they] also carry a production line with the highest standards in the market, evidenced in the certifications obtained year after year." *Id.*

34. The "Our Story" page also includes the following in bold, capital letters at the very top of the webpage: **INTEGRATED QUALITY, SAFETY, CONTROL AND SECURITY MANAGEMENT POLICY BASC [STANDARDS]**. *Id.*

35. The statements above also appear in marketing materials and labeling in stores through which the Products are distributed.

36. However, contrary to WanaBana's assurances that all its products are manufactured under strict quality standards, the Products have been shown to contain detectable levels of dangerous materials like lead which are known to pose human health risks.

37. WanaBana failed to disclose to consumers that the Products contain or have a material risk of containing dangerous materials like lead.

38. Nowhere on the Products' packaging is it disclosed that they contain or have a material risk of containing dangerous materials like lead (collectively the "Omissions"). It was only through testing conducted by the Food and Drug Administration ("FDA") and the North Carolina Department of Health and Human Services ("NCDHHS") that the general public became aware of the true nature and characteristics of the Products.
39. Based on the Omissions, no reasonable consumer had any reason to know, suspect, or expect that the Products contained dangerous materials like lead.
40. Reasonable consumers like Plaintiffs, who were purchasing the Products for consumption by themselves and their families, would consider the presence or risk of dangerous materials like lead to be a material fact when considering whether to purchase the Products. Accordingly, Plaintiffs and other reasonable consumers would not have purchased the Products or would have paid substantially less for them but for the Omissions.
41. WanaBana is aware that their customers trust the quality of their Products and would not expect the Products to contain or have a material risk of containing dangerous materials like lead.
42. WanaBana is aware that reasonable consumers, especially parents, seek out and wish to purchase products with ingredients free of toxins or contaminants, and that these consumers will pay more for products they believe meet these standards.
43. WanaBana is aware that reasonable consumers would not knowingly consume, or feed to their families and children, products that contain dangerous materials like lead.
44. WanaBana is aware that the consumers to whom it markets the Products would find their Omissions material and that they were in a special position of public trust to those consumers.

45. The Omissions are deceptive, misleading, unfair, and/or false because the Products contain undisclosed dangerous materials, including lead.
46. The Omissions enabled WanaBana to capitalize on, and reap enormous profits from, reasonable consumers like Plaintiffs who purchased the Products that omitted material information as to the Products' true quality and value.
47. Reasonable consumers, including Plaintiffs, paid more for the Products than they would have had they known the truth about the Products, and Defendants continue to wrongfully induce consumers to purchase the Products.
48. Accordingly, Plaintiffs bring this proposed class action individually and on behalf of all other members of the Classes (defined *infra*), who, during the Class Period, purchased for use and not resale any of the Products.

B. DEFENDANTS' PRODUCTS ARE CONTAMINATED WITH LEAD.

49. On or around October 30, 2023, Plaintiffs became aware of the FDA's public health alert that the Products contained elevated levels of lead (the "FDA Alert"). FDA, *FDA Advises Parents and Caregivers Not to Buy or Feed WanaBana Apple Cinnamon Fruit Puree Pouches to Toddlers and Young Children Because of Elevated Lead Levels*, <https://www.fda.gov/food/alerts-advisories-safety-information/fda-advises-parents-and-caregivers-not-buy-or-feed-wanabana-apple-cinnamon-fruit-puree-pouches>, Oct. 30, 2023 (last visited Oct. 30, 2023).
50. The FDA Alert was prompted by the NCDHHS investigation³ regarding four children in North Carolina that were found to have high levels of lead in their blood linked to the puree products. *Id.*

³ NCDHHS, *NCDHHS Urges Caution After Reportable Lead Found in WanaBana Brand Apple Cinnamon Puree*, <https://www.ncdhhs.gov/news/press-releases/2023/10/28/ncdhhs-urges->

51. According to the FDA Alert, NCDHHS officials analyzed multiple lots of the product and detected “extremely high” concentrations of lead. The FDA confirmed the results and said they could lead to “acute toxicity.” *Id.*
52. “As part of their investigation, NCDHHS analyzed multiple lots of WanaBana apple cinnamon fruit puree, detecting extremely high concentrations of lead.” *Id.*
53. “The FDA has reviewed and supports NCDHHS’s analytical findings and found that analytical results at this level could result in acute toxicity,” and “has shared the results with [Defendants] whose representatives are cooperating with the FDA and have agreed to voluntarily recall all WanaBana apple cinnamon fruit puree pouches regardless of expiration.” *Id.*
54. The FDA and the NCDHHS, along with the North Carolina Department of Agriculture & Consumer Services, analyzed various samples of the Products to determine that these products are dangerous and contaminated. *Id.*
55. The FDA identified and confirmed that there are serious health implications arising from lead exposure and toxicity. *Id.*
56. On October 29, 2023, Defendants initiated a voluntary recall of certain units of its WanaBana Apple Cinnamon Fruit Puree pouches due to elevated levels of lead found in certain lots of the Products. Less than two weeks later, Defendants expanded its recall to include all lots of the Products.⁴

caution-after-reportable-lead-found-wanabana-brand-apple-cinnamon-puree, Oct. 28, 2023 (last visited Oct. 30, 2023) (the “NCDHHS Statement”).

⁴ FDA, WanaBana Recalls WanaBana, Weis, and Schnucks Apple Cinnamon Fruit Puree Pouches & Cinnamon Apple Sauce Due to Elevated Lead Levels, <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/wanabana-recalls-wanabana-weis-and-schnucks-apple-cinnamon-fruit-puree-pouches-cinnamon-apple-sauce>, Nov. 9, 2023 (last visited Dec. 17, 2023).

57. On November 30, 2023, Defendants (with Austrofood CIA LTDA, WanaBana's manufacturer in Ecuador) released a statement reporting that WanaBana had "conducted a root cause investigation," and the leading hypothesis pointed to the cinnamon supplied by Negocios Asociados Mayoristas S.A. ("Negasmart"), a third-party distribution company located in Ecuador, as the source of the elevated lead levels in the recalled products.⁵
58. On December 12, 2023, the FDA announced an onsite inspection at the Austrofood facility in Ecuador where the Products were manufactured. On December 18, the FDA announced the inspection had concluded and that, during the inspection, FDA investigators collected samples of cinnamon supplied by Negasmart to Defendants, which were analyzed and were confirmed to contain extremely high levels of lead contamination.⁶
59. Because all products have been recalled, significant testing of the Products have demonstrated that the Products contain lead. The ongoing investigation has confirmed the presence of extremely high levels of lead in the cinnamon used in the Products. Moreover, there have been 46 confirmed cases of lead toxicity in less than two months (along with 68 probable cases as of December 17, 2023). Accordingly, it is likely that all of the Products are contaminated with lead.
60. Lead is a heavy metal. Its harmful effects are well-documented, particularly in children. Exposure to heavy metals, particularly lead, puts children at risk for lowered IQ, behavioral problems (such as attention deficit hyperactivity disorder), type 2 diabetes, and cancer, among other health issues. Lead also poses health risks to adults. Even modest amounts of

⁵ FDA, *FDA Roundup: December 1, 2023*, <https://www.fda.gov/news-events/press-announcements/fda-roundup-december-1-2023>, Dec. 1, 2023 (last visited Dec. 18, 2023).

⁶ FDA, *Investigation of Elevated Lead Levels: Cinnamon Applesauce Pouches*, <https://www.fda.gov/food/outbreaks-foodborne-illness/investigation-elevated-lead-levels-cinnamon-applesauce-pouches-november-2023>, Dec. 18, 2023 (last visited Dec. 18, 2023).

lead can increase the risk of cancer, cognitive and reproductive problems, and other adverse conditions. These facts, including the significant risk of latent injury due to lead, underscore the importance of limiting heavy metal exposure and consumption.

- 61.** The Products included undisclosed levels of lead due to WanaBana's failure to sufficiently monitor for its presence in the ingredients and finished products. WanaBana was or should have been aware of this risk.
- 62.** Concerns over exposure to lead, and the knowledge of such risks associated with exposure, are not a new phenomenon, and WanaBana knew or should have known of the risks associated with the presence of lead in foods they sell to consumers.
- 63.** WanaBana knew or should have known that it owed consumers a duty of care to prevent, or at the very least, minimize the presence of dangerous materials like lead in the Products to the extent reasonably possible.
- 64.** Defendants knew or should have known that it owed consumers a duty of care to adequately test for dangerous materials like lead in the Products and the contributing ingredients.
- 65.** The FDA and the World Health Organization ("WHO") have declared lead dangerous to human health. *See, e.g.,* U.S. House of Representatives Committee on Oversight and Reform, *Staff Report: Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury* at 2, (Feb. 4, 2021).⁷
- 66.** The FDA has acknowledged that exposure is "likely to have the most significant impact on public health" and has prioritized them in connection with its Toxic Elements Working Group to look at reducing the risks associated with human consumption of heavy metals

⁷ *See* <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf>.

