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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 SARAHA MACK and YAJAIRA SOLANO,
14 individually and on behalf of all others similarly
15 situated,

16 Plaintiffs,

17 v.

18 EDGEWELL PERSONAL CARE COMPANY,

19 Defendant.

CASE NO.: 3:23-cv-00837-AMO

**SECOND AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

20 **SECOND AMENDED CLASS ACTION COMPLAINT**

21 Plaintiffs Saraha Mack and Yajaira Solano (“Plaintiffs”) individually, and on behalf of all
22 others similarly situated, bring this Second Amended Class Action Complaint against Defendant
23 Edgewell Personal Care Company (“Edgewell” or “Defendant”) and allege the following based upon
24 personal knowledge as to themselves and, as to all other matters upon information and belief,
25 including investigation conducted by their attorneys.

26 **NATURE OF THE CASE**

27 1. This is a civil class action brought by Plaintiffs on behalf of consumers who purchased
28 Playtex-branded Gentle Glide Tampons (“Tampon Products” or “Products”) for personal hygiene
purposes.

1 2. Approximately 5.8 billion tampons were sold in the United States in 2018.¹ In 2020
2 alone, 34.1 million women in the United States used tampons to manage their menstruation.²

3 3. In recent years there has been increased concern from women about the presence of
4 chemicals in menstrual products and how these chemicals might affect long-term health.³ These
5 concerns arise, in part, from the fact that the vagina and vulva absorb chemicals at a higher rate than
6 other areas of the body.⁴ Accordingly, consumers have begun to demand eco-friendly, natural, and
7 chemical-free methods of managing menstruation.

8 4. As one of the biggest players in the very lucrative feminine hygiene market,
9 Edgewell is keenly aware of increased consumer demand for products which limit unnecessary
10 chemical exposure. In order to capitalize on this demand, Edgewell designs, manufactures,
11 advertises, distributes, and sells personal care products, including the Tampon Products that are
12 the subject of this Action.

13 5. Defendant knows that when it comes to product labeling, words matter. Product label
14 real estate is limited, and Defendant has carefully and intentionally chosen certain words on the
15 Tampon Product labels to convince consumers that the Tampon Products are free of artificial or
16 potentially harmful chemicals and are therefore environmentally friendly, clean, healthy, and safe.

17 6. Defendant has intentionally designed the front and back label representations on the
18 Tampon Products, beginning with the name “Playtex SIMPLY gentle glide,” with the “SIMPLY” in
19 all capital letters and emphasized in green text on the front product label, along with “SIMPLE.
20 GENTLE. RELIABLE” in green text on the back label with a green circle with leaves surrounding
21 the text, in addition to representations that the Tampon Products contain “purified fibers,” “free from
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24 ¹ <https://www.nationalgeographic.com/environment/article/how-tampons-pads-became-unsustainable-story-of-plastic/> (last accessed Feb. 20, 2024).

25 ² <https://www.statista.com/statistics/278085/us-households-usage-of-tampons/> (last accessed Feb.
26 15, 2024).

27 ³ See <https://www.theguardian.com/commentisfree/2015/apr/20/tampon-safety-research-legislation>
(last accessed Feb. 20, 2024).

28 ⁴ See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3948026/> (last accessed Feb. 20, 2024).

1 colors, dyes and BPA,” which are known chemicals of concern, and an assurance that “Every
2 ingredient used in Simply Gentle Glide is rigorously evaluated to provide reliable protection that you
3 can trust to be gentle and safe for your body” (collectively the “Safe, Gentle, and Purified”
4 Representations), in order to lead reasonable consumers to believe that the Tampon Products do not
5 contain any potentially harmful chemicals:⁵



5 <https://www.playtextampons.com/products/simply-gentle-glide-tampons> (last accessed Feb. 20, 2024).



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12 7. With the Safe, Gentle and Purified Representations, Defendant intentionally and
13 knowingly leads consumers to believe that the Tampon Products do not contain any potentially
14 harmful chemicals, like PFAS.⁶

15 8. Reasonable consumers, therefore, fairly and reasonably understand that a product
16 marketed with the Safe, Gentle and Purified Representations would not contain chemicals known to
17 be harmful to humans or the environment.

18 9. Edgewell knows that consumers are concerned with the ingredients in their personal
19 care products, especially products like tampons that are designed to be used internally. Thus,
20 Edgewell has intentionally utilized its marketing, centering on its Safe, Gentle and Purified
21 Representations to drive sales and increase profits, including by targeting health-conscious consumers
22 who reasonably believe that the Tampon Products are free from harmful chemicals.

23 10. However, despite Edgewell’s consistent and pervasive marketing of the Tampon
24 Products as Safe, Gentle and Purified, Plaintiffs’ independent testing has shown that the Tampon
25 Products contain per- and polyfluoroalkyl substances (“PFAS”), a category of human-made chemicals
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27 ⁶ <https://www.playtextampons.com/products/simply-gentle-glide-tampons> (last accessed Feb. 20,
28 2024).

1 with a toxic, persistent, and bioaccumulative nature which are associated with numerous health
2 concerns.

3 11. As described below, PFAS are a class of chemicals, with more than 12,000 different
4 types of identified PFAS, all of which are potentially harmful to human health and the environment,
5 and none of which belong in, or are necessary to the utility of feminine hygiene products.

6 12. As further shown below, Plaintiffs' independent extractable or total organic fluorine
7 testing, which was performed over the course of more than one year, consistently showed the presence
8 of PFAS in the Products. The testing that Plaintiffs performed is the gold standard, as it is able to
9 capture the entire class of 12,000 different PFAS structures, rather than testing for specific PFAS
10 analytes which can only account for a limited number of the more than 12,000 PFAS, despite all
11 12,000 different PFAS structures having similar concerns for human health and the environment.⁷ In
12 other words, it provides a single result that is representative of the total PFAS concentration of the
13 sample tested.

14 13. The presence of PFAS chemicals in the Tampon Products is entirely inconsistent with
15 Edgewell's uniform Safe, Gentle and Purified Representations.

16 14. As a result of Edgewell's misconduct, Plaintiffs and Class Members have suffered
17 injury in fact in the form of economic damages.

18 15. Plaintiffs bring this suit to halt Edgewell's dissemination of false and misleading
19 representations and to correct the false and misleading perceptions that Edgewell's representations
20 have created in the minds of reasonable consumers.

21 16. Plaintiffs seek damages, injunctive relief, and other equitable remedies for themselves
22 and for the proposed classes.

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26 ⁷ <https://pubs.acs.org/doi/10.1021/acs.est.2c05198> ("Organic fluorine has recently emerged as a novel
27 indicator that encompasses the total content of both known and unknown types of PFAS, unlike
28 traditional targeted analyses that can reliably quantify only a few dozen known PFAS that have
commercially available analytical standards") (last accessed Feb. 13, 2024).

1 **JURISDICTION AND VENUE**

2 17. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
3 1332 of the Class Action Fairness Act of 2005 because: (1) there are 100 or more proposed Class
4 Members; (ii) the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest and
5 costs; and (iii) there is minimal diversity because Plaintiffs and Defendant are citizens of different
6 states. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C.
7 § 1367.

8 18. This Court has personal jurisdiction over Defendant because Defendant has
9 intentionally availed itself of the laws of the United States and the state of California, having
10 purposefully marketed, advertised and/or sold the Tampon Products to consumers across the United
11 States, including the state of California. Such conduct has a direct, substantial, reasonably
12 foreseeable, and intended effect of causing injury to persons throughout the United States, including
13 the state of California.

14 19. In accordance with 28 U.S.C. § 1391 and the California Consumers Legal Remedies
15 Act (“CLRA”), Civil Code § 1780(d), venue is proper in this District because a substantial part of
16 the conduct giving rise to Plaintiffs’ claims occurred in this District, Defendant transacts business
17 in this District, and Defendant has intentionally availed itself of the laws and markets within this
18 District.

19 **DIVISIONAL ASSIGNMENT**

20 20. Plaintiffs purchased the Tampon Products in Fairfield, California and Oxnard,
21 California. Accordingly, pursuant to Civil Local Rule 3-2(d), this action can be assigned to the
22 Oakland Division or San Francisco Division.

23 **PARTIES**

24 21. Plaintiff Saraha Mack is a resident and citizen of the state of California and resides in
25 Fairfield, California.

26 22. Plaintiff Yajaira Solano is a resident and citizen of the state of California and resides
27 in Oxnard, California.

1 23. Defendant Edgewell is incorporated in Missouri and its principal place of business is
2 located at 6 Research Drive, Shelton, CT 06484.

3 **FACTUAL ALLEGATIONS**

4 24. On average, women will have 450 periods over their lifetime, which equals 3,500 days
5 spent menstruating.⁸ This means women spend more than 9 years of their lives using menstrual
6 products.

7 25. Tampons are a method of absorbing menstrual flow that are worn internally by
8 inserting them into the vagina.⁹

9 26. Tampons are designed to be worn for up to 8 hours at a time and are typically available
10 in different levels of absorbency to be used throughout a woman’s menstrual period.

11 27. The first commercial tampon was introduced in the United States in the 1930s.¹⁰

12 28. Playtex is an established tampon manufacturer and innovator, having introduced the
13 first “plastic, dome-tipped applicator in 1973.”¹¹

14 29. Thus, Playtex is indisputably one of the most well recognized—and highly trusted—
15 brands of feminine hygiene products currently on the market.

16 30. Edgewell acquired Playtex in 2007 and has since built a large portfolio of other
17 feminine care brands as well.¹²

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22 ⁸ <https://www.helpingwomenperiod.org/7-amazing-facts-about-periods-that-everyone-needs-to-know/> (last accessed Feb. 20, 2024).

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24 ⁹ <https://www.fda.gov/consumers/consumer-updates/facts-tampons-and-how-use-them-safely> (last accessed Feb. 20, 2024).

25 ¹⁰ <https://www.theatlantic.com/health/archive/2015/06/history-of-the-tampon/394334/> (last accessed Feb. 20, 2024).

26 ¹¹ *Id.*

27 ¹² <https://ir.edgewell.com/~media/Files/E/EdgeWell-IR/annual-reports/epc-10k-9-30-22-48.pdf>
28 (last accessed Feb. 20, 2024).

1 31. Edgewell is “one of the world’s largest manufacturers and marketers of personal care
2 products in the wet shave, sun and skin care, and feminine care categories. With operations in over
3 20 countries, our products are widely available in more than 50 countries.”¹³

4 32. In fact, Edgewell was named one of Newsweek’s “America’s Most Responsible
5 Companies in 2023,”¹⁴ further cementing its status as a trusted source for consumers.

6 33. Despite their widespread use, health concerns about feminine hygiene products date
7 back to the 1980s, when tampons were first linked to toxic shock syndrome, a potentially life-
8 threatening condition.¹⁵ From the time toxic shock syndrome was first linked to tampons, and
9 continuing to the present time, Edgewell has continuously worked to reassure consumers about the
10 safety of its products.

11 34. Currently, there is significant public health concern about the chemicals used in
12 feminine hygiene products.¹⁶ Potential negative health effects stemming from the chemicals in
13 tampons and pads, in addition to environmental concerns related to single-use plastics, have caused
14 many women to seek out alternative menstrual hygiene products, including those that limit their
15 exposure to unnecessary and potentially harmful chemicals and reduce plastic waste. In the past
16 decade, in response to consumer demand, various new brands have begun to offer menstrual products
17 which are marketed as more ethical and ecologically friendly than traditional feminine hygiene
18 brands.¹⁷

19 35. As an undisputed leader in the menstrual products market, Edgewell is well aware that
20 consumers are looking for eco-friendly and healthy ways to deal with menstruation.

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22 ¹³ *Id.*

23 ¹⁴ [https://www.prnewswire.com/news-releases/edgewell-personal-care-named-one-of-americas-
24 most-responsible-companies-in-2023-301697589.html](https://www.prnewswire.com/news-releases/edgewell-personal-care-named-one-of-americas-most-responsible-companies-in-2023-301697589.html) (last accessed Feb. 20, 2024).

25 ¹⁵ <https://my.clevelandclinic.org/health/diseases/15437-toxic-shock-syndrome> (last accessed Feb. 20,
26 2024).

27 ¹⁶ [https://www.womensvoices.org/2018/06/05/new-tampon-testing-reveals-undisclosed-
28 carcinogens-and-reproductive-toxins/](https://www.womensvoices.org/2018/06/05/new-tampon-testing-reveals-undisclosed-carcinogens-and-reproductive-toxins/) (last accessed Feb. 20, 2024).

¹⁷ [https://www.theguardian.com/society/2020/feb/11/tampon-wars-the-battle-to-overthrow-the-
tampax-empire](https://www.theguardian.com/society/2020/feb/11/tampon-wars-the-battle-to-overthrow-the-tampax-empire) (last accessed Feb. 20, 2024).

1 36. Edgewell currently sells Playtex tampons, including the Tampon Products, in retail
2 stores throughout the country, including at drug and grocery stores such as Walgreens, CVS, Target,
3 Kroger, and Walmart.

4 ***Defendant's False and Deceptive Advertising***

5 37. Edgewell uniformly represents the Tampon Products as Safe, Gentle and Purified
6 in accordance with representations on both the front and back of the Tampon Product packaging,
7 where they cannot be missed by consumers.

8 38. Nowhere on the Tampon Products' packaging does Edgewell disclose the presence of
9 PFAS.

10 39. The Safe, Gentle and Purified Representations appear prominently on the Tampon
11 Products' front label, which is adorned with illustrations of green leaves to match the green in the
12 all-capitalized "SIMPLY," and representations that the Tampon Products consist of purified
13 fibers which are free of chemicals of concern such as colors, dyes, and BPA¹⁸:



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27 ¹⁸ <https://www.playtextampons.com/products/simply-gentle-glide-tampons> (last accessed Feb. 15,
28 2023). At some point after the filing of Plaintiffs' Amended Complaint (ECF No. 32) on May 12,
2023, Playtex removed this page from their website.

1 40. Likewise, the back label of the Tampon Products¹⁹ contains the Safe, Gentle and
2 Purified Representations, which are further bolstered by the inclusion of the phrase “Simple. Gentle.
3 Reliable” in green text in a green circle containing leaves, as well as reiteration that the Tampon
4 Product consists of purified fibers and is free from colors, dyes, and BPA. Additionally, the packaging
5 indicates that “Every ingredient used in Simply Gentle Glide™ is rigorously evaluated to provide
6 reliable protection that you can trust to be gentle and safe for your body”:

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¹⁹ *Id.*

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Playtex **SIMPLY** gentle glide™

SIMPLE. GENTLE. RELIABLE.
SIMPLE. DOUX. FIABLE.
SIMPLE. SUAVE. CONFIABLE.

Every ingredient used in Simply Gentle Glide™ is rigorously evaluated to provide reliable protection that you can trust to be gentle and safe for your body.**

Chaque composant des tampons Simply Gentle Glide™ est rigoureusement évalué pour vous offrir une protection fiable, douce et sûre pour votre corps.**

Cada ingrediente utilizado en Simply Gentle Glide™ se evalúa rigurosamente para brindar una protección confiable y asegurar que sea suave y seguro para tu cuerpo.**

Shapes to your body for a protective barrier against leaks.
 Notre tampon épouse les formes de votre corps pour créer une barrière protectrice contre les fuites.
 Se adapta a la forma de tu cuerpo creando una barrera protectora para evitar filtraciones.

Comfort shape applicator free from colors, dyes and BPA.
 L'applicateur de forme tout confort ne contient pas de colorants, de teintures ni de BPA.
 Cómodo aplicador, libre de colorantes, tintes y BPA.

*Purified fibers washed up to 5 times and woven together to form an absorbent core.
 Les fibres purifiées sont lavées jusqu'à 5 fois et entrelacées pour former un noyau absorbant.
 *Fibras purificadas lavadas hasta 5 veces y tejidas juntas para formar un núcleo absorbente.

1 41. The packaging's side panel contains similar representations, along with the Tampon
 2 Products' ingredients, which are listed as: rayon and/or cotton fiber, polyester, polysorbate 20, wax
 3 blend (paraffin, butyl shearate, and carnuba wax) and polymer wax dispersion.²⁰
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28 ²⁰ <https://www.ebay.com/itm/334576351989> (last visited Feb. 15, 2023).

1 42. In fact, Edgewell uses its official website to uniformly reassure consumers that the
2 Tampon Products are “Made Simple - 360° simple, reliable protection and comfortable applicator
3 made with no unnecessary ingredients” and “with Simply GentleGlide™, you can have the best of
4 both worlds – it’s simple and a great value!”²¹

5 43. Because Edgewell knows that safety is material to consumers—especially when using
6 a product that is designed to be used internally in the body—the Playtex website explicitly addresses
7 consumer concerns about toxic chemicals in tampons and makes absolutely clear that all Playtex
8 products are free of any harmful materials²²:

9 Q: I read on the Internet that there are all kinds of toxic chemicals in tampons. Is that true?

10 A: We all know how easy it is for the wrong information to get passed on the Internet. However, there are government organizations like
Health Canada that have strict requirements for the production of tampons to make sure they are free from any harmful materials.

11 44. Edgewell has consistently positioned the Playtex brand as a safe, trusted brand, having
12 trademarked the slogan “Made Better Every Day™...Playtex—since 1960.”²³

13 45. Thus, there can be no doubt that the Safe, Gentle and Purified Representations are
14 intentionally designed to convince reasonable consumers that the Tampon Products are, in fact, Safe,
15 Gentle and Purified and otherwise free from potentially harmful ingredients.

16 46. The Safe, Gentle and Purified Representations are central to Edgewell’s marketing and
17 sale of the Tampon Products and are strategically employed to convince health-conscious consumers
18 that the Tampon Products are a pure and safe choice.

19 ***PFAS and Associated Risks***

20 47. PFAS are a category of highly persistent and potentially harmful man-made
21 chemicals.²⁴

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25 ²¹ <https://www.playtextampons.com/products/simply-gentle-glide-tampons> (last accessed Feb. 20, 2024).

26 ²² <https://www.playtextampons.com/faqs/tampon-myths> (last accessed Feb. 20, 2024).

27 ²³ <https://edgewell.com/pages/our-brands> (last accessed Feb. 20, 2024).

28 ²⁴ <https://www.epa.gov/pfas/pfas-explained> (last accessed Feb. 20, 2024).

1 48. PFAS are not naturally occurring.²⁵ They are man-made and have been used in various
2 products since the 1940s.²⁶ Thus, they are indisputably synthetic chemicals.

3 49. The unique chemical composition of PFAS makes them both hydrophobic and
4 oleophobic. Because of these properties, PFAS is frequently used to increase the performance of
5 consumer products by increasing their durability, water resistance, and stain resistance.²⁷

6 50. In the case of menstrual products, PFAS is used to make tampons more absorbent by
7 drawing liquid into the products' absorbent core and preventing wicking and leakage.

8 51. While there are thousands of varieties of PFAS chemicals in existence, all PFAS
9 contain carbon-fluorine bonds—one of the strongest in nature—which makes them highly persistent
10 in the environment and in human bodies.²⁸ For this reason, PFAS chemicals are sometimes called
11 “forever chemicals.”

12 52. PFAS chemicals can be categorized as “long-chain” or “short-chain” based on the
13 amount of carbon atoms they contain. Chemical companies once claimed that short-chain PFAS were
14 a safer type of PFAS than long-chain varieties, but these claims have been thoroughly debunked. A
15 recent study determined short-chain PFAS may be just as harmful as the long-chain versions, if not
16 more.²⁹

17 53. Because of their persistence and bioaccumulative nature, all PFAS are harmful. In the
18 words of Dr. Graham Peaslee, a nuclear scientist, professor and researcher at the University of Notre
19 Dame, “I’ve never met the good PFAS, and there are no such things. They are all long-lived, they all
20 bioaccumulate, a good number of them are shown to be toxic and the rest we just haven’t measured
21 yet.”

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25 ²⁵ <https://www.atsdr.cdc.gov/pfas/resources/pfas-faqs.html> (last accessed Feb. 20, 2024).

26 ²⁶ <https://www.atsdr.cdc.gov/pfas/health-effects/index.html>(last accessed Feb. 20, 2024).

27 ²⁷ <https://pubs.rsc.org/en/content/articlehtml/2020/em/d0em00291g> (last accessed Feb. 20, 2024).

28 ²⁸ <https://ntp.niehs.nih.gov/whatwestudy/topics/pfas/index.html> (last accessed Feb. 20, 2024).

²⁹ <https://web.uri.edu/steep/study-newer-pfas-chemicals-may-pose-more-risks-than-those-they-replaced/> (last accessed Feb. 20, 2024).

1 54. Crucially, PFAS can be harmful even at extremely low levels of exposure.³⁰ The EPA
2 recently confirmed that the levels at which negative health effects could occur are much lower than
3 previously understood— including near zero in some cases.³¹

4 55. In other words, there is no “safe” level of exposure with regard to these chemicals, and
5 even “trace” levels of PFAS can pose a risk to humans.