- like lead. FDA, *Environmental Contaminants in Food*, Jan. 24, 2023, <https://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/default.htm>.
67. The Products contain lead, which is extremely toxic. WHO, *Lead Poisoning*, Aug. 11, 2023, <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.
68. “Exposure to lead can affect multiple body systems” of all humans, but “is particularly harmful to young children and women of child-bearing age.” *Id.*
69. “Once lead enters the body, it is distributed to organs such as the brain, kidneys, liver, and bones. The body stores lead in the teeth and bones, where it accumulates over time.” *Id.*
70. No amount of lead is known to be safe, and its harmful effects cannot be reversed or remediated. *Id.*
71. Exposure to lead by ingesting contaminated foods has been demonstrated to lead to the development of chronic poisoning, cancer, developmental, and reproductive disorders, as well as serious injuries to the nervous system, and other organs and body systems. *Id.*
72. Moreover, “[y]oung children are particularly vulnerable to lead poisoning because they absorb 4–5 times as much ingested lead as adults from a given source.” *Id.*
73. Exposure can seriously harm the brain and nervous system in children and is associated with a range of negative health outcomes including behavioral problems, decreased cognitive performance, delayed puberty, and reduced postnatal growth. Centers for Disease Control: Agency for Toxic Substances and Disease Registry, Division of Toxicology and Human Health Sciences, *ToxFAQs for Lead*, Aug. 7, 2020, <https://www.atsdr.cdc.gov/toxfaqs/tfacts13.pdf>.
74. Aside from being a probable human carcinogen, exposure to lead can result in neuropathy, brain damage, hypertension, decreased renal function, increased blood pressure, and

gastrointestinal and cardiovascular effects, and can cause fetal death in pregnant women.

Id.

C. DEFENDANTS' DECEPTIVE STATEMENTS, MISREPRESENTATIONS AND OMISSIONS ARE MATERIAL.

75. The popularity of applesauce and other pureed products are increasing rapidly across the world in everything from baby food to school lunches as consumers, especially parents like Plaintiffs, seek nutritious, appealing, and convenient foods for children.
76. The purported health benefits of applesauce puree are on full display on WanaBana's packaging, as identified *supra*.
77. WanaBana manufactures, designs, tests, packages, labels, markets, advertises, promotes, distributes, and sells the Products throughout the United States at numerous retail and online outlets.
78. WanaBana touts its commitment to "quality, safety, sustainable resource management and social responsibility," and further claim to "have a team of highly qualified people, controlled processes and a food safety management system, which allows us to guarantee the safety of our products and a continuous improvement of our processes," stating they "carry a production line with the highest standards in the market, evidenced in the certifications obtained year after year." WanaBana, *Our Story*, <https://wanabana.com/about-us> (last visited Oct. 30, 2023).
79. However, inconsistent with such assertions about the quality of their products and their manufacturing processes, WanaBana knows or should know that the Products contain or

have a material risk of containing dangerous materials, including lead, yet failed to disclose this fact to consumers.⁸

- 80.** At all times during the relevant period, WanaBana knew or should have known the Products included undisclosed levels of and were not sufficiently tested for the presence and material risk of dangerous materials like lead.
- 81.** Given the negative effects of heavy metals, including lead, on child development and adult health, the presence of these substances in food is material to reasonable consumers, including Plaintiffs and the Classes, as it relates to their purchasing decisions.
- 82.** Based, in part, on WanaBana's own representations that they manufactured the Products using the highest standards, WanaBana knew or should have known that the presence (or material risk) of dangerous materials, including lead, in their Products is material to reasonable consumers, including Plaintiffs and the Classes.
- 83.** Based, in part, on WanaBana's own representations that they manufactured the Products using the highest standards, WanaBana knew or should have known that consumers, including Plaintiffs and the Classes, reasonably expect that the Products do not contain (or have a material risk of containing) dangerous materials like lead.
- 84.** WanaBana omitted the presence or material risk of dangerous materials like lead in the Products to induce and mislead reasonable consumers to purchase the Products and pay a premium price for them.
- 85.** The Omissions wrongfully convey to consumers that the Products are of a superior quality and have certain characteristics that they do not actually possess.

⁸ On October 31, 2023, Defendants' website homepage was updated to include information about a "Voluntary Recall of [the Products] due to Elevated Lead Levels," which is back-dated to October 29, 2023. See WanaBana, *Homepage*, <https://wanabana.com> (last visited Oct. 31, 2023).

- 86.** WanaBana's representations and omissions have caused consumers, including Plaintiffs and the Classes, to believe the Products do not contain any harmful substances, when in fact the Products contain or have a material risk of containing undisclosed levels of dangerous materials, including lead, which is material information to reasonable consumers.
- 87.** As a result of the material Omissions, a reasonable consumer would have no reason to suspect the presence of or material risk of dangerous materials like lead in the Products without conducting their own scientific tests (which is time consuming and expensive) or reviewing third-party scientific testing of the Products.
- 88.** Unlike Defendants, reasonable consumers are generally without the means to conduct their own independent scientific tests or to review scientific testing conducted on the Products.
- 89.** Information regarding the true nature and/or presence of dangerous materials like lead in the Products was and is in the exclusive possession of WanaBana and not available to consumers.
- 90.** Instead, consumers, including Plaintiffs and the Classes, must and do rely on WanaBana to honestly report what their Products contain.
- 91.** Based on the impression created by the representations and omissions on the packaging, no reasonable consumer would expect, suspect, or understand that the Products contained or had a material risk of containing lead.
- 92.** Plaintiffs' expectations and reliance are consistent with reasonable consumers.
- 93.** Due to WanaBana's affirmative statements regarding the quality of the Products, Defendants knew or should have known the Products contained or had a material risk of containing lead.

94. WanaBana had a duty to ensure the Products were not deceptively, misleadingly, unfairly, and falsely marketed and that all material information was properly and fully disclosed.
95. WanaBana acted negligently, recklessly, unfairly, and/or intentionally with their deceptive packaging based on the Omissions.
96. WanaBana knew that properly and sufficiently monitoring the Products for dangerous materials like lead in the ingredients and finished products was critical.
97. WanaBana knew or should have known it could control the levels of dangerous materials like lead in the Products by properly monitoring and testing for dangerous materials like lead at ingredient sourcing, manufacturing, and packaging stages, and effecting changes when needed.
98. The Omissions are material and reasonably likely to deceive reasonable consumers, especially considering WanaBana's long-standing "I AM FRUIT" slogan and campaign to market the Products as "a high quality product from its harvest to its end...not only maintain[ing] the fruit's organoleptic and nutritional characteristics, but also carry[ing] a production line with the highest standards in the market" for "quality, safety, sustainable resource management and social responsibility," as "evidenced in the certifications obtained year after year." WanaBana, *Our Story*, <https://wanabana.com/about-us> (last visited Oct. 30, 2023).
99. Such statements were made to induce reasonable consumers, including Plaintiffs and the Classes, to purchase the Products.
100. The Omissions make the Products' packaging deceptive based on the presence or risk of lead in the Products. Reasonable consumers, like Plaintiffs and the Classes, would consider

the presence or risk of dangerous materials like lead in the Products a material fact when considering which applesauce or other pureed products to purchase.

- 101.** WanaBana knew or should have known, yet failed to disclose, that it was not sufficiently or adequately monitoring or testing the Products or ingredients used in the Products for Heavy Metals like lead.
- 102.** The Omissions and the representations on the website were misleading due to WanaBana's failure to sufficiently or adequately monitor or test for and disclose the presence or material risk of dangerous materials like lead in the Products.
- 103.** WanaBana knew or should have known that the Products contained or may contain undisclosed levels of dangerous materials like lead that were not disclosed on the packaging.
- 104.** WanaBana knew or should have known that reasonable consumers expected them to sufficiently monitor and test the Products and ingredients for dangerous materials like lead to ensure the quality of the Products.
- 105.** The Omissions are material and render the Products' packaging and advertising deceptive because without full disclosure, reasonable consumers believe the Products are safe, high-quality products, that would not contain or have a material risk of containing dangerous materials like lead.
- 106.** The Omissions were intended to and did cause consumers, like Plaintiffs and the Classes, to purchase products they would not have if the true quality and ingredients were disclosed.
- 107.** As a result of the Omissions, WanaBana was able to generate substantial sales, which allowed them to capitalize on and reap enormous profits from Plaintiffs and similarly situated consumers who purchased the Products.

108. Plaintiffs and other reasonable consumers would not have purchased the Products or would have paid less for them but for the Omissions concerning the presence or material risk of dangerous materials like lead in the Products.

109. In addition, WanaBana knew or should have known that a reasonable consumer would consume the Products regularly, leading to repeated exposure to and accumulation of dangerous materials like lead.

D. DEFENDANTS' BREACH OF IMPLIED WARRANTIES.

110. WanaBana had sufficient notice of its breach of implied warranties.

111. WanaBana has had exclusive knowledge of the physical and chemical make-up of the Products, and exclusive knowledge of suppliers and whether any suppliers provided ingredients that contained dangerous materials like lead.

112. WanaBana was also put on notice by, *inter alia*, the FDA and NCDHHS reports that identified the presence of lead in the Products, as well as any communications regarding those ongoing investigations leading to the FDA and NCDHHS reports.

113. WanaBana has not changed their packaging to include any disclaimer that the Products contain, or are at risk of containing, dangerous materials like lead.

114. Privity exists between WanaBana and the Plaintiffs and Classes.

115. WanaBana knew that reasonable consumers, like Plaintiffs and the Classes, would be the end purchasers of the Products and the targets of their advertising, promotion, and labeling.

116. WanaBana intended that the packaging and implied warranties would be considered by the end purchasers of the Products, including Plaintiffs and the Classes, and they directly marketed to Plaintiffs and the Classes through the Products' packaging and labeling.