6 56. Humans can be exposed to PFAS in a variety of ways, including skin absorption.³²

7 57. PFAS chemicals have been associated with numerous negative health effects for
8 humans and the environment. The health risks associated with PFAS include, but are not limited to,
9 decreased male and female fertility, negative developmental effects or delays in children, increased
10 risk of cancers, liver damage, and thyroid disease, adverse impacts on the immune system,
11 interference with hormones and increased cholesterol levels.³³

12 58. It is well documented that PFAS in personal care products may pose a risk to human
13 health through direct and indirect exposure, as well as a risk to ecosystem health throughout the
14 lifecycle of these products.³⁴

15 59. As skin is the body’s largest organ,³⁵ subjecting it to absorption of PFAS through
16 tampons is very concerning.

17 60. A large number of studies have examined the potential harmful health effects of
18 exposure to PFAS. In a 2019 study, the U.S. Department of Health and Human Services’ National
19 Toxicology Program found that PFAS has adverse effects on human organ systems, including
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21 ³⁰ <https://www.washingtonpost.com/climate-environment/2022/06/15/epa-pfas-forever-chemicals/>
22 (last accessed Feb. 20, 2024).

23 ³¹ *Id.*

24 ³² *Id.*

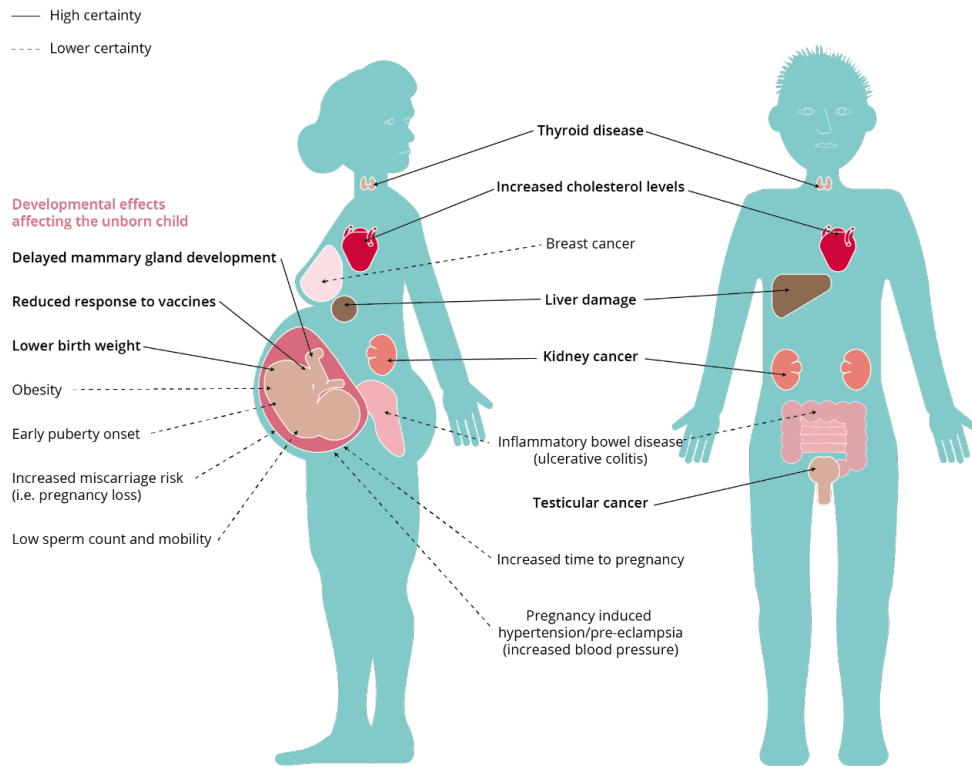
25 ³³ See [https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-](https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas)
26 [pfas](https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas) (last accessed February 20, 2023); <https://www.atsdr.cdc.gov/pfas/health-effects/index.html>
(last accessed Feb. 20, 2023); [https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-](https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html)
27 [toxins-chemicals.html](https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html) (last accessed Feb. 20, 2024).

28 ³⁴ <https://pubs.acs.org/doi/10.1021/acs.estlett.1c00240> (last accessed Feb. 20, 2024).

³⁵ <https://doi.org/10.3109/17453054.2010.525439> (last accessed Feb. 20, 2024).

1 impacting the liver and thyroid hormone.³⁶

2 61. A figure from the European Environmental Agency (“EEA”) shows the
 3 “[e]ffects of PFAS on human health.”³⁷



17 62. The EEA has further explained that “[p]eople most at risk of adverse health impacts
 18 are those exposed to high levels of PFAS, and vulnerable population groups such as children and the
 19 elderly.”³⁸

20 63. The Center for Disease Control’s Agency for Toxic Substances and Disease Registry
 21 has recognized that exposure to high levels of PFAS may also impact the immune system and reduce
 22 antibody responses to vaccines.³⁹

25 ³⁶ <https://ntp.niehs.nih.gov/whatwestudy/topics/pfas/index.html> (last accessed Feb. 20, 2024).

26 ³⁷ <https://www.eea.europa.eu/publications/emerging-chemical-risks-in-europe> (last accessed Feb. 20, 2024).

27 ³⁸ *Id.*

28 ³⁹ <https://www.atsdr.cdc.gov/pfas/health-effects/index.html> (last accessed Feb. 20, 2024).

1 64. On September 20, 2020, a New York Times article titled “These Everyday Toxins
2 May Be Hurting Pregnant Women and Their Babies” reported on the dangers of PFAS—particularly
3 during gestation and in early childhood development:⁴⁰

4 Scientists think these widely used industrial chemicals may harm
5 pregnant women and their developing babies by meddling with gene
6 regulators and hormones that control two of the body’s most critical
7 functions: metabolism and immunity.

8 More disturbing, PFAS can also alter levels of both mothers’ and
9 babies’ thyroid hormones, which oversee brain development, growth
10 and metabolism, and also play a role in immunity. Prenatal PFAS
11 exposures that disrupt metabolism and immunity may cause
12 immediate and lasting effects on both mother and child. Women
13 exposed to PFAS during pregnancy have higher risks of gestational
14 diabetes and pre-eclampsia, a type of high blood pressure. Their
15 babies are more likely to undergo abnormal growth in utero, leading
16 to low birth weight, and later face increased risk of childhood obesity
17 and infections.

18 65. Costs to society arising from PFAS exposure are high, with the annual health-related
19 costs estimated to be EUR 52-84 billion across Europe in a recent study (Nordic Council of Ministers,
20 2019).⁴¹ The study notes that these costs are likely underestimated, as only a limited range of health
21 effects (high cholesterol, decreased immune system and cancer) linked to exposure to a few specific
22 PFAS were included in the estimates.⁴²

23 66. There is no treatment to remove PFAS from the body. Therefore, experts agree the
24 most effective risk mitigation strategy is to avoid and/or limit exposure to products known to contain
25 PFAS.

26 67. The exposure to toxic substances such as PFAS through period care products is
27 particularly serious due to the fact that studies have shown that the vaginal ecosystem is more
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25 ⁴⁰ <https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html> (last
26 accessed Feb. 20, 2024).

27 ⁴¹ <https://www.eea.europa.eu/publications/emerging-chemical-risks-in-europe> (last accessed Feb. 20,
28 2024).

⁴² *Id.*

1 sensitive and absorbent than typical skin.⁴³ “Research on vaginal drug delivery has shown that the
2 vaginal canal offers a suitable environment for chemical absorption and circulation. The canal is rich
3 in arteries and lymphatic vessels. And vaginal mucus is sticky, so it holds some molecules against the
4 vaginal wall for a long time; this forced proximity can stimulate absorption.”⁴⁴

5 68. Further, with the average woman spending the equivalent of 9 years of her life using
6 menstrual products, it is undisputed that women will experience significant exposure to any chemicals
7 that those products may contain, with such exposure spanning many decades.

8 69. “The Madrid Statement,” a scientific consensus regarding the persistence and potential
9 for harm of PFAS substances issued by the Green Science Policy Institute and signed by more than
10 250 scientists from 38 countries, recommended actions in order to mitigate future harm, including:
11 (1) discontinuing use of PFAS where not essential or safer alternatives exist; (2) labeling products
12 containing PFAS; and (3) encouraging retailers and individual consumers to avoid products
13 containing or manufactured using PFAS whenever possible.⁴⁵

14 ***Testing for PFAS***

15 70. There are two primary testing methods for detecting PFAS in a particular sample:
16 “targeted” analysis and total organic fluorine (“TOF”) analysis.

17 71. Targeted PFAS analysis looks for the presence of specific PFAS in a sample, with the
18 results limited to a fixed set of parameters (i.e., a limited and defined list of potential PFAS “targets”).

19 72. There are more than 12,000 PFAS chemicals currently in existence.⁴⁶ Because PFAS
20 are man-made, this list continues to grow as chemists develop new varieties of PFAS.

21 73. Recently scientists were able to build off existing methods to develop an advanced test
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24 ⁴³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3948026/> (last accessed Feb. 20, 2024).

25 ⁴⁴ <https://undark.org/2022/11/15/in-turmoil-over-tampons-scientists-see-a-need-for-more-scrutiny/>
26 (last accessed Feb. 20, 2024).

27 ⁴⁵ <https://greensciencepolicy.org/our-work/science-policy/madrid-statement/> (last accessed Feb. 20,
28 2024).

⁴⁶ <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster> (last accessed Feb.13, 2024).

1 which can detect 70 PFAS,⁴⁷ but even with this significant advancement, targeted testing can still
2 only detect, at most, 0.006% of PFAS in existence.

3 74. The results of targeted analysis cannot provide a comprehensive measure of the total
4 quantity of PFAS that may be present in a sample since it can only detect a mere fraction of potential
5 PFAS. In other words, targeted testing seeks a needle in a haystack.

6 75. Because of these limitations, targeted testing cannot support the conclusion that a
7 sample is “PFAS free;” it can only support a conclusion that a sample is free from the handful of
8 specific PFAS chemicals it can detect.

9 76. In contrast to targeted testing, TOF testing is used to detect organic fluorine, which is
10 the foundational element—and defining characteristic—of PFAS.

11 77. When used in chemistry, the term “organic” refers to compounds containing carbon.⁴⁸
12 This is notably different than the common usage of the word organic as it relates to consumer products
13 such as food and cosmetics.

14 78. Accordingly, organic fluorine is created by the chemical bond between carbon atoms
15 and fluorine atoms.

16 79. The strong bond created between carbon and fluorine is what defines PFAS chemicals
17 and is the reason for their functional benefits. *See* ¶ 51.

18 80. Because organic fluorine is the identifying element of PFAS and is present in **all** PFAS
19 varieties, the detection of organic fluorine in a sample necessarily means that PFAS are present in
20 some form.

21 81. TOF testing is crucial in the detection of the 99.99% of PFAS that cannot be detected
22 through limited targeted testing.

23 82. It is *extremely* unlikely (if not impossible) that TOF testing would yield a “false
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26 ⁴⁷ <https://www.sciencedirect.com/science/article/pii/S0048969723015966> (last accessed Feb. 13,
2024).

27 ⁴⁸ <https://www.acs.org/careers/chemical-sciences/areas/organic-chemistry.html#:~:text=Organic%20chemistry%20is%20the%20study,phosphorus%2C%20silicon%2C%20sulfur> (last accessed Feb. 13, 2024).

1 positive” for PFAS as it only measures fluorine that originates from a substance where fluorine is
2 attached to a carbon backbone (i.e., the building blocks of PFAS).⁴⁹ Accordingly, TOF testing does
3 not detect any other forms of fluorine, such as inorganic fluorine (i.e., fluoride).

4 83. Organic fluorine is not naturally present in the human body and it is practically
5 nonexistent outside of its use in synthetic PFAS chemicals.

6 84. The exceedingly rare examples of organic fluorine from sources other than manmade
7 PFAS—the most famous of which is the deadly poison monofluoroacetic acid from a rare indigenous
8 South African plant—are not found or used in the industrial world and would never be the source of
9 organic fluorine in a consumer product (even as an incidental contaminant).⁵⁰

10 85. Due to the significant limitations of targeted testing, TOF analysis is the only method
11 that can reliably indicate the presence or absence of *any* of the tens of thousands of varieties of PFAS
12 for which no targeted testing is currently available by identifying the foundational element of all
13 PFAS—organic fluorine.

14 86. Accordingly, TOF analysis has been widely accepted by scientists, researchers, and
15 regulators as the reliable indicator that a sample contains PFAS.

16 87. The state of California *requires* the use of TOF testing to ensure compliance with
17 regulations regarding the presence of PFAS in certain consumer products. *See*, e.g., Cal. Health &
18 Safety Code §§ 108945, *et seq.* The statute measures PFAS in parts per million of organic fluorine,
19 rendering targeted testing insufficient to demonstrate compliance.

20 88. TOF is typically reported in micrograms per gram or parts per million (“ppm”). By
21 using the average proportion of organic fluorine in PFAS, organic fluorine concentration can also be
22 used to provide an estimate of the maximum PFAS concentration in a sample.

23 89. In sum, TOF testing is more reliable than targeted testing in demonstrating the
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26 ⁴⁹ <https://esaa.org/wp-content/uploads/2021/10/RT2021-program-Abstracts-18.pdf> (last accessed
Feb. 20, 2024).

27 ⁵⁰ [https://www.tcichemicals.com/US/en/support-download/chemistry-clip/2013-10-
08#:~:text=The%20most%20famous%20naturally%20existing,enough%20to%20kill%20a%20cow](https://www.tcichemicals.com/US/en/support-download/chemistry-clip/2013-10-08#:~:text=The%20most%20famous%20naturally%20existing,enough%20to%20kill%20a%20cow)
28 (last accessed Feb. 20, 2024).

1 presence of PFAS in a particular sample. Targeted testing can serve as a complimentary approach in
2 identifying the particular *types* of PFAS detected through TOF testing, but it is far from conclusive
3 given its inability to identify more than a slight fraction of the known PFAS chemicals.

4 90. From a harm reduction perspective, the specific *type* of PFAS chemical in a consumer
5 product is largely inconsequential. All PFAS bioaccumulate, meaning that once they are introduced
6 to the body, they cannot be removed. In addition, all 12,000 PFAS structures present similar harm to
7 human health and the environment. Accordingly, the only way to avoid the consequences of
8 accumulated PFAS in the body is to avoid additional exposure to any PFAS.

9 91. Despite claims to the contrary, no “safe” or “harmless” PFAS exist. Although testing
10 on certain legacy PFAS chemicals is more extensive given their length of time on the market, there
11 is significant peer-reviewed data demonstrating that newer versions are just as dangerous to human
12 health.⁵¹ In some cases, newer “short-chain” PFAS may even exhibit a higher likelihood of harm, as
13 they are more persistent and mobile than legacy PFAS.⁵²

14 92. There are no peer-reviewed studies that conclusively demonstrate the safety of PFAS.

15 ***Plaintiffs’ Independent Testing Confirms PFAS Chemicals are Part of the Tampon Products’***
16 ***Design***

17 93. Plaintiffs sought independent third-party testing from a certified laboratory to confirm
18 the presence of PFAS chemicals in the Tampon Products.

19 94. In order to determine whether there were any PFAS in the Tampon Products,
20 Plaintiffs’ testing utilized TOF analysis.

21 95. Plaintiffs tested two different samples of the Tampon Products. Plaintiffs first tested
22 the whole finished Tampon Product in March 2022. Plaintiffs then conducted a second round of
23 testing in April 2023, this time analyzing each individual component of the Tampon Products—the
24 absorbent core, the fabric overwrap, the string, and the applicator.

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26 ⁵¹ <https://www.ewg.org/news-insights/news/new-generation-forever-chemicals-toxicity-exposure-contamination-and-regulation> (Feb. 20, 2024).

27 ⁵² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7926449/>;
28 <https://www.sciencedirect.com/science/article/abs/pii/S1385894719319096> (last accessed Feb. 20, 2024).

1 96. Plaintiffs' testing uniformly showed that the finished Tampon Products and each of
2 their individual components contained PFAS.

3 97. The amount of PFAS detected in the Tampon Product samples was above trace
4 amounts and within detection limits.

5 98. The results of Plaintiffs' TOF testing indicated a total PFAS concentration of more
6 than 33 ppm in some of the individual components, with much higher concentrations of PFAS in the
7 aggregate. These amounts are significant, as even "near zero" amounts of PFAS can pose a danger to
8 human health.

9 99. As discussed above, PFAS are frequently used as a treatment or coating on textiles
10 and other materials to make them hydrophobic (i.e., water-repellant). Accordingly, unlike other
11 consumer products, PFAS serves a functional purpose in menstrual products like tampons.

12 100. The results of Plaintiffs' testing are made more plausible by Defendant's patents,
13 which disclose the use of various hydrophobic materials in the design and construction of their
14 tampons. For example, one patent states that the Tampon Products' "leak shield" is comprised of
15 various layers of hydrophobic materials which divert liquid to the absorbent core of the tampon.⁵³
16 This is logical for the design of a tampon, as a hydrophobic overwrap would help prevent leakage by
17 drawing liquid into the tampon's absorbent core.

18 101. Similarly, another of Defendant's patents states that the design of its tampon strings
19 are treated with a "hydrophobic wax" coating to reduce string absorbency and wicking.⁵⁴ A necessary
20 feature of the withdrawal cord is that it resists wicking of menstrual fluid in order to avoid the soiling
21 of underwear and outer garments. For this reason, tampon withdrawal cords are frequently treated
22 with chemicals such as PFAS to render the fibers hydrophobic and/or to increase their hydrophobicity.

23 102. Further, PFAS has historically been used as a dispersing agent to impart water
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27 ⁵³ <https://patents.google.com/patent/CA2723697A1/en>

28 ⁵⁴ [https://patents.google.com/patent/US11154430B2/en?q=\(tampon\)&assignee=edgewell&oq=edge+well+tampon](https://patents.google.com/patent/US11154430B2/en?q=(tampon)&assignee=edgewell&oq=edge+well+tampon)

1 repelancy on various surfaces,⁵⁵ leading to the reasonable conclusion that the “polymer wax
2 dispersion” listed as an ingredient on the Tampon Products’ packaging is likely comprised of PFAS.

3 103. The use of PFAS in menstrual products is well-established. Peer-reviewed studies and
4 other third-party testing have found PFAS in menstrual products, including tampons.⁵⁶

5 104. Plaintiffs have conducted independent TOF testing with a certified lab, which
6 demonstrates the presence of PFAS at above-trace levels in every sample of the Products tested over
7 a period of a year. These findings are further supported by industry-wide practices, including
8 Defendant’s own patents. Other scientific research and independent studies have also discovered
9 PFAS in menstrual products. PFAS serves a functional purpose in menstrual products, as it can be
10 used to improve product performance by increasing absorbency, reducing leaks, and preventing
11 wicking from the string. Accordingly, it is reasonable to conclude that PFAS is present in the Tampon
12 Products.

13 ***The Presence of PFAS Renders the Tampon Products Adulterated, Misbranded, and Illegal to Sell***

14 105. Plaintiffs bring claims under various state consumer and warranty theories and are not
15 seeking to enforce any federal statute or regulation; however, much of the conduct giving rise to
16 Plaintiffs’ claims is likewise in violation of the Federal Food, Drug, and Cosmetics Act, 21 U.S.C. §
17 301, *et seq.* (“FDCA”) and its implementing regulations.

18 106. The Federal Food, Drug & Cosmetic Act (“FFDCA”) establishes numerous
19 regulations regarding the safety of drugs and medical devices which are sold to consumers, including
20 by creating various labeling requirements.

21 107. Tampons, such as the Tampon Products, are regulated by the FDA as medical devices.
22 21 C.F.R. § 884.5470.

23 108. The FFDCA prohibits the introduction or delivery for introduction into interstate
24 commerce of any device that is adulterated or misbranded. 21 U.S.C. § 331(a).

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27 ⁵⁵ <https://pubs.rsc.org/en/content/articlehtml/2020/em/d0em00291g>

28 ⁵⁶ See <https://news.nd.edu/news/scientists-find-pfas-in-feminine-hygiene-products/>;
<https://pubmed.ncbi.nlm.nih.gov/37262408/> (last accessed Feb. 13, 2024).

1 109. Devices that are “adulterated” or “misbranded” cannot legally be manufactured,
2 advertised, distributed, or sold. 21 U.S.C. § 331(a). Accordingly, adulterated and misbranded products
3 have no economic value and are legally worthless.

4 110. California’s Sherman Food, Drug, and Cosmetic Law has expressly adopted the
5 federal labeling requirements as its own. The definition of “adulterated” as defined by Cal. Health &
6 Safety Code § 111265 mirrors the FDA definition, defining an adulterated drug as one that is
7 composed, in whole or in part, of any poisonous or deleterious substance which may render the
8 contents injurious to health.”⁵⁷

9 111. In fact, under the California law, drugs and cosmetics are required to satisfy all of the
10 labeling requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301, *et seq.*), and
11 the federal Fair Packaging and Labeling Act (15 U.S.C. §§ 1451, *et seq.*).⁵⁸

12 112. Accordingly, it is unlawful in the state of California to distribute a device if the
13 packaging or labeling does not conform to the provisions of California and/or Federal law.⁵⁹ Further,
14 it is unlawful for any person to disseminate any false or misleading advertisement of a device,⁶⁰ or to
15 advertise any device that is adulterated or misbranded.⁶¹

16 113. A device is misbranded if its labeling is false or misleading in any particular. 21 U.S.C.
17 § 352(a)(1).