117. Plaintiffs and the Classes are the intended beneficiaries of the implied warranties.

RULE 9(b) ALLEGATIONS

118. Although WanaBana is in the best position to know what content it placed on the website(s), social media sites, and in marketing materials during the relevant timeframe, and the knowledge it had regarding the dangerous materials, including lead, and their failure to disclose the existence of the dangerous materials like lead in their Products to Plaintiffs and consumers, to the extent necessary, Plaintiffs satisfy the requirements of Federal Rule of Civil Procedure 9(b) by alleging the following facts with particularity:

- a. WHO:** WanaBana made false statements and material misrepresentations and omissions of fact on their products, labeling, marketing materials and in public statements, which include express and/or implicit representations that their Products were and are free of dangerous materials like lead and were safe for human consumption.
- b. WHAT:** WanaBana falsely and misleadingly, and through the Omissions led consumers to believe that their Products were and are free of dangerous materials like lead and failed to disclose that the Products contain these materials. Thus, WanaBana's conduct deceived Plaintiffs and the Classes into believing that the Products were created, manufactured, and sold with such qualities. WanaBana knew or should have known this information is material to reasonable consumers, including Plaintiffs and the Classes, in making their purchasing decisions about the food to eat and provide to their families, yet it continued to pervasively market the Products as possessing qualities they do not possess.
- c. WHEN:** WanaBana made material misrepresentations, false statements and/or the Omissions during and at the time Plaintiffs and the Classes purchased the Products;

prior to and at the time Plaintiffs and the Classes made claims after realizing the Products contained dangerous materials like lead in their Products; and continuously throughout the applicable Class period.

- d. WHERE:** WanaBana's marketing message was uniform and pervasive, carried through material misrepresentations, false statements and/or omissions on their products, labeling, marketing materials and in public statements.
- e. HOW:** WanaBana made material misrepresentations, false statements and/or omissions regarding the presence of dangerous materials including lead in the Products by making express and implicit representations in various marketing materials that the Products were healthy, safe, and made of premium ingredients by omitting any facts in their marketing, labeling, and/or other descriptions of their Products that would inform a consumer as to the presence of dangerous materials like lead.
- f. WHY:** WanaBana made the material misrepresentations, false statements, and/or Omissions detailed herein for the express purpose of inducing Plaintiffs, the Classes, and all other reasonable consumers to purchase and pay for the Products instead of other brands that did not contain similar dangerous materials like lead, the effect of which was that WanaBana profited by selling to many thousands of consumers the faulty and defective Product.
- g. INJURY:** Plaintiffs and the Classes did not receive the benefit of their bargain. They purchased the Products when they otherwise would not have, absent WanaBana's misrepresentations, false statements, and omissions. They purchased an unsafe and harmful product that should not be consumed by anyone.

CLASS ALLEGATIONS

119. Plaintiffs seek certification of a Nationwide Class and State Subclasses for the fullest period allowed by law (the “Relevant Time Period”).

120. All named Plaintiffs seek certification on behalf of a nationwide class, defined as:

The Nationwide Class: All persons who purchased the Products in the United States within the Relevant Time Period.

121. In addition to the Nationwide Class, Plaintiffs seek certification of state subclasses, including the Florida Class, the Georgia Class, the Illinois Class, the Louisiana Class, the Michigan Class, the New York Class, the North Carolina Class, the Oregon Class, the Pennsylvania Class, and the Washington Class (collectively the “State Subclasses”).

122. Plaintiffs Holmes and Turner seek certification for a Florida subclass, defined as:

The Florida Class: All persons who purchased the Products in the State of Florida within the Relevant Time Period.

123. Plaintiffs Douglas and Hoggard seek certification for a Georgia subclass, defined as:

The Georgia Class: All persons who purchased the Products in the State of Georgia within the Relevant Time Period.

124. Plaintiff Casillas seeks certification for an Illinois subclass, defined as:

The Illinois Class: All persons who purchased the Products in the State of Illinois within the Relevant Time Period.

125. Plaintiff Scales seeks certification for a Louisiana subclass, defined as:

The Louisiana Class: All persons who purchased the Products in the State of Louisiana within the Relevant Time Period.

126. Plaintiffs Hatchett and Jackson seek certification for a Michigan subclass, defined as:

The Michigan Class: All persons who purchased the Products in the State of Michigan within the Relevant Time Period.

127. Plaintiffs Rozental and Schuster seek certification for a New York subclass, defined as:

The New York Class: All persons who purchased the Products in the State of New York within the Relevant Time Period.

128. Plaintiffs Bell and Williamson seek certification for a North Carolina subclass, defined as:

The North Carolina Class: All persons who purchased the Products in the State of North Carolina within the Relevant Time Period.

129. The Wagner Plaintiffs seek certification for an Oregon subclass, defined as:

The Oregon Class: All persons who purchased the Products in the State of Oregon within the Relevant Time Period.

130. The Kissi Plaintiffs seek certification for a Pennsylvania subclass, defined as:

The Pennsylvania Class: All persons who purchased the Products in the State of Pennsylvania within the Relevant Time Period.

131. Plaintiff Buffan seeks certification for a Washington subclass, defined as:

The Washington Class: All persons who purchased the Products in the State of Washington within the Relevant Time Period.

132. Excluded from the proposed Nationwide Class and State Subclasses are: (a) Defendants; (b) Defendants' board members, executive-level officers, attorneys, and their immediate family members; (c) governmental entities; (d) the Court, the Court's immediate family, and the Court staff; and (e) any person that timely and properly excludes themselves from the Class in accordance with Court-approved procedures.

133. **Numerosity.** As required under Rule 23(a)(1), the putative members of the Class and Subclasses are so numerous that joinder of individual members is impracticable. The exact number of members of the Class and Subclasses, as herein identified and described, are not known, but upon information and belief, the Defendant sold its products to hundreds or thousands of individuals.

134. Commonality. As required under Rules 23 (a)(2) and (b)(3), common questions of fact and law exist for each cause of action and predominate over questions affecting only individual Class members, including *inter alia*:

- a. Whether Defendants owed a duty of care;
- b. Whether Defendants owed a duty to disclose;
- c. Whether Defendants knew or should have known that the Products contained or may contain dangerous materials like lead;
- d. Whether Defendants failed to disclose that the Products contained or may contain dangerous materials like lead;
- e. Whether the claims of Plaintiffs and the Classes serve a public benefit;
- f. Whether Defendants' packaging is false, deceptive, and misleading based on the Omissions;
- g. Whether the Omissions are material to a reasonable consumer;
- h. Whether the inclusion of dangerous materials like lead in the Products is material to a reasonable consumer;
- i. Whether the Omissions are likely to deceive a reasonable consumer;
- j. Whether Defendants had knowledge that the Omissions were material and false, deceptive, and misleading;
- k. Whether Defendants breached their duty of care;
- l. Whether Defendants breached their duty to disclose;
- m. Whether Defendants violated applicable state laws;
- n. Whether Defendants breached their implied warranties;
- o. Whether Defendants engaged in unfair trade practices;

- p.** Whether Defendants engaged in false advertising;
 - q.** Whether Plaintiffs and members of the Classes are entitled to actual, statutory, treble, and punitive damages; and
 - r.** Whether Plaintiffs and members of the Classes are entitled to declaratory and injunctive relief.
- 135. Typicality.** As required under Rule 23(a)(3), Plaintiffs' claims are typical of the claims of the other members of the proposed Class. Plaintiffs and putative members of the Class and Subclasses (as applicable) suffered injuries as a result of Defendants' wrongful conduct that are uniform across the Class.
- 136. Adequacy.** As required under Rule 23(a)(4), Plaintiffs have and will continue to fairly and adequately represent and protect the interests of the Class and Subclasses. Plaintiffs have no interest that is antagonistic to those of the Class or Subclasses, and Defendant has no defenses unique to Plaintiffs. Plaintiffs have retained competent counsel committed to protecting the interests of the Class. Plaintiffs' counsel has extensive experience in complex litigation and class actions, including the types of claims at issue here, and has the resources necessary for this litigation. Neither Plaintiffs nor Plaintiffs' counsel have any interest adverse to those of the other members of the Class, and both are committed to vigorously prosecuting this action on behalf of the members of the Class.
- 137. Superiority.** As required under Rule 23(b)(3), the class action mechanism is superior to other available means for the fair and efficient adjudication of this controversy because the relief sought for each member of the Classes is small such that, absent representative litigation, it would not be feasible for members of the Classes to redress the wrongs done to them.

- 138. Manageability.** This proposed class action presents fewer management difficulties than individual litigation, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.
- 139. Notice.** Plaintiffs and their counsel anticipate that notice to the proposed Class will be effectuated through recognized, Court-approved notice dissemination methods, which may include United States mail, electronic mail, Internet postings, and/or published notice.
- 140.** Accordingly, a class action is appropriate under Federal Rule 23, because the common questions of law or fact predominate over any questions affecting individual members of the Class; and a class action is superior to other available methods for the fair and efficient adjudication of this action.

JURY DEMAND.

- 141.** Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

CLAIMS FOR RELIEF.