18 114. Further, “[i]f an article is alleged to be misbranded because the labeling...is
19 misleading, then in determining whether the labeling...is misleading there shall be taken into account
20 (among other things) not only representations made or suggested by statement [or] word,...but also
21 the extent to which the labeling...fails to reveal facts material in the light of such representations or
22 material with respect to consequences which may result from the use of the article...under such
23 conditions of use as are customary or usual.” 21 U.S.C. § 321(n).

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25 ⁵⁷ See Cal. Health & Safety Code § 111265.

26 ⁵⁸ See Cal. Health & Safety Code § 110371.

27 ⁵⁹ Cal. Health & Safety Code § 110385.

28 ⁶⁰ Cal. Health & Safety Code § 110390.

⁶¹ Cal. Health & Safety Code § 110398.

1 115. Nothing in the FDCA prohibits Defendant from disclosing the presence of PFAS in
2 the Tampon Products or warning of the potential harms of PFAS.

3 116. The Tampon Products are misbranded pursuant to 21 U.S.C. § 352(a)(1) because their
4 labeling is false and misleading insofar as the labeling uses the Safe, Gentle and Purified
5 Representations and other representations described herein which are designed to convince
6 reasonable consumers that the Tampon Products are free from potentially harmful ingredients such
7 as PFAS.

8 117. In addition to (or in the alternative to) being “misbranded” under 21 U.S.C. § 352, the
9 Tampon Products are “adulterated” under 21 U.S.C. § 351 and related regulations.

10 118. Under the FFDCA, a device is deemed “adulterated” if it “consists in whole or in
11 part of any filthy, putrid, or decomposed substance,” or “if it has been prepared, packed, or held
12 under insanitary conditions whereby it may have been contaminated with filth, or whereby it may
13 have been rendered injurious to health.” 21 U.S.C. § 351(a)(1)-(2).

14 119. As described herein, PFAS is indisputably linked to negative health consequences.

15 ***Defendant’s Unlawful Conduct***

16 120. Edgewell is well aware of consumers’ concern with the safety of tampon usage⁶² as
17 well their desire to avoid potentially harmful chemicals, which is exactly why it has engaged in an
18 aggressive, uniform marketing campaign intended to convince consumers that the Tampon Products
19 are a Safe, Gentle and Purified alternative to traditional menstrual products that are free from
20 potentially harmful ingredients like PFAS.

21 121. Edgewell has engaged in this uniform marketing campaign in an effort to convince
22 reasonable consumers to believe that the Tampon Products are superior to other tampons or menstrual
23 products that do not have the same purported simple, purified, or chemical-free health benefits.

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28 ⁶² <https://www.playtextampons.com/faqs/tss-information> (last accessed Feb. 20, 2024).

1 122. Reasonable consumers purchasing the Tampon Products would believe, based on
2 Edgewell’s representations, that the Tampon Products do not contain artificial, synthetic or man-made
3 chemicals that could adversely impact their health.

4 123. At all times relevant to this action, Defendant knew, or at minimum should have
5 known, that its Tampon Products contain PFAS.

6 124. Throughout the class period, Defendant has targeted health-conscious consumers by
7 falsely and misleadingly representing its Tampon Products using the Safe, Gentle and Purified
8 Representations, and consequently, reasonable consumers believe the Tampon Products are free from
9 harmful chemicals such as PFAS.

10 125. Defendant is well-aware that consumers are increasingly demanding menstrual
11 products that are free from ingredients that may be harmful to their health and that otherwise support
12 their wellness goals—specifically, harmful chemicals. In its own words: “Every ingredient used in
13 Playtex Simply Gentle Glide is **rigorously evaluated** to provide reliable protection that you can trust
14 to be gentle and **safe for your body.**”⁶³ In further assurance to consumers, Defendant identifies on a
15 section of its website under “Tampon Myths,” Defendant specifically addresses whether it is true that
16 there are “toxic chemicals in its tampons.”⁶⁴ Defendant prefaces its response by saying “We all know
17 how easy it is for the wrong information to get passed on the internet” and represents without
18 qualification that its tampons “Are free from any harmful materials.”⁶⁵ Responding to the concern
19 that tampons contain toxic chemicals in a “frequently asked questions” section of its website makes
20 plain that Defendant knows the significance of consumer concerns over toxic chemicals in tampons.

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⁶³ <https://www.playtextampons.com/products/simply-gentle-glide-tampons> (last accessed Feb. 20,
26 2024) (emphasis added).

27 ⁶⁴ <https://www.playtextampons.com/faqs/tampon-myths> (last accessed Feb. 20, 2024).

28 ⁶⁵ *Id.*

1 126. Over the course of six decades, Playtex has cultivated a trustworthy brand image
2 pertaining specifically to feminine hygiene products and is regarded as one of the “‘big three’ tampon
3 brands.”⁶⁶

4 127. Defendant’s wellness-focused business strategy is supported by current market
5 research, which has shown an increased demand for more sustainable and environmentally friendly
6 menstrual products, as well as those that do not contain potentially harmful chemicals.⁶⁷

7 128. Therefore, current research demonstrates, and Defendant’s marketing strategy
8 supports, that the presence of harmful chemicals in menstrual products is material to reasonable
9 consumers.

10 129. Defendant’s strategy to stay aligned with consumer preferences in order to retain a
11 competitive advantage in the marketplace, which includes representing to sell Safe, Gentle and
12 Purified tampons which do not contain ingredients that are suspected to cause harm to human health
13 and the environment, would inevitably be negatively impacted if it disclosed the presence of PFAS
14 in the Tampon Products.

15 130. Further, Defendant’s claims touting its Tampon Product as Safe, Gentle and Purified,
16 and other representations and omissions as described herein, further contribute to the reasonable
17 consumer perception and belief that the Tampon Products contain only ingredients that are good for
18 humans and the environment, and that they are free of man-made chemicals indisputably linked to
19 negative health effects.

20 131. Consumers lack the expertise to ascertain the true ingredients in the Tampon Products
21 prior to purchase. Accordingly, reasonable consumers must, and do, rely on Defendant to accurately
22 and honestly advertise the Tampon Products’ ingredients and benefits. Further, consumers rely on
23 Defendant to not contradict those representations by using artificial man-made chemicals in its
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26 ⁶⁶ <https://www.theatlantic.com/health/archive/2015/06/history-of-the-tampon/394334/> (last accessed
Feb. 20, 2024).

27 ⁶⁷ <https://www.factmr.com/report/415/feminine-hygiene-products-market> (last accessed Feb. 20,
28 2024).

1 Tampon Products that are known to pose a risk to human health. Such misrepresentations are material
2 to reasonable consumers' purchasing decisions.

3 132. Defendant's representations that the Tampon Products are healthy for humans,
4 including *inter alia*, the representations described herein, are false because products containing toxic,
5 man-made ingredients like PFAS are neither good for consumers nor the environment.

6 133. Defendant's representations are likely to mislead reasonable consumers, and indeed
7 did mislead Plaintiffs and Class members, regarding the presence of PFAS chemicals in its Tampon
8 Products. Accordingly, these acts and practices by Defendant are deceptive.

9 134. Consumers reasonably relied on Defendant's false statements and misleading
10 representations, and reasonably expected that Defendant's Tampon Products would conform with its
11 representations and, as such, would not contain artificial, man-made PFAS chemicals.

12 135. Defendant's false statements, misleading representations and material omissions are
13 intentional, or otherwise entirely careless, and render its Tampon Products worthless or less valuable.

14 136. If Defendant had disclosed to Plaintiffs and Class Members that its Tampon Products
15 contained PFAS chemicals, Plaintiffs and Class Members would not have purchased Defendant's
16 Tampon Products, or they would have paid less for them.

17 137. Plaintiffs and Class Members were among the intended recipients of Defendant's
18 deceptive representations and omissions described herein.

19 138. Defendant's representations and omissions, as described herein, are material in that a
20 reasonable person would attach importance to such information and would be induced to act upon
21 such information in making purchase decisions.

22 139. The materiality of the representations and omissions described herein also establishes
23 causation between Defendant's conduct and the injuries Plaintiffs and Class Members sustained.

24 140. Defendant is aware that the consumers are concerned about the use of PFAS in its
25 Tampon Products, yet it has continued to market and advertise its Tampon Products using the Safe,
26 Gentle and Purified Representations and other representations described herein in order to profit off
27 of unsuspecting consumers, including Plaintiffs and Class Members.

1 141. The presence of PFAS chemicals in Defendant's Tampon Products is entirely
2 inconsistent with its uniform representations.

3 142. Defendant's knowingly false and misleading representations have the intended result
4 of convincing reasonable consumers that its Tampon Products are Safe, Gentle and Purified and
5 therefore do not contain artificial, man-made, toxic chemicals. No reasonable consumer would
6 consider Defendant's Tampon Products Safe, Gentle and Purified, or good for people and the
7 environment, if they knew that the Tampon Products contained harmful, artificial PFAS chemicals.

8 143. Defendant's false, misleading, and deceptive representations, as described herein, are
9 likely to continue to deceive and mislead reasonable consumers and the general public. Indeed, they
10 have already deceived and misled Plaintiffs and Class Members.

11 144. In making the false, misleading, and deceptive representations, Defendant knew and
12 intended that consumers would pay a premium for the Tampon Products over comparable products
13 that are made from or contain synthetic or artificial chemical ingredients that are known to be harmful
14 to humans and the environment.

15 145. Plaintiffs and Class Members all paid money for the Tampon Products; however, they
16 did not obtain the full value of the advertised Tampon Products due to Defendant's misrepresentations
17 as detailed herein. Plaintiffs and Class Members purchased, purchased more of, or paid more for, the
18 Tampon Products than they would have had they known the truth about the Tampon Products'
19 artificial, man-made, and harmful ingredients. Thus, Plaintiffs and Class Members have suffered
20 injury in fact and lost money or property as a result of Defendant's wrongful conduct.

21 146. Defendant's widespread marketing campaign portraying the Tampon Products as
22 containing Safe, Gentle and Purified ingredients as detailed herein, is misleading and deceptive to
23 consumers because the Tampon Products are made with artificial, man-made, and toxic ingredients.
24 Plaintiffs bring this action on behalf of the proposed Classes to stop Defendant's misleading practices.

PLAINTIFFS' FACTS

Plaintiff Mack's Facts

147. Plaintiff Saraha Mack purchased Playtex brand tampons for nearly thirty years. She most recently purchased the Tampon Products in January 2023, from Walmart in Fairfield, California. Plaintiff Mack purchased the Tampon Products in close proximate time to when they were tested in March 2022 and April 2023, as described above.

148. At the time she purchased the Tampon Products, Plaintiff Mack was specifically seeking out chemical-free personal care products, including chemical-free feminine hygiene products.

149. Prior to her purchase, Plaintiff Mack reviewed the Tampon Products' labeling, packaging, and marketing materials, including the Safe, Gentle and Purified Representations on the Tampon Products' package.

150. Plaintiff Mack reasonably understood Defendant's Safe, Gentle and Purified Representations to mean that the Tampon Products would not contain harmful chemicals, especially chemicals that could pose a risk to her health and the environment, like PFAS.

151. Plaintiff Mack relied on these representations when purchasing the Tampon Products, and these representations were part of the basis of the bargain in that she would not have purchased the Tampon Products, or would not have purchased them on the same terms, if the true facts had been known.

152. Plaintiff Mack continues to seek out menstrual products that are free from harmful chemicals like PFAS, and she would like to purchase Defendant's Tampon Products in the future if they conform with Defendant's representations about the Tampon Products. However, Plaintiff Mack is currently unable to rely on Defendant's representations regarding its Tampon Products in deciding whether to purchase them in the future. Plaintiff Mack understands that the composition of the Tampon Products may change over time, but as long as Defendant may freely advertise the Tampon Product as Safe, Gentle and Purified when it contains PFAS, Plaintiff Mack will be unable to make informed decisions about whether to purchase Defendant's Tampon Products and will be unable to

1 evaluate the different prices between Defendant's Tampon Products and competitor's products, which
2 *are* in fact free from harmful chemicals like PFAS.

3 153. As a direct and proximate result of Defendant's acts, including its affirmative
4 misrepresentations, false statements and material omissions, Plaintiff Mack has incurred economic
5 injuries including financial damages at the point-of-sale stemming from her purchase of and/or
6 overpayment for the Tampon Products, in addition to the loss of the benefit of her bargain and the
7 Tampon Products' intended benefits.

8 ***Plaintiff Solano's Facts***

9 154. Plaintiff Yajaira Solano purchased the Tampon Products most recently in December
10 2022, from a Walgreens near her home in Oxnard, California.

11 155. Plaintiff Solano purchased the Tampon Products in close proximate time to when they
12 were tested in March 2022 and April 2023, as described above.

13 156. At the time she purchased the Tampon Products, Plaintiff Solano was specifically
14 seeking out chemical-free personal care products, including chemical-free feminine hygiene products.

15 157. Prior to her purchase, Plaintiff Solano reviewed the Tampon Products' labeling,
16 packaging, and marketing materials, including the Safe, Gentle and Purified Representations on the
17 Tampon Products' package.

18 158. Plaintiff Solano reasonably understood Defendant's Safe, Gentle and Purified
19 Representations to mean that the Tampon Products would not contain harmful chemicals, especially
20 chemicals that could pose a risk to her health and the environment, like PFAS.

21 159. Plaintiff Solano relied on these representations when purchasing the Tampon Products,
22 and these representations were part of the basis of the bargain in that she would not have purchased
23 the Tampon Products, or would not have purchased them on the same terms, if the true facts had been
24 known.

25 160. Plaintiff Solano continues to seek out natural menstrual products that are free from
26 harmful chemicals like PFAS, and she would like to purchase Defendant's Tampon Products in the
27 future if they conform with Defendant's representations about the Tampon Products. However,
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1 Plaintiff Solano is currently unable to rely on Defendant’s representations regarding its Tampon
2 Products in deciding whether to purchase them in the future. Plaintiff Solano understands that the
3 composition of the Tampon Products may change over time, but as long as Defendant may freely
4 advertise the Tampon Product as Safe, Gentle and Purified when it contains PFAS, Plaintiff Solano
5 will be unable to make informed decisions about whether to purchase Defendant’s Tampon Products
6 and will be unable to evaluate the different prices between Defendant’s Tampon Products and
7 competitor’s products, which *are* in fact free from harmful chemicals like PFAS.

8 161. As a direct and proximate result of Defendant’s acts, including its affirmative
9 misrepresentations, false statements and material omissions, Plaintiff Solano has incurred economic
10 injuries including financial damages at the point-of-sale stemming from her purchase of and/or
11 overpayment for the Tampon Products, in addition to the loss of the benefit of her bargain and the
12 Tampon Products’ intended benefits.

13 **INJURY TO THE PUBLIC-AT-LARGE AND POTENTIAL FOR FUTURE HARM**

14 162. Defendant’s wrongful conduct harms the public-at-large.

15 163. PFAS chemicals, also known as “forever chemicals,” are a category of highly
16 persistent and toxic man-made chemicals that have been associated with numerous negative health
17 effects for humans.

18 164. PFAS chemicals are known to negatively impact the human body, including, but not
19 limited to, decreased fertility, developmental effects or delays in children, increased risk of cancers,
20 liver damage, increased risk of asthma and thyroid disease, adverse impacts on the immune system,
21 interference with hormones and increased cholesterol levels.

22 165. PFAS chemicals are further known to negatively impact the environment.

23 166. Because Defendant’s deceptive advertising is ongoing and directed to the public, and
24 because Defendant continues to sell its Tampon Products containing PFAS chemicals, the deception
25 poses an ongoing risk to the public.

26 167. As such, a public injunction must be provided in order to enjoin Defendant’s continued
27 harm of consumers and the public-at-large.

TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS

1
2 168. Defendant had actual knowledge, or should have had actual knowledge, that the
3 Tampon Products contained artificial, man-made PFAS chemicals which pose a risk of harm to human
4 health.

5 169. Although Defendant was aware of the deception in its advertising, marketing,
6 packaging, and sale of the Tampon Products given the inclusion of PFAS chemicals, it took no steps
7 to disclose to Plaintiffs or Class Members that the Tampon Products contained PFAS chemicals.

8 170. Despite its knowledge, Defendant has fraudulently misrepresented the Tampon
9 Products as having qualities and characteristics they do not, while concealing the fact that the Tampon
10 Products contain PFAS chemicals.

11 171. Defendant has made, and continues to make, affirmative false statements and
12 misrepresentations to consumers, and continues to omit the fact that the Tampon Products contain
13 PFAS, to promote sales of the Tampon Products.

14 172. Defendant has misrepresented, concealed, and otherwise omitted material facts that
15 would have been important to Plaintiffs and Class Members in deciding whether to purchase the
16 Tampon Products. Defendant's misrepresentations and omissions were knowing, and it intended to,
17 and did, deceive reasonable consumers, including Plaintiffs and Class Members. Accordingly,
18 Plaintiffs and Class Members reasonably relied upon Defendant's misrepresentations and
19 concealment of these material facts and suffered injury as a proximate result of that justifiable
20 reliance.

21 173. The PFAS chemicals in the design and/or manufacture of Defendant's Tampon
22 Products were not reasonably detectible to Plaintiffs and Class Members.

23 174. At all times, Defendant actively and intentionally misrepresented the qualities and
24 characteristics of the Tampon Products, while concealing the existence of the PFAS chemicals and
25 failing to inform Plaintiffs or Class Members of the existence of the PFAS chemicals in the Tampon
26 Products. Accordingly, Plaintiffs and Class Members' lack of awareness was not attributable to a lack
27 of diligence on their part.
28

1 175. Defendant's statements, words, and acts were made for the purpose of deceiving the
2 public, and suppressing the truth that the Tampon Products contained artificial, man-made PFAS
3 chemicals.

4 176. Defendant misrepresented the Tampon Products and concealed the PFAS chemicals
5 for the purpose of delaying Plaintiffs and Class Members from filing a complaint on their causes of
6 action.

7 177. As a result of Defendant's intentional misrepresentations and active concealment of
8 the PFAS chemicals and/or failure to inform Plaintiffs and Class Members of the PFAS chemicals,
9 any and all applicable statutes of limitations otherwise applicable to the allegations herein have been
10 tolled. Furthermore, Defendant is estopped from relying on any statutes of limitations in light of its
11 intentional misrepresentations and active concealment of the inclusion of artificial, man-made PFAS
12 chemicals in the Tampon Products.

13 178. Further, the causes of action alleged herein did not occur until Plaintiffs and Class
14 Members discovered that the Tampon Products contained PFAS chemicals. Plaintiffs and Class
15 Members had no realistic ability to discern that the Tampon Products contained PFAS chemicals until
16 they learned of the existence of the PFAS chemicals. In either event, Plaintiffs and Class Members
17 were hampered in their ability to discover their causes of action because of Defendant's active
18 concealment of the existence and true nature of the Tampon Products.

19 **FEDERAL RULE OF CIVIL PROCEDURE 9(b) ALLEGATIONS**

20 179. Although Defendant is in the best position to know what content it placed on its
21 packaging, website(s), and other marketing and advertising during the relevant timeframe, and the
22 knowledge that it had regarding the PFAS chemicals and its failure to disclose the existence of PFAS
23 chemicals in the Tampon Products to Plaintiffs and consumers, to the extent necessary, Plaintiffs
24 satisfy the requirements of Rule 9(b) by alleging the following facts with particularity:

25 180. **WHO:** Defendant made its Safe, Gentle and Purified Representations on the Tampon
26 Products' packaging, online, and its marketing and advertising of the Tampon Products.

1 **During the fullest period allowed by law, all persons who purchased the**
2 **Tampon Products in the United States within the applicable statute of**
3 **limitations for personal use and not resale, until the date notice is**
4 **disseminated.**

5 188. Plaintiffs bring this action individually and as representatives of all those similarly
6 situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf of themselves and the
7 members of the following proposed multi-state class (“Multi-State Consumer Protection Class”):

8 **During the fullest period allowed by law, all persons who purchased the**
9 **Tampon Products in the States of California, Florida, Illinois, New York,**
10 **Massachusetts, Michigan, Minnesota, Missouri, New Jersey, Washington⁶⁸**
11 **within the applicable statute of limitations for personal use and not resale,**
12 **until the date notice is disseminated.**

13 189. Plaintiffs bring this action individually and as representatives of all of those similarly
14 situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf of themselves and the
15 members of the following proposed the members of the following class (“California Class”):

16 **During the fullest period allowed by law, all persons who purchased the**
17 **Tampon Products in the State of California within the applicable statute**
18 **of limitations for personal use and not resale, until the date notice is**
19 **disseminated.**

20 190. The Nationwide Class, Multi-State Consumer Protection Class, and California Class
21 are referred to collectively as the “Class” or “Classes,” and the members of the Classes are referred
22 to as the “Class Members.” Specifically excluded from the Classes are: (1) Defendant, any entity in
23 which Defendant has a controlling interest, and its legal representatives, officers, directors,
24 employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of

25 ⁶⁸ Plaintiffs seek to certify a Multi-State Consumer Protection Class consisting of persons in the
26 following states (and implicating the following statutes): California (Cal. Bus. & Prof. Code §§
27 17200, *et seq.*); Florida (Fla. Stat. §§ 501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 502/1, *et seq.*);
28 Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws §§ 445.901, *et seq.*);
 Minnesota (Minn. Stat. §§ 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. §§ 407.010, *et seq.*);
 New Jersey (N.J. Stat. §§ 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law §§ 349, *et seq.*); and
 Washington (Wash. Rev. Code §§ 19.86.010, *et seq.*).