**I. NEGLIGENT MISREPRESENTATION.
On Behalf of the Nationwide Class and State Subclasses.**

- 142.** This claim incorporates by reference all previous allegations in the complaint.
- 143.** Plaintiffs bring this cause of action on behalf of themselves, the Nationwide Class, and their respective State Subclasses (collectively, the “Classes”) against Defendants.
- 144.** As alleged herein, WanaBana made material misrepresentations and omissions regarding the Products on the Products’ labeling and packaging, in the Products’ advertisements, and on the website, about the safety, nutrition, and health benefits of the Products.
- 145.** WanaBana described the Products as being safe, nutritious, and healthy in order to sell the Products to Plaintiffs and the Classes and increase their profits.

146. Plaintiffs and the Classes reasonably relied upon WanaBana's representations that the Products were safe, nutritious, and healthy.
147. Plaintiffs and the Classes suffered economic and other losses because the Products were harmful and contained lead.
148. Had Plaintiffs and the Classes known the truth about the Products, they would not have purchased the Products.
149. Plaintiffs and the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

**II. UNJUST ENRICHMENT.
On Behalf of the Nationwide Class and State Subclasses.**

150. This claim incorporates by reference all previous allegations in the complaint.
151. Plaintiffs bring this cause of action on behalf of themselves and the Classes against Defendants.
152. Plaintiffs and the Classes conferred a benefit on WanaBana when they purchased the Products, of which WanaBana had knowledge about the unhealthy, dangerous, and unsafe inclusion of dangerous materials like lead.
153. Substantial benefits have been conferred on WanaBana by Plaintiffs and the Classes through the purchase of the Products. WanaBana knowingly and willingly accepted and enjoyed these benefits.
154. WanaBana knew or should have known that the payments rendered by Plaintiffs were given and received with the expectation that the Products would not contain dangerous materials like lead. As such, it would be inequitable for WanaBana to retain the benefit of the payments under these circumstances.

- 155.** WanaBana was obligated to disclose the presence of dangerous materials, including lead, in the Products because:
- a.** WanaBana had exclusive knowledge of the presence of dangerous materials like lead in the Products that were not known or reasonably accessible to Plaintiffs and the Classes; and
 - b.** WanaBana actively concealed the presence of dangerous materials like lead from Plaintiffs and the Classes.
- 156.** WanaBana’s acceptance and retention of the benefits of the payments from Plaintiffs and the Classes under the circumstances alleged herein make it inequitable for WanaBana to retain the benefits without payment of the value to Plaintiffs and the Classes.
- 157.** Plaintiffs and the Classes are entitled to recover all amounts wrongfully collected and improperly retained by WanaBana, plus interest thereon.
- 158.** Plaintiffs and the Classes seek actual damages, injunctive and declaratory relief, attorneys’ fees, costs, and any other just and proper relief available under the laws.

**III. BREACH OF EXPRESS WARRANTY.
On Behalf of the Nationwide Class and State Subclasses.**

- 159.** This claim incorporates by reference all previous allegations in the complaint.
- 160.** Plaintiffs bring this cause of action on behalf of themselves and the Classes against Defendants.
- 161.** WanaBana manufactures markets, advertises, distributes, and sells the Products as part of its regular course of business.
- 162.** Defendants are, and were at all relevant times, “merchants” under U.C.C. § 2-313, and State U.C.C. provisions.

- 163.** Until at least October 2023, in connection with its advertisement and sale of the Products, WanaBana expressly represented and warranted that its Products were high-quality, healthy, and safe products for consumers, including Plaintiffs and the Classes, and their children to eat.
- 164.** WanaBana's pervasive marketing campaign includes the warranty representations described herein, which are made on its website, on labeling and packaging, and in WanaBana's statements to the public.
- 165.** These representations are affirmations of fact and promises that the Products were healthy and safe to ingest.
- 166.** Defendant made these express representations and warranties to all consumers, including Plaintiffs and the Classes.
- 167.** The express written warranties covering the Products are a material part of the bargain between WanaBana and consumers, including Plaintiffs and the Classes. When making these express warranties, Defendant knows that reasonable consumers purchase the Products because they believe these products to be as marketed. Thus, Plaintiffs and the Classes purchased the Products from WanaBana with the foregoing express representations and warranties as the basis of the bargain.
- 168.** As designer, manufacturer, marketer, advertiser, distributor, and seller of the Products, WanaBana had knowledge and notice that the Products contained dangerous materials like lead, which was unknown to consumers at the time of sale.
- 169.** WanaBana breached the foregoing express warranties by placing the Products into the stream of commerce and selling them to consumers when, despite representations to the contrary, the Products contained lead and were therefore not free of dangerous materials

and not healthy and safe to consume, as promised in WanaBana's marketing and public comments.

- 170.** It is reasonably foreseeable that Plaintiffs and the Classes are the intended beneficiaries of the Products and warranties, creating privity or an exception to any privity requirement. Plaintiffs and each member of the Classes are the intended beneficiaries of WanaBana's warranties and the sale of the Products. Such warranties are designed for and intended to benefit the consumer only, and Plaintiffs and the Classes are the intended beneficiaries of the Products.
- 171.** WanaBana has been provided sufficient notice of its breaches of the express warranties associated with the Products.
- 172.** The presence of lead makes the Products unfit for their intended use and purpose, rendering them valueless.
- 173.** Plaintiffs and the Classes purchased the Products, which were not healthy and safe to consume, as promised by WanaBana. Instead, they received products that contained lead and, as a result, suffered a loss of the Product, loss of use of the Product, loss of the Product's intended benefits, and loss of the benefit of their bargain.
- 174.** Plaintiffs and Classes were injured as a direct and proximate result of WanaBana's breaches of warranties because they would not have purchased the Products if the true facts had been known. Specifically, Plaintiffs and the Classes suffered economic damages at the point-of-sale in connection with their payment for the Products, as well as the loss of the Products' intended benefits, which include avoiding exposure to unwanted risk of lead poisoning.
- 175.** Accordingly, Plaintiffs and the Classes are entitled to legal and equitable relief including compensatory damages, costs, attorneys' fees, rescission, and all such other relief deemed

appropriate, for an amount to compensate them for not receiving the benefit of their bargain, as well as any additional relief the Court deems proper.

**IV. BREACH OF IMPLIED WARRANTY.
On Behalf of the Nationwide Class and State Subclasses.**

- 176.** This claim incorporates by reference all previous allegations in the complaint.
- 177.** Plaintiffs bring this cause of action on behalf of themselves and the Classes against Defendants.
- 178.** Defendants are each a merchant and, at all relevant times, has been involved in the manufacturing, distributing, warranting, and/or selling of the Products.
- 179.** The Products are goods as defined by U.C.C. § 2-105, and State U.C.C. provisions and WanaBana knows or has reason to know of the specific use for which the Products, as goods, are purchased.
- 180.** The implied warranty of merchantability included with the sale of each Product means that WanaBana warrants that: (a) the Products are fit for the ordinary purposes for which the Products are used and sold and are not otherwise injurious to consumers; and (b) the Products would pass without objection in the trade, be of fair and average quality, and conform to Defendants' promises and affirmations of fact.
- 181.** This implied warranty of merchantability is part of the basis for the benefit of the bargain between Defendants and consumers, which include Plaintiffs and the Classes.
- 182.** There was a sale of goods from WanaBana to Plaintiffs and the Classes.
- 183.** As set forth herein, WanaBana manufactured and sold the Products, and prior to the time the Products were purchased by Plaintiffs and the Classes, impliedly warranted that the Products were of merchantable quality and fit for their ordinary use of being consumed.

- 184.** Plaintiffs and the Classes relied on these implied warranties when they purchased the Products.
- 185.** However, the Products were not fit for their ordinary use (consumption) as they include levels of dangerous materials, including lead, that do not conform to the packaging.
- 186.** These promises became part of the basis of the bargain between WanaBana and Plaintiffs and the Classes, and thus constituted implied warranties.
- 187.** WanaBana breached its implied warranties by selling Products that contain dangerous materials like lead.
- 188.** Defendants were on notice of this breach as it was aware of the inclusion of dangerous materials like lead in the Products as a result of the public investigation and report published by the FDA and the NCDHSS Reports that showed the Products contain lead.
- 189.** Privity exists because WanaBana manufactured and sold the Products directly to consumers, including Plaintiffs and the Classes.
- 190.** WanaBana impliedly warranted to Plaintiffs and the Classes that the Products did not contain contaminants like lead by failing to mention or disclose the presence of like lead while making promises about the quality and nature of the Products, including that their products must meet stringent quality expectations.
- 191.** As a direct and proximate result of WanaBana's breach of the implied warranties, Plaintiffs and the Classes suffered actual damages, as they purchased the Products that were worth less than the price paid and that they would not have purchased at all had they known of the presence of lead.
- 192.** Plaintiffs, on behalf of themselves and the Classes, seek actual damages for WanaBana's failure to deliver goods that conform to their implied warranties and resulting breach.