1 the Judge's staff or immediate family; and (3) Class Counsel. Plaintiffs reserve the right to amend the
2 Class definitions as necessary.

3 191. **Numerosity:** The members of the Class are so numerous that joinder of all members
4 is impracticable. While the exact number of Class Members is presently unknown, given the wide
5 distribution of the Tampon Products, it is voluminous and nationwide. The number of Class Members
6 can be determined by sales information and other records. Moreover, joinder of all potential Class
7 Members is not practicable given their numbers and geographic diversity. The Class is readily
8 identifiable from information and records in the possession of Defendant and its authorized retailers.

9 192. **Typicality:** The claims of the representative Plaintiffs are typical in that Plaintiffs, like
10 all Class Members, purchased the Tampon Products containing PFAS that were designed,
11 manufactured, marketed, advertised, distributed, and sold by Defendant. Plaintiffs, like all Class
12 Members, have been damaged by Defendant's misconduct in that, *inter alia*, they have incurred or
13 will continue to incur damage as a result of overpaying for the Tampon Products containing chemicals
14 which makes the Tampon Products not what reasonable consumers were intending to purchase.
15 Furthermore, the factual basis of Defendant's misconduct is common to all Class Members because
16 Defendant has engaged in systematic fraudulent behavior that was deliberate, includes negligent
17 misconduct, and results in the same injury to all Class Members.

18 193. **Commonality:** Common questions of law and fact exist as to all Members of the
19 Class. These questions predominate over questions that may affect only individual Class Members
20 because Defendant has acted on grounds generally applicable to the Class. Such common legal or
21 factual questions include, *inter alia*:

- 22 (a) Whether Defendant misrepresented that the Tampon Product is free from harmful
23 ingredients;
- 24 (b) Whether Defendant's practices in marketing, advertising and packaging the Tampon
25 Products tend to mislead reasonable consumers into believing that the Tampon
26 Products are free from harmful chemicals, such as PFAS;
- 27 (c) Whether Defendant engaged in false or misleading advertising;
- 28

- 1 (d) Whether Defendant engaged in unfair, unconscionable, or deceptive trade practices
2 by selling and/or marketing the Tampon Products with the Safe, Gentle and Purified
3 Representations and other misrepresentations and omissions as described herein;
- 4 (e) Whether Defendant violated Cal. Bus. & Prof. Code §§ 17500, *et seq.* (FAL);
- 5 (f) Whether Defendant violated Civil Code §§ 1750, *et seq.* (CLRA);
- 6 (g) Whether Defendant violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* (UCL);
- 7 (h) Whether Defendant engaged in deceptive trade practices by selling, packaging,
8 advertising and/or marketing the Tampon Products containing PFAS chemicals;
- 9 (i) Whether Defendant engaged in false or misleading advertising by selling, packaging,
10 and/or marketing the Tampon Products containing PFAS chemicals;
- 11 (j) Whether Plaintiffs and Class Members either paid a premium for the Tampon
12 Products that they would not have paid but for Defendant's false representations or
13 would not have purchased them at all;
- 14 (k) Whether Plaintiffs and Class Members are entitled to damages, including
15 compensatory, exemplary, and statutory damages, and the amount of such damages;
- 16 (l) Whether Plaintiffs and Class Members have suffered an economic injury and the
17 proper measure of their losses as a result of those injuries; and
- 18 (m) Whether Plaintiffs and Class Members are entitled to injunctive, declaratory, or other
19 equitable relief.

194. **Adequate Representation:** Plaintiffs will fairly and adequately protect the interests
20 of Class Members. They have no interests antagonistic to those of Class Members. Plaintiffs retained
21 attorneys experienced in the prosecution of class actions, including consumer product,
22 misrepresentation, and mislabeling class actions, and Plaintiffs intend to prosecute this action
23 vigorously.

195. **Injunctive/Declaratory Relief:** The elements of Rule 23(b)(2) are met. Defendant
24 will continue to commit the unlawful practices alleged herein, and Plaintiffs and Class Members will
25 continue to be deceived by Defendant's misrepresentations and omissions and unknowingly be
26 exposed to the risk of harm associated with the PFAS chemicals in the Tampon Products. Defendant
27 has acted and refused to act on grounds that apply generally to the Classes, such that final injunctive
28 relief and corresponding declaratory relief is appropriate respecting the Class as a whole.

1 202. Defendant violated the Multi-State Consumer Protection Class states' unfair and
2 deceptive acts and practices laws by representing the Tampon Products using the Safe, Gentle and
3 Purified Representations and other misrepresentations and omissions detailed herein, when, in reality,
4 they contain unnatural, human-made PFAS chemicals known to be harmful to humans and the
5 environment.

6 203. Defendant's misrepresentations were material to Plaintiffs' and Multi-State Consumer
7 Protection Class Members' decision to purchase the Tampon Products or pay a premium for the
8 Tampon Products.

9 204. Defendant made its untrue and/or misleading statements and representations willfully,
10 wantonly, and with reckless disregard for the truth.

11 205. As a result of Defendant's violations of the aforementioned states' unfair and
12 deceptive practices laws, Plaintiffs and Multi-State Consumer Protection Class Members purchased
13 and paid for Tampon Products that did not conform to Defendant's Tampon Product promotion,
14 marketing, advertising, packaging, and labeling, and they were deprived of the benefit of their bargain
15 and spent money on Tampon Products that did not have any value or had less value than warranted
16 or Tampon Products that they would not have purchased and used had they known the true facts about
17 them

18 206. As a result of Defendant's violations, Defendant has been unjustly enriched.

19 207. Pursuant to the aforementioned States' unfair and deceptive practices laws, Plaintiffs
20 and Multi-State Consumer Protection Class Members are entitled to recover compensatory damages,
21 restitution, punitive and special damages including but not limited to treble damages, reasonable
22 attorneys' fees and costs and other injunctive or declaratory relief as deemed appropriate or permitted
23 pursuant to the relevant law.

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COUNT TWO

**Violation of the California Consumer Legal Remedies Act
("CLRA"), Civil Code §§ 1750, *et seq.*
(On Behalf of Plaintiffs and the California Class)**

208. Plaintiffs, individually and on behalf of the California Class, repeat and re-allege all previous paragraphs as if fully included herein.

209. The conduct described herein took place in the State of California and constitutes unfair methods of competition or deceptive acts or practices in violation of the Consumers Legal Remedies Act ("CLRA"), Civil Code §§ 1750, *et seq.*

210. The CLRA applies to all claims of all California Class Members because the conduct which constitutes violations of the CLRA by Defendant occurred within the State of California.

211. Plaintiffs and California Class Members are "consumers" as defined by Civil Code § 1761(d).

212. Defendant is a "person" as defined by Civil Code § 1761(c).

213. The Tampon Products qualify as "goods" as defined by Civil Code § 1761(a).

214. Plaintiffs' and the California Class Members' purchases of Tampon Products are "transactions" as defined by Civil Code § 1761(e).

215. As set forth below, the CLRA deems the following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which does result in the sale or lease of goods or services to any consumer as unlawful.

- a. "Representing that goods ... have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have." Civil Code § 1770(a)(5);
- b. "Representing that goods ... are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." Civil Code § 1770(a)(7);
- c. "Advertising goods or services with intent not to sell them as advertised." Civil Code § 1770(a)(9); and
- d. "Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not." Civil Code § 1770(a)(16).

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216. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Civil Code §§ 1770(a)(5), (a)(7), (a)(9), and (a)(16) when it represented, through its advertising and other express representations, that the Tampon Products had benefits or characteristics that they did not actually have.

217. As detailed in the body of this Complaint, Defendant has repeatedly engaged in conduct deemed a violation of the CLRA, and has made representations regarding Tampon Products benefits or characteristics that they did not in fact have, and represented the Tampon Products to be of a quality that was not true. Indeed, Defendant concealed this information from Plaintiffs and California Class Members.

218. The Tampon Products are not Safe, Gentle and Purified, and are of an inferior quality and trustworthiness compared to other products in the industry. As detailed above, Defendant further violated the CLRA when it falsely represented that the Tampon Products meet a certain standard or quality.

219. As detailed above, Defendant violated the CLRA when it advertised the Tampon Products with the intent not to sell Tampon Products as advertised and knew that the Tampon Products were not as represented.

220. Specifically, Defendant marketed, labeled, and represented the Tampon Products with the Safe, Gentle and Purified Representations, when in fact the Tampon Products contain PFAS, which no reasonable consumer would believe was in products with the Safe, Gentle and Purified Representations.

221. Defendant's deceptive practices were specifically designed to induce Plaintiffs and California Class Members to purchase or otherwise acquire the Tampon Products.

222. Defendant engaged in uniform marketing efforts to reach California Class Members, their agents, and/or third parties upon whom they relied, to persuade them to purchase and use the Tampon Products manufactured by Defendant. Defendant's packaging, advertising, marketing, website and retailer product identification and specifications, contain numerous false and misleading statements regarding the quality and safety of the Tampon Products.

1 223. Despite these Safe, Gentle and Purified Representations, Defendant also omitted and
2 concealed information and material facts from Plaintiffs and California Class Members.

3 224. In their purchase of Tampon Products, Plaintiffs and California Class Members relied
4 on Defendant's representations and omissions of material facts.

5 225. These business practices are misleading and/or likely to mislead consumers and should
6 be enjoined.

7 226. Pursuant to Cal. Civ. Code § 1782, Plaintiffs Mack and Solano notified Defendant in
8 writing by certified mail sent on February 10, 2023, of its violations of § 1770 described above and
9 demanded that it correct the problems associated with the actions detailed above and give notice to
10 all affected consumers of Defendant's intent to do so. If Defendant does not agree to rectify the
11 problems identified and give notice to all affected consumers within 30 days of the date of written
12 notice, Plaintiffs will amend this Complaint to seek actual, punitive, and statutory damages, as
13 appropriate.

14 227. A declaration stating facts showing that venue in this District is proper pursuant to Cal.
15 Civ. Code § 1780(d) is attached hereto as Exhibit A.