**V. VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT.
Fla.Stat. §§ 501.201, *et seq.*
On Behalf of the Florida Class.**

- 193.** Plaintiffs Emily Holmes Turner and Blake Turner (“Florida Plaintiffs”), adopt and incorporate by reference the foregoing allegations of paragraphs 1-117, 120, and 128-145 as if fully set forth herein.
- 194.** This claim under the Florida Unfair and Deceptive Trade Practices Act (“FDUTPA”), Fla.Stat. §§ 501.201, *et seq.*, is brought by the Florida Plaintiffs on behalf of themselves and the Florida Class.
- 195.** Florida Plaintiffs and all Florida Class members are “consumers;” the transactions at issue in this action constitute “trade or commerce;” and the Products produced and sold by Defendants are “goods” within the meaning of FDUTPA. *See generally* Fla.Stat. §§ 501.203(7)-(8).
- 196.** “Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are...unlawful” under the FDUTPA. Fla.Stat. § 501.204.
- 197.** WanaBana has violated the FDUTPA by engaging in the unconscionable, deceptive, unfair acts or practices described herein:
- a.** On its website, on its packaging, and in its national marketing materials, WanaBana repeatedly advertised that the Products were high-quality, healthy, and safe products for consumers, including Florida Plaintiffs and Florida Class members, and their children to eat.

- b.** Contrary to these representations, the Products were contaminated with dangerous materials, including lead. Thus, the Products were not high-quality, healthy, or safe for human consumption
- 198.** WanaBana's acts, practices, and omissions, described *supra*, were likely to and did deceive and mislead consumers acting reasonably under the circumstances, including Florida Plaintiffs and Florida Class members, to their detriment.
- 199.** Florida Plaintiffs and Florida Class members purchased the Products as a result of being misled by WanaBana's deceptive trade practices.
- 200.** WanaBana's deceptive and unlawful acts, practices, and omissions, described *supra*, were likely to and did deceive consumers acting reasonably under the circumstances.
- 201.** Had they known the true and dangerous nature of the Products, Florida Plaintiffs and Florida Class members would not have purchased the Products.
- 202.** WanaBana's unlawful acts, practices, and omissions affect the public interest. These violations present a continuing risk the general public, including Florida Plaintiffs and Florida Class members.
- 203.** As a direct and proximate result of WanaBana's unfair or deceptive acts, practices, and omissions, Florida Plaintiffs and the Florida Class have been harmed and suffered actual damages in that the Products cannot be safely used as intended. Thus, they are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial, as well as attorneys' fees, and any other just and proper relief available under the FDUTPA and applicable law.

VI. VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT.

**O.C.G.A. §§ 10-1-390, *et seq.*
On Behalf of the Georgia Class.**

- 204.** Plaintiffs James Douglas Jr. and Jada Hoggard (“Georgia Plaintiffs”), individually and on behalf of the Georgia Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
- 205.** This claim under the Georgia Fair Business Practices Act (“GFBPA”), O.C.G.A. §§ 10-1-390, *et seq.*, is brought by the Georgia Plaintiffs on behalf of themselves and the Georgia Class.
- 206.** Georgia Plaintiffs and all Georgia Class members are “consumers;” the transactions at issue in this action are “consumer transaction;” and WanaBana is a “person” within the meaning of the GFBPA. *See generally* O.C.G.A. § 10-1-392(a).
- 207.** WanaBana had an ongoing duty to the Georgia Plaintiffs and the Georgia Class to refrain from unfair or deceptive acts and practices under the GFBPA.
- 208.** WanaBana advertised and sold the Products in Georgia and engaged in trade or commerce directly or indirectly affecting the people of Georgia, including Georgia Plaintiffs and the Georgia Class. The GFBPA is to be liberally construed to protect consumers “from unfair or deceptive practices in the conduct of any trade or commerce in part or wholly in the state.” O.C.G.A. § 10-3-391(a).
- 209.** “Unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce” is unlawful under the GFBPA. O.C.G.A. § 10-1-393(a).

210. WanaBana engaged in deceptive trade practices that violated the GFBPA by knowingly making false and misleading statements about the true nature and characteristics of the Products, including the repeated claims that the Products were high-quality, healthy, and safe products for consumers, including Georgia Plaintiffs and Georgia Class members, and their children to eat.
211. WanaBana’s claims are false and likely to mislead or deceive the public and put the health and wellbeing of consumers, including Georgia Plaintiffs and the Georgia Class, at risk.
212. WanaBana’s deceptive acts, practices, and omissions, alleged *supra*, were deceptive acts or practices in violation of the GFBPA.
213. WanaBana’s false and misleading advertising and labeling were designed to and did induce Georgia Plaintiffs and Georgia Class members to purchase and use the Products for personal, family, or household purposes, and thus violated the GFBPA by, *inter alia*:
 - a. “Representing that [goods] have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have[;]”
 - b. “Representing that [goods] are of a particular standard, quality, or grade[;]” and
 - c. “Advertising goods or services with intent not to sell them as advertised.” O.C.G.A. §§ 10-1-393(b)(5), (7) & (9).
214. WanaBana knew or should have known its conduct violated the GFBPA.
215. WanaBana had a duty to disclose the truth about its Products—that they were contaminated with dangerous materials, including lead.
216. Instead of fulfilling its duty to Georgia Plaintiffs and the Georgia Class, WanaBana intentionally and knowingly misrepresented and failed to disclose these material facts with

the specific intent of misleading consumers, including the Georgia Plaintiffs and the Georgia Class.

- 217.** WanaBana owed Georgia Plaintiffs and the Georgia Class a duty to disclose material facts about the nature and characteristics of the Products because it possessed exclusive knowledge about, *inter alia*:
- a.** The manufacturing of the Products;
 - b.** The testing and quality control processes undertaken with respect to the Products; and
 - c.** The marketing and promotion strategies involving the intentional representation that the Products were high-quality, healthy, and safe products for consumers, including Georgia Plaintiffs and Georgia Class members, and their children to eat.
- 218.** WanaBana's misrepresentations and omissions were material to Georgia Plaintiffs and the Georgia Class.
- 219.** Georgia Plaintiffs and Georgia Class members relied on WanaBana's material misrepresentations and omissions, as identified *supra*.
- 220.** Georgia Plaintiffs and Georgia Class members acted reasonably in relying upon WanaBana's misrepresentations and omissions, the truth of which they could not have discovered through the exercise of reasonable diligence.
- 221.** Had WanaBana disclosed the truth about the nature and characteristics of the Products to Georgia Plaintiffs and the Georgia Class, including the fact that the Products were contaminated with lead, Georgia Plaintiffs and Georgia Class members would not have purchased the Products. Instead, WanaBana kept these material facts secret and embarked on a disinformation campaign aimed at convincing consumers that the Products were high-

quality, healthy, and safe for consumers, including Georgia Plaintiffs and Georgia Class members, and their children to eat.

- 222.** WanaBana’s foregoing deceptive acts, practices, and omissions were likely to deceive, and did deceive, consumers acting reasonably under the circumstances, including Georgia Plaintiffs and the Georgia Class.
- 223.** Georgia Plaintiffs and Georgia Class members would not have purchased the Products had they known about their nature and characteristics.
- 224.** As a direct and proximate result of WanaBana’s unfair or deceptive acts, practices, and omissions, Georgia Plaintiffs and the Georgia Class have suffered injury, including ascertainable losses of money or property, monetary damages, and non-monetary damages, in part from not receiving the benefit of their bargain in purchasing the Products. Thus, they seek all monetary and non-monetary relief allowed by law, including actual and statutory damages, treble damages, punitive damages, equitable relief, and reasonable attorneys’ fees and costs, *see* O.C.G.A. § 10-1-399, and as permitted under the GFBPA and the applicable law.

**VII. VIOLATION OF ILLINOIS CONSUMER
FRAUD & DECEPTIVE BUSINESS PRACTICES ACT.
815 ILCS §§ 505/1, *et seq.*
On Behalf of the Illinois Class.**

- 225.** Plaintiff Kaylee Casillas (“Illinois Plaintiff”), individually and on behalf of the Illinois Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
- 226.** This claim under the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS §§ 505/1, *et seq.*, is brought by the Illinois Plaintiff on behalf of themselves and the Illinois Class.

227. Defendants are “persons” within the meaning of the ICFA. *See* 815 ILCS § 505/1(c).
228. Illinois Plaintiff and Illinois Class members are “consumers” within the meaning of the ICFA. *See* 815 ILCS § 505/1(e).
229. Defendants’ acts and omissions, as described *supra*, were in the conduct of “trade” or “commerce.” *See* 815 ILCS § 505/1(f).
230. Defendants’ deceptive, unfair, and unlawful trade acts or practices, as described *supra*, are in violation of the ICFA. *See* 815 ILCS § 505/2.
231. WanaBana violated the ICFA by perpetrating “unfair or deceptive acts or practices...in the conduct of trade or commerce,” including “the use or employment of” false promise and the “misrepresentation or the concealment, suppression, or omission of any material fact, with intent that others rely upon” that misrepresentation or concealment, suppression, or omission. 815 ILCS § 505/2.
232. Specifically, WanaBana violated the ICFA by, *inter alia*:
 - a. Designing, formulating, manufacturing, labelling, packaging, marketing, advertising, distributing, and selling the Products when they knew or should have known the Products were contaminated with dangerous materials like lead, rendering the Products unsafe and unsuitable for consumer use as marketed;
 - b. Concealing material information regarding the true nature and characteristics of the Products from consumers, including Illinois Plaintiff and the Illinois Class, to encourage them to purchase the Products; and
 - c. Otherwise making affirmative public representations about benefits of the Products while, at the same time, not ensuring such benefits existed, including consumer health and safety.