16 228. In accordance with Civil Code § 1780(a), Plaintiffs and the other California Class
17 Members seek injunctive and equitable relief for Defendant's violations of the CLRA, including an
18 injunction to enjoin Defendant from continuing its deceptive advertising and sales practices.

19 **COUNT THREE**

20 **Violations of the California Unfair Competition Law**
21 **("UCL") California Business and Professions Code §§ 17200, et seq.**
22 **(On Behalf of Plaintiffs and the California Class)**

23 229. Plaintiffs bring this count on behalf of themselves and the California Class and repeat
24 and re-allege all previous paragraphs as if fully included herein.

25 230. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17201.

26 231. Plaintiffs and Class Members who purchased Defendant's Tampon Products suffered
27 an injury by virtue of buying products in which Defendant misrepresented and/or omitted the Tampon
28 Products' true quality, reliability, safety, and use. Had Plaintiffs and Class Members known that

1 Defendant materially misrepresented the Tampon Products and/or omitted material information
2 regarding its Tampon Products, they would not have purchased the Tampon Products.

3 232. Defendant's conduct, as alleged herein, violates the laws and public policies of
4 California and the federal government, as set out in this complaint.

5 233. There is no benefit to consumers or competition by allowing Defendant to deceptively
6 label, market, and advertise its Tampon Products.

7 234. Plaintiffs and Class Members who purchased Defendant's Tampon Products had no
8 way of reasonably knowing that the Tampon Products were deceptively packaged, marketed,
9 advertised, and labeled, were not safe, and were unsuitable for their intended use. Thus, Plaintiffs and
10 California Class Members could not have reasonably avoided the harm they suffered.

11 235. Specifically, Defendant marketed, labeled, and represented the Tampon Products with
12 Safe, Gentle and Purified Representations, when in fact the Tampon Products contain PFAS, which
13 no reasonable consumer would believe was in products with the Safe, Gentle and Purified
14 Representations.

15 236. The gravity of the harm suffered by Plaintiffs and Class Members who purchased
16 Defendant's Tampon Products outweighs any legitimate justification, motive or reason for packaging,
17 marketing, advertising, and labeling the Tampon Products in a deceptive and misleading manner.
18 Accordingly, Defendant's actions are immoral, unethical, unscrupulous and offend the established
19 public policies as set out in federal regulations and are substantially injurious to Plaintiffs and
20 California Class Members.

21 237. The above acts of Defendant in disseminating said misleading and deceptive
22 statements to consumers throughout the state of California, including to Plaintiffs and Class Members,
23 were and are likely to deceive reasonable consumers by obfuscating the true nature of Defendant's
24 Tampon Products, and thus were violations of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

25 238. Further, the acts alleged herein are "unlawful" under the UCL in that they violate at
26 least the following laws: the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.* and
27 the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*

1 239. Plaintiffs and the California Class do not have an adequate remedy at law because
2 damages alone will not stop Defendant’s unlawful sale of the Products, as well as their
3 misrepresentation or omissions. Damages will only address past injuries visited on Plaintiffs and the
4 California Class. Defendant continues to market the Tampon Products in a deceptive and misleading
5 manner. Only injunctive relief can prevent any future harm.

6 240. Additionally, Plaintiffs seek restitution if monetary damages are not available. Indeed,
7 restitution under the UCL can be awarded in situations where the entitlement to damages may prove
8 difficult. *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 177 (2000) (Restitution
9 under the UCL can be awarded “even absent individualized proof that the claimant lacked knowledge
10 of the overcharge when the transaction occurred.”); *Gutierrez v. Wells Fargo Bank, NA*, 589 F. App’x
11 824, 827 (9th Cir. 2014) (same); *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 661 (1993)
12 (“In a suit arising under Business and Professions Code section 17200 *et seq.*, the court ‘is empowered
13 to grant equitable relief, including restitution in favor of absent persons, without certifying a class
14 action.’”).

15 241. But even if damages were available, such relief would not be adequate to address the
16 injury suffered by Plaintiffs and the California Subclass. Unlike damages, the Court’s discretion in
17 fashioning equitable relief is very broad. *Cortez*, 23 Cal.4th at 180. Thus, restitution would allow
18 recovery even when normal consideration associated with damages would not. See, e.g., *Fladeboe v.*
19 *Am. Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007), as modified (Apr. 24, 2007) (noting that
20 restitution is available even in situations where damages may not be available).

21 242. Plaintiffs and California Class Members seek all monetary and nonmonetary relief
22 allowed by law, including restitution stemming from Defendant’s unfair, unlawful and fraudulent
23 business practices; declaratory relief; reasonable attorneys’ fees and costs under California Code of
24 Civil Procedure § 1021.5; injunctive relief and other appropriate equitable relief.

COUNT FOUR

**Violation of the California False Advertising Law
 (“FAL”) California Business and Professions Code §§ 17500, *et seq.*
 (On Behalf of Plaintiffs and the California Class)**

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4 243. Plaintiffs, individually and on behalf of the California Class, repeat and re-allege all
5 previous paragraphs as if fully included herein.

6 244. The conduct described herein took place within the State of California and constitutes
7 deceptive or false advertising in violation of California Business and Professions Code § 17500.

8 245. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
9 association, or any employee thereof with intent directly or indirectly to dispose of real or personal
10 property or to perform services” to disseminate any statement “which is untrue or misleading, and
11 which is known, or which by the exercise of reasonable care should be known, to be untrue or
12 misleading.” Cal. Bus. & Prof. Code § 17500.

13 246. Specifically, Defendant marketed, labeled, and represented the Tampon Products with
14 the Safe, Gentle and Purified Representations, when, in fact, the Tampon Products contain PFAS,
15 which no reasonable consumer would believe was in products with the Safe, Gentle and Purified
16 Representations.

17 247. At the time of its misrepresentations, Defendant was either aware that Tampon
18 Products contained PFAS, which no reasonable consumer would expect would be in products with
19 the Safe, Gentle and Purified Representations or was aware that it lacked the information and/or
20 knowledge required to make such a representation truthfully. Defendant concealed and omitted and
21 failed to disclose this information to Plaintiffs and California Class Members.

22 248. Defendant’s descriptions of the Tampon Products were false, misleading, and likely
23 to deceive Plaintiffs and other reasonable consumers.

24 249. Defendant’s conduct therefore constitutes deceptive or misleading advertising.

25 250. Plaintiffs have standing to pursue claims under the FAL as they reviewed and relied
26 on Defendant’s packaging, advertising, representations, and marketing materials regarding the
27 Tampon Products when selecting and purchasing the Tampon Products.
28

1 251. In reliance on the statements made in Defendant’s advertising and marketing materials
2 and Defendant’s omissions and concealment of material facts regarding the quality and use of the
3 Tampon Products Plaintiffs and California Class Members purchased the Tampon Products.

4 252. Had Defendant disclosed the true nature of the Tampon Products (that they contain
5 PFAS and are not Safe, Gentle, and Purified), Plaintiffs and California Class Members would not
6 have purchased Tampon Products or would have paid substantially less for them.

7 253. As a direct and proximate result of Defendant’s actions, as set forth herein, Defendant
8 has received ill-gotten gains and/or profits, including but not limited to money from Plaintiffs and
9 California Class Members who paid for the Tampon Products, which contained chemicals and were
10 not safe.

11 254. Plaintiffs and the California Class do not have an adequate remedy at law because
12 damages alone will not stop Defendant’s unlawful sale of the Products, as well as their
13 misrepresentation or omissions. Damages will only address past injuries visited on Plaintiffs and the
14 California Class. Defendant continues to market the Tampon Products in a deceptive and misleading
15 manner. Only injunctive relief can prevent any future harm.

16 255. Additionally, Plaintiffs seek restitution if monetary damages are not available. Indeed,
17 restitution under the FAL can be awarded in situations where the entitlement to damages may prove
18 difficult. *Cortez*, 23 Cal.4th at 177 (Restitution under the UCL can be awarded “even absent
19 individualized proof that the claimant lacked knowledge of the overcharge when the transaction
20 occurred.”); *Gutierrez*, 589 F. App’x at 827 (same); *Caro*, 18 Cal. App. 4th at 661 (“In a suit arising
21 under Business and Professions Code section 17200 *et seq.*, the court ‘is empowered to grant equitable
22 relief, including restitution in favor of absent persons, without certifying a class action.’”).

23 256. But even if damages were available, such relief would not be adequate to address the
24 injury suffered by Plaintiffs and the California Class. Unlike damages, the Court’s discretion in
25 fashioning equitable relief is very broad. *Cortez*, 23 Cal.4th at 180. Thus, restitution would allow
26 recovery even when normal consideration associated with damages would not. See, e.g., *Fladeboe*,

1 150 Cal. App. 4th at 68 (2007) (noting that restitution is available even in situations where damages
2 may not be available).

3 257. Plaintiffs and California Class Members seek all monetary and nonmonetary relief
4 allowed by law, including restitution stemming from Defendant's fraudulent business practices;
5 declaratory relief; reasonable attorneys' fees and costs under California Code of Civil Procedure §
6 1021.5; injunctive relief and other appropriate equitable relief.

7
8 **COUNT FIVE**

9 **Unjust Enrichment/Quasi-Contract**

10 **(On Behalf of Plaintiffs and the Nationwide Class, or, in the Alternative, the California Class)**

11 258. Plaintiffs, individually and on behalf of the Nationwide Class or, in the alternative, the
12 California Class, repeat and re-allege all previous paragraphs as if fully included herein.

13 259. Defendant's unfair and unlawful contract includes, among other things, making false
14 and misleading representations and omissions of material fact, as set forth in this Complaint.
15 Defendant's acts and business practices offend the established public policy of California, as there is
16 no societal benefit from false advertising, only harm. While Plaintiffs and Class Members were
17 harmed at the time of purchase, Defendant was unjustly enriched by its misrepresentations and
18 omissions.

19 260. Plaintiffs and Class Members were harmed when purchasing Defendant's Tampon
20 Products as a result of Defendant's material representations and omissions, as described in this
21 Complaint. Plaintiffs and each Class Member purchased the Tampon Products. Plaintiffs and Class
22 Members have suffered injury in fact and lost money as a result of paying the price they paid for the
23 Tampon Products as a result of Defendant's unlawful, unfair, and fraudulent business practices.

24 261. Defendant's conduct allows Defendant to knowingly realize substantial revenues from
25 selling the Tampon Products at the expense of, and to the detriment of, Plaintiffs and Class Members,
26 and to Defendant's benefit and enrichment. Defendant's retention of these benefits violates
27 fundamental principles of justice, equity, and good conscience.
28

1 DATED: February 21, 2024

Respectfully submitted,

2 /s/ Rachel Soffin

Rachel Soffin*

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