- 233.** Moreover, the ICFA prohibits “the use or employment of any practice described in...the Uniform Deceptive Trade Practices Act” at 815 ILCS § 510/2. 815 ILCS § 505/2.
- 234.** In the conduct of its business, WanaBana engaged in deceptive trade practices in violation of 815 ILCS § 510/2, and thus the ICFA, including, *inter alia*:
- a.** Causing “likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods,” 815 ILCS § 510/2(a)(2);
 - b.** Representing “that goods...have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have,” 815 ILCS § 510/2(a)(5);
 - c.** Representing “that goods...are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another,” 815 ILCS § 510/2(a)(7); and
 - d.** Advertising “goods...with intent not to sell them as advertised.” 815 ILCS § 510/2(a)(9).
- 235.** WanaBana’s repeatedly advertised the Products as high-quality, healthy, and safe products for consumers, including Illinois Plaintiff and Illinois Class members, and their children to eat. However, the Products were contaminated with dangerous materials, including lead, thus WanaBana’s advertising and marketing of the Products had the tendency to deceive consumers and did indeed deceive Illinois Plaintiff and members of the Illinois Class.
- 236.** The presence of lead in the Products is material information to consumers, including Illinois Plaintiff and the Illinois Class. WanaBana falsely and misleadingly represented this material information intentionally, knowingly, willfully, wantonly, and with reckless disregard for the truth.
- 237.** WanaBana’s representations and omissions were material because they were likely to deceive reasonable consumers, including Illinois Plaintiff and the Illinois Class.

238. WanaBana's knowledge of the Products' true nature and characteristics, including the health and safety risks from their use, put them on notice that the Products were not as they advertised.
239. WanaBana intended to mislead consumers, including Illinois Plaintiff and Illinois Class members, and induce them to rely on its misrepresentations and omissions.
240. All consumers were exposed to WanaBana's marketing, which was intended to and did induce Illinois Plaintiff and the Illinois Class to purchase the Products.
241. WanaBana's actions and omissions were immoral, unethical, oppressive, and unscrupulous, and caused substantial injury that consumers, including Illinois Plaintiff and Illinois Class members, could not reasonably avoid; this substantial injury outweighed any benefit to consumers or to competition.
242. WanaBana acted intentionally, knowingly, and maliciously to violate the ICFA, and recklessly disregarded the rights of Illinois Plaintiff and Illinois Class members.
243. As a direct and proximate result of WanaBana's unlawful conduct, Illinois Plaintiff and the Illinois Class have suffered injury, including ascertainable losses of money.
244. Accordingly, pursuant to the ICFA, Illinois Plaintiff and the Illinois Class seek all monetary and non-monetary relief allowed by law, including actual damages, reasonable attorneys' fees and costs, and other additional relief that is just and proper.

VIII. VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT.

**M.C.L §§ 445.901, *et seq.*
On Behalf of the Michigan Class.**

- 245.** Plaintiffs Charlette Hatchett and Jermaine Jackson (“Michigan Plaintiffs”), individually and on behalf of the Michigan Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
- 246.** This claim under the Michigan Consumer Protection Act (“MCPA”), M.C.L. §§ 445.901, *et seq.*, is brought by the Michigan Plaintiffs on behalf of themselves and the Michigan Class.
- 247.** Michigan Plaintiffs, Michigan Class members, and Defendants are all “persons” within the meaning of the MCPA. *See* M.C.L. § 445.902(d).
- 248.** By “[conducting] a business providing goods...primarily for personal, family, or household purposes,” including advertising, solicitation, and offering such goods for sale in Michigan, WanaBana engaged in “trade or commerce” within the meaning of the MCPA. § 445.902(g)
- 249.** WanaBana violated the MCPA by perpetrating “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce,” including, *inter alia*:
- a.** Representing that the Products have characteristics, uses, and benefits that they do not have, M.C.L. § 445.903(1)(c);
 - b.** “Representing that [the Products] are of a particular standard or quality when they were another,” M.C.L. § 445.903(1)(e);
 - c.** “Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is,” M.C.L. § 445.903(1)(bb); and
 - d.** “Failing to reveal facts that are material to the transaction in light of representation of fact made in a positive matter,” M.C.L. § 445.903(1)(cc).
- 250.** WanaBana’s false marketing and sale of the Products as high-quality, healthy, and safe products for consumers, including Michigan Plaintiffs and Michigan Class members, and

their children to eat when the Products were contaminated with dangerous materials, including lead, had the capacity or tendency to deceive consumers and did indeed deceive Michigan Plaintiffs and members of the Michigan Class.

251. The presence of lead in the Products is material information to consumers, including Michigan Plaintiffs and the Michigan Class. WanaBana falsely and misleadingly represented this material information intentionally, knowingly, willfully, wantonly, and with reckless disregard for the truth.
252. All consumers were exposed to WanaBana's marketing, which was intended to and did induce Michigan Plaintiffs and the Michigan Class to purchase the Products.
253. As a direct and proximate result of WanaBana's unlawful conduct, Michigan Plaintiffs and the Michigan Class have suffered injury, including ascertainable losses of money.
254. Accordingly, pursuant to the MCPA, Michigan Plaintiffs and the Michigan Class seek all monetary and non-monetary relief allowed by law, including actual damages, and other additional relief that is just and proper.

**IX. UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER NEW YORK LAW.
N.Y.G.B.L. §§ 349, *et seq.*
On Behalf of the New York Class.**

255. Plaintiffs Michael Rozenhal and Rebecca Schuster ("New York Plaintiffs"), individually and on behalf of the New York Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
256. This claim under New York's Unfair and Deceptive Trade Practices Law, N.Y.G.B.L. §§ 349, *et seq.* ("G.B.L. § 349"), is brought by the New York Plaintiffs on behalf of themselves and the New York Class.
257. Defendants are "persons" within the meaning of the NY Law. *See* N.Y.Stat. § 56:8-1(d).

258. In violation of G.B.L. § 349, WanaBana engaged in deceptive acts or practices in the conduct of their business, trade, and commerce, as described *supra*.
259. WanaBana's deceptive and unlawful acts and practices affected the public interest and consumers who purchased and ingested the Products, including New York Plaintiffs and the New York Class.
260. New York Plaintiffs and New York Class members purchased the Products as a result of being misled by WanaBana's deceptive trade practices
261. WanaBana intentionally, knowingly, and maliciously violated G.B.L. § 349, and recklessly disregarded the rights of New York Plaintiffs and New York Class members.
262. WanaBana's representations and omissions were material because they were likely to deceive reasonable consumers, including New York Plaintiffs and New York Class members.
263. As a direct and proximate result of WanaBana's deceptive acts and practices, New York Plaintiffs and the New York Class have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Products.
264. WanaBana's deceptive and unlawful acts and practices caused substantial injury New York Plaintiffs and New York Class members that they could not reasonably avoid.
265. Accordingly, New York Plaintiffs and the New York Class seek all monetary and non-monetary relief allowed by law, including actual damages or statutory damages of \$50 (whichever is greater), treble damages, injunctive relief, and attorneys' fees and costs.

**X. FALSE ADVERTISING UNDER NEW YORK LAW.
N.Y.G.B.L. §§ 350, *et seq.*
On Behalf of the New York Class.**

- 266.** The New York Plaintiffs, individually and on behalf of the New York Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
- 267.** This claim under New York’s False Advertising Law, N.Y.G.B.L. §§ 350, *et seq.* (“G.B.L. § 350”), is brought by the New York Plaintiffs on behalf of themselves and the New York Class.
- 268.** “False advertising in the conduct of any business, trade or commerce” is unlawful. G.B.L. § 350.
- 269.** “False advertising” is defined as “advertising, including labeling, of a commodity...if such advertising is misleading in a material respect,” or that “fails to reveal facts material in the light of such representations with respect to the commodity...to which the advertising relates.” G.B.L. § 350-a.
- 270.** WanaBana engaged in false advertising in violation of G.B.L. § 350 because its labeling, marketing, and advertising of the Products as high-quality, healthy, and safe products for consumers, including New York Plaintiffs and New York Class members, and their children to eat are “misleading in a material respect.” *Id.*
- 271.** As described *supra*, WanaBana repeatedly advertised the Products as high-quality, healthy, and safe products for consumers, including New York Plaintiffs and New York Class members, and their children to eat on its website, through a national advertising campaign, and on the Products’ packaging.
- 272.** These claims are false—the Products contain dangerous materials, including lead, rendering the Products unsuitable for consumer use as marketed by WanaBana.
- 273.** Accordingly, the Products are defective because they have the propensity to cause and have caused economic and physical injury, including lead poisoning.

- 274.** In its conduct of business, trade, and commerce, WanaBana attempted, directly and indirectly, to induce consumers to purchase the Products by labeling them as high-quality, healthy, and safe products for consumers, including New York Plaintiffs and New York Class members, and their children to eat. In doing so, WanaBana utilized false advertising—the Products’ labeling did not represent the true nature and quality of the Products and misled consumers, including New York Plaintiffs and New Your Class members, into believing the Products were safe to ingest and did not cause adverse reactions, such as lead poisoning.
- 275.** The false labeling was materially misleading and materially deceptive to consumers acting reasonably under the circumstances, including New York Plaintiffs and the New York Class.
- 276.** WanaBana’s conduct caused and continues to cause injury to consumers, including New York Plaintiffs and New York Class members, in that they were misled and made to believe that they were purchasing Products that were high-quality, healthy, and safe, and did not have the propensity to cause and had not caused adverse reactions, including lead poisoning.
- 277.** In making and disseminating the false advertising alleged *supra*, WanaBana knew or should have known that its practices were materially deceptive and misleading in violation of G.B.L. § 350.
- 278.** New York Plaintiffs and the New York Class based their decision to purchase the Products in substantial part on WanaBana’s advertisements, labeling, material representations, and omitted facts. The revenue accumulated by WanaBana attributable to the sale of the Products likely is significant.

279. WanaBana's misrepresentations and non-disclosures of material fact constitute false and misleading advertising in violation of G.B.L. § 350.
280. Based on the foregoing, WanaBana has violated G.B.L. § 350. As a direct and proximate result, New York Plaintiffs and New York Class members have suffered injury-in-fact: the ascertainable loss of monies paid for the Products.
281. Accordingly, New York Plaintiffs and the New York Class seek actual damages and/or statutory damages of \$500.00 per violation, whichever is greater, as well as punitive damages. *See* G.B.L. § 350-e(3).

**XI. VIOLATION OF THE NORTH CAROLINA UNFAIR AND
DECEPTIVE TRADE PRACTICES ACT.**

N.C.G.S. §§ 75-1.1, *et seq.*

On Behalf of the North Carolina Class.

282. Plaintiff Jennifer Bell and Plaintiffs Nancy and David Williamson ("North Carolina Plaintiffs"), individually and on behalf of the North Carolina Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
283. This claim under the North Carolina Unfair and Deceptive Trade Practices Act ("UDTPA"), N.C.G.S. §§ 75-1.1, *et seq.*, is brought by the North Carolina Plaintiffs on behalf of themselves and the North Carolina Class.
284. Defendants engaged in commerce, as defined by N.C. Gen. Stat. § 75-1.1.
285. Defendants engaged in deceptive practices in conducting its trade or commerce, and such deceptive trade practices significantly affected the public interest.
286. North Carolina Plaintiffs and North Carolina Class members purchased the Products as a result of being misled by WanaBana's deceptive trade practices.
287. WanaBana failed to disclose that the Products contained, or had a material risk of containing, dangerous materials like lead. Such an omission is material and misleading.

- 288.** WanaBana omitted this material information with the intent to induce consumers, including North Carolina Plaintiffs and North Carolina Class members, to purchase the Products.
- 289.** The marketing and sale of the Products contaminated with dangerous materials like lead had the capacity or tendency to deceive and did indeed deceive consumers, including North Carolina Plaintiffs and North Carolina Class members.
- 290.** The presence of dangerous materials like lead in the Products marketed for consumption is material information for consumers, including North Carolina Plaintiffs and North Carolina Class members.
- 291.** WanaBana falsely and misleadingly omitted this material information from any communications with the public knowingly, willfully, wantonly, and with reckless disregard for the truth, causing economic and physical harm to North Carolina Plaintiffs and North Carolina Class members.
- 292.** WanaBana's false marketing and sale of its Products as high-quality, healthy, and safe products for consumers, including North Carolina Plaintiffs and North Carolina Class members, and their children to eat when the Products contained dangerous materials, including lead, had the capacity or tendency to deceive consumers and did indeed deceive North Carolina Plaintiffs and North Carolina Class members.
- 293.** All consumers were exposed to WanaBana's marketing, which was intended to and did induce North Carolina Plaintiffs and the North Carolina Class to purchase the Products.
- 294.** North Carolina Plaintiffs and the North Carolina Class have been injured as a result of their reliance on WanaBana's deceptive marketing and sales practices.

295. Pursuant to the UDTPA, North Carolina Plaintiffs and the North Carolina Class seek declaratory relief, full refund, actual and punitive damages, statutory damages, and attorneys' fees.

**XII. VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICE ACT.
ORS §§ 646.605, *et seq.*
On Behalf of the Oregon Class.**

296. Plaintiffs Tammy and Thomas Wagner ("Oregon Plaintiffs"), individually and on behalf of the Oregon Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.

297. This claim under the Oregon Unlawful Trade Practice Act ("OUTPA"), ORS §§ 646.605, *et seq.*, is brought by the Oregon Plaintiffs on behalf of themselves and the Oregon Class.

298. Oregon Plaintiffs, all Oregon Class members, and Defendants are "persons" as defined by the OUTPA. *See* ORS § 646.605(4).

299. Defendants are engaged in "trade" or "commerce" under the OUTPA. *See* ORS § 646.605(8).

300. Generally, conduct is "an unlawful trade practice" under the OUTPA when, "in the course of [their] business," the perpetrator:

- a.** "Employs any unconscionable tactic in connection" with the sale of goods; or
- b.** "Fails to deliver all or any portion of [good] as promised, and at a customer's request, fails to refund money that the customer gave to the person to purchase [such goods]." ORS § 646.607(1)-(2).

301. Under the OUTPA, a "representation" includes "any manifestation of any assertion by words or conduct, including but not limited to a failure to disclose a fact." ORS § 646.608(2).

- 302.** WanaBana engaged in deceptive trade practices that violated the OUTPA by knowingly making false and misleading representations about the true nature and characteristics of the Products, including the repeated claims that the Products were high-quality, healthy, and safe products for consumers, including Oregon Plaintiffs and Oregon Class members, and their children to eat.
- 303.** WanaBana’s false and misleading representations were designed to and did induce Oregon Plaintiffs and Oregon Class members to purchase and use the Products for personal, family, or household purposes.
- 304.** Specifically, WanaBana violated the OUTPA by, *inter alia*:
- a.** Representing that the goods “have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that [they] do not have,” ORS § 646.608(1)(e);
 - b.** Representing that the goods “are of a particular standard, quality, or grade,” ORS § 646.608(1)(g);
 - c.** Advertising goods “with intent not to provide [them] as advertised,” ORS § 646.608(1)(i); and
 - d.** Engaging “in any other unfair or deceptive conduct in trade or commerce.” ORS § 646.608(1)(u).
- 305.** WanaBana knew or should have known its conduct violated the UTPCPL.
- 306.** WanaBana failed to disclose that the Products contained, or had a material risk of containing, dangerous materials like lead. Such an omission is material and misleading.
- 307.** WanaBana’s representations and omissions were material because they were likely to deceive Oregon Plaintiffs and the Oregon Class about the true nature and characteristics of the Products—that they were contaminated with dangerous materials like lead.

308. WanaBana omitted this material information with the intent to induce consumers, including Oregon Plaintiffs and Oregon Class members, to purchase the Products.
309. The marketing and sale of the Products contaminated with dangerous materials like lead had the capacity or tendency to deceive and did indeed deceive consumers, including Oregon Plaintiffs and Oregon Class members.
310. The presence of dangerous materials like lead in the Products marketed for consumption is material information for consumers, including Oregon Plaintiffs and Oregon Class members.
311. WanaBana intended to induce Oregon Plaintiffs and Oregon Class members to rely on its misrepresentations and omissions, and they did reasonably rely on WanaBana's representations that the Products were high-quality, healthy, and safe for consumers, including Oregon Plaintiffs and Oregon Class members, and their children to eat.
312. Oregon Plaintiffs and the Oregon Class have been injured as a result of their reliance on WanaBana's misrepresentations and omissions.
313. As a direct and proximate result of WanaBana's unlawful practices, Oregon Plaintiffs and the Oregon Class have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, in part from not receiving the benefit of their bargain in purchasing the Products. Thus, they seek all monetary and non-monetary relief, including reasonable attorneys' fees and costs, allowed under the OUTPA and the applicable law.

**XIII. VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW.**

73 P.S. §§ 201-1, *et seq.*

On Behalf of the Pennsylvania Class.

- 314.** Plaintiffs Javonney and Emmanuel Kissi (“Pennsylvania Plaintiffs”), individually and on behalf of the Pennsylvania Class, adopt and incorporate by reference all foregoing allegations as if fully set forth herein.
- 315.** This claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. §§ 201-1, *et seq.*, is brought by the Pennsylvania Plaintiffs on behalf of themselves and the Pennsylvania Class.
- 316.** Pennsylvania Plaintiffs, all Pennsylvania Class members, and Defendants are all “persons” under the UTPCPL. 73 P.S. § 201-2(2).
- 317.** By “advertising, offering for sale, sale or distribution of [goods or services], and any other article, commodity, or thing of value,” Defendants are engaged in “trade or commerce directly or indirectly affecting the people” of Pennsylvania. 73 P.S. 201-2(3).
- 318.** WanaBana advertised and sold the Products in Pennsylvania and engaged in trade or commerce directly or indirectly affecting the people of Pennsylvania, including Pennsylvania Plaintiffs and the Pennsylvania Class.
- 319.** The UTPCPL prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” 73 P.S. § 201-3(a).
- 320.** WanaBana engaged in deceptive trade practices that violated the UTPCPL by knowingly making false and misleading statements about the true nature and characteristics of the Products, including the repeated claims that the Products were high-quality, healthy, and safe products for consumers, including Pennsylvania Plaintiffs and Pennsylvania Class members, and their children to eat.

- 321.** WanaBana’s false and misleading advertising and labeling were designed to and did induce Pennsylvania Plaintiffs and Pennsylvania Class members to purchase and use the Products for personal, family, or household purposes, and thus violated the UTPCPL by, *inter alia*:
- a.** “Representing that [goods] have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have,” 73 P.S. § 201-2(4)(v);
 - b.** “Representing that [goods] are of a particular standard, quality, or grade,” 73 P.S. § 201-2(4)(vii);
 - c.** “Advertising goods or services with intent not to sell them as advertised,” 73 P.S. § 201-2(4)(ix); and
 - d.** “Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” 73 P.S. § 201-2(4)(xxi).
- 322.** WanaBana knew or should have known its conduct violated the UTPCPL.
- 323.** WanaBana’s failure to disclose the true nature and characteristics of the Products was a deceptive omission because it tended to cause confusion or misunderstanding.
- 324.** WanaBana’s misrepresentations and omissions were material to Pennsylvania Plaintiffs and the Pennsylvania Class.
- 325.** Pennsylvania Plaintiffs and Pennsylvania Class members relied on WanaBana’s material misrepresentations and omissions, as identified *supra*.
- 326.** Pennsylvania Plaintiffs and Pennsylvania Class members acted reasonably in relying upon WanaBana’s misrepresentations and omissions, the truth of which they could not have discovered through the exercise of reasonable diligence.
- 327.** Had WanaBana disclosed the truth about the nature and characteristics of the Products to Pennsylvania Plaintiffs and the Pennsylvania Class, including the fact that the Products

were contaminated with lead, Pennsylvania Plaintiffs and Pennsylvania Class members would not have purchased the Products. Instead, WanaBana kept these material facts secret and embarked on a disinformation campaign intended to convince consumers that the Products were high-quality, healthy, and safe for consumers, including Pennsylvania Plaintiffs and Pennsylvania Class members, and their children to eat.

- 328.** WanaBana’s foregoing deceptive acts, practices, and omissions were likely to deceive, and did deceive, consumers acting reasonably under the circumstances, including Pennsylvania Plaintiffs and the Pennsylvania Class.
- 329.** Pennsylvania Plaintiffs and Pennsylvania Class members would not have purchased the Products had they known about their nature and characteristics.
- 330.** The UTPCPL includes a private right of action for all persons, including Pennsylvania Plaintiffs and Pennsylvania Class members, who purchase goods “primarily for personal, family or household purposes,” and suffer “any ascertainable loss of money or property...as a result of the use or employment by any person of a method, act or practice declared unlawful[.]” 73 P.S. § 201-9.2(a).
- 331.** Accordingly, Pennsylvania Plaintiffs and the Pennsylvania Class are entitled to recover and seek “to recover actual damages or [\$100.00], whichever is greater,” in addition to treble damages, costs, reasonable attorneys’ fees, and all additional relief this Court deems necessary or proper. *Id.*

**XIV. VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT.
RCW §§ 19.86, et seq.
On Behalf of the Washington Class.**

- 332.** Plaintiff Jennifer Buffan (“Washington Plaintiff”), individually and on behalf of the Washington Class, adopts and incorporates by reference all foregoing allegations as if fully set forth herein.
- 333.** This claim under the Washington Consumer Protection Act (“WCPA”), RCW §§ 19.86 *et seq.*, is brought by Washington Plaintiff on behalf of herself and the Washington Class.
- 334.** WanaBana’s unfair and deceptive acts, practices, and omissions, alleged *supra*, injured Washington Plaintiff and the Washington Class, and were committed in WanaBana’s course of trade or commerce, directed at consumers, and affected and continue to affect the public interest.
- 335.** WanaBana’s deceptive acts, practices, and omissions, alleged *supra*, were material, in part because they implicated an essential part of the Products’ intended use and provision of safety to Washington Plaintiff and Washington Class members.
- 336.** WanaBana omitted facts about the Products’ true nature, characteristics, and safety that were material to Washington Plaintiff and Washington Class members. Instead of disclosing the material information, WanaBana continuously marketed and labeled the Products as being high-quality, healthy, and safe products for consumers, including Washington Plaintiff and Washington Class members, and their children to eat. WanaBana’s claims are false and likely to mislead or deceive the public and put the health and wellbeing of consumers, including Washington Plaintiff and the Washington Class, at risk.

- 337.** WanaBana’s deceptive acts, practices, and omissions, alleged *supra*, were deceptive acts or practices in violation of the WCPA.
- 338.** WanaBana had a duty to disclose the truth about its Products—that they were contaminated with dangerous materials, including lead.
- 339.** Instead of fulfilling its duty to Washington Plaintiff and Washington Class members, WanaBana intentionally and knowingly misrepresented and failed to disclose these material facts with the specific intent of misleading consumers, including the Washington Plaintiff and Washington Class.
- 340.** WanaBana owed Washington Plaintiff and the Washington Class a duty to disclose material facts about the nature and characteristics of the Products because it possessed exclusive knowledge about, *inter alia*:
- a.** The manufacturing of the Products;
 - b.** The testing and quality control processes undertaken with respect to the Products; and
 - c.** The marketing and promotion strategies involving the intentional representation that the Products were high-quality, healthy, and safe products for consumers, including Washington Plaintiff and Washington Class members, and their children to eat.
- 341.** WanaBana’s misrepresentations and omissions were material to Washington Plaintiff and the Washington Class.
- 342.** Washington Plaintiff and Washington Class members relied on WanaBana’s material misrepresentations and omissions, as identified *supra*.
- 343.** Washington Plaintiff and Washington Class members acted reasonably in relying upon WanaBana’s misrepresentations and omissions, the truth of which they could not have discovered through the exercise of reasonable diligence.

- 344.** Had WanaBana disclosed the truth about the nature and characteristics of the Products to Washington Plaintiff and the Washington Class, including the fact that the Products were contaminated with lead, Washington Plaintiff and Washington Class members would not have purchased the Products. Instead, WanaBana kept these material facts secret and embarked on a disinformation campaign aimed at convincing consumers that the Products were high-quality, healthy, and safe for consumers, including Washington Plaintiff and Washington Class members, and their children to eat.
- 345.** WanaBana's foregoing deceptive acts, practices, and omissions were likely to deceive, and did deceive, consumers acting reasonably under the circumstances, including Washington Plaintiff and Washington Class members.
- 346.** Washington Plaintiff and Washington Class members would not have purchased the Products had they known about their nature and characteristics.
- 347.** As a direct and proximate result of Defendants' deceptive acts, practices, and omissions, Washington Plaintiff and Washington Class members have been damaged as alleged herein, and are entitled to recover actual and treble damages to the extent permitted by law, including class action rules, in an amount to be proven at trial.
- 348.** In addition, Washington Plaintiff and Washington Class members seek equitable and injunctive relief against Defendant on terms that the Court considers reasonable, and reasonable attorneys' fees and costs.

PRAYER FOR RELIEF.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated, pray for the following relief:

- a.** Certify the Class and State Subclasses pursuant to Rule 23 of the Federal Rules of

Civil Procedure;

- b. Name Plaintiffs as Class Representatives of the Nationwide Class and their respective State Subclasses;
- c. Name Plaintiffs' counsel as Class Counsel for all Classes;
- d. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiffs, the Class and Subclasses in an amount to be determined at trial;
- e. Award Plaintiffs and the Classes their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;
- f. Award Plaintiffs and the Classes pre- and post-judgment interest at the highest legal rate to the extent provided by law; and
- g. Award such further relief as the Court deems appropriate.

Respectfully submitted, this 22nd day of December, 2023.

**SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.**

/s/Jack Scarola

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF 1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 USC 1332

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment)”.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an “X” in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge’s decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an “X” in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JENNIFER BELL, JENNIFER BUFFAN, KAYLEE CASILLAS, JAMES DOUGLAS JR., CHARLETA HATCHETT, JADA HOGGARD, JERMAINE JACKSON, JAVONNEY and EMMANUEL KISSI, MICHAEL ROZENTAL, KELSEY SCALES REBECCA SCHUSTER, EMILY HOLMES TURNER and BLAKE TURNER, TAMMY and THOMAS WAGNER, and NANCY and DAVID WILLIAMSON, individually and on behalf of themselves and all others similarly situated,

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) Class Action
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) Civil Action No.
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Plaintiff(s)

v.

WANABANA LLC and WANABANA USA LLC,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: WanaBana USA, LLC
By Serving its Registered Agent
Corporation Service Company
1201 Hays Street
Tallahassee, FL 32301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Jack Scarola, Esq.
Katherine A. Kiziah, Esq.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
(561) 686-6300

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

AO 440 (Rev. 06/12) Summons in a Civil Action

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JENNIFER BELL, JENNIFER BUFFAN, KAYLEE CASILLAS, JAMES DOUGLAS JR., CHARLETA HATCHETT, JADA HOGGARD, JERMAINE JACKSON, JAVONNEY and EMMANUEL KISSI, MICHAEL ROZENTAL, KELSEY SCALES REBECCA SCHUSTER, EMILY HOLMES TURNER and BLAKE TURNER, TAMMY and THOMAS WAGNER, and NANCY and DAVID WILLIAMSON, individually and on behalf of themselves and all others similarly situated,

Plaintiff(s)

v.

WANABANA LLC and WANABANA USA LLC,

Defendant(s)

Class Action

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: WanaBana, LLC
By Serving Registered Agent
Barry Perl, CPA
9405 N. Miami Avenue
Miami Shores, FL 33150

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Jack Scarola, Esq.
Katherine A. Kiziah, Esq.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
(561) 686-6300

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

AO 440 (Rev. 06/12) Summons in a Civil Action

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: