

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

DION HARDEN, individually and on behalf of
M.H., a minor, and JESSICA TAN, individually,
and on behalf of all others similarly situated,

Plaintiffs,

v.

MEAD JOHNSON & COMPANY, LLC,

Defendant.

CASE NO.: 1:24-cv-00108

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs DION HARDEN, individually and on behalf of M.H., a minor, and JESSICA TAN, individually, and on behalf of all others similarly situated (collectively “Plaintiffs”), by and through undersigned counsel, bring this action against Defendant MEAD JOHNSON & COMPANY, LLC (“Mead Johnson” or “Defendant”). Plaintiffs make the following allegations based on knowledge as to their own acts, and upon information and belief, and investigation, as to all other matters:

PRELIMINARY STATEMENT

1. This is a class action brought by Plaintiffs on behalf of all persons who have purchased Enfamil Brand Nutramigen Powder infant formula products sold in the United States with a “Use By” date of January 1, 2024 (“Nutramigen Powder products”). Plaintiffs pursue claims against Mead Johnson for negligence, breach of warranties, consumer fraud, fraudulent concealment, and unjust enrichment seeking redress for Defendant’s business practices designed to mislead the public in connection with Defendant’s promotion, marketing, advertising, packaging, labeling, distribution, and/or sale of Nutramigen Powder products which Defendant, during the relevant time period, promoted as containing ingredients safe for human consumption and being safe for use, when, in fact, they cause severe, life-threatening conditions.

2. Mead Johnson is one of the nation's leading producers of infant formulas. Nutramigen, the first infant formula for the nutritional management of cow's milk allergy, was launched in 1942.¹ Nutramigen with LGG® from Mead Johnson Nutrition is the world-leading brand for the management of cow's milk allergy.²

3. Mead Johnson manufactures, labels, markets, and sells Nutramigen Powder products.

4. Consumers expect, when they purchase Nutramigen Powder products, they are purchasing safe and healthy infant formula. This is especially true of Nutramigen Powder products, which are advertised as hypoallergenic, which means it has been specially formulated to not cause allergic reactions in most infants with cow's milk allergy. Nutramigen Powder products are also advertised as formulated for food allergies, with brain building DHA, and providing fast colic relief.

5. Unfortunately for Plaintiffs, and all other similarly situated consumers of Nutramigen Powder products, Nutramigen Powder products were contaminated with *Cronobacter sakazakii*. See **Exhibit A** (FDA published Defendant's recall announcement).

6. *Cronobacter sakazakii* can cause infections (sepsis) or meningitis (an inflammation of the membranes that protect the brain and spine). Symptoms of sepsis and meningitis may include poor feeding, irritability, temperature changes, jaundice (yellow skin and whites of the eyes), grunting breaths and abnormal movements. *Cronobacter* infection may also cause bowel damage and may spread through the blood to other parts of the body. See **Exhibit A**.

¹ See <https://www.nutramigen.co.uk/why-nutramigen/history-of-mead-johnson-nutrition/> (last visited Jan. 2, 2024).

² See <https://www.nutramigen.co.uk/why-nutramigen/about-nutramigen-with-lgg/> (last visited Jan. 2, 2024).

7. On December 30, 2023, Defendant issued a recall of Nutramigen Powder products sold in the United States due to possible contamination with “*Cronobacter sakazakii*.”³ The FDA published Defendant’s recall announcement. See **Exhibit A**.

8. Plaintiffs and Class members did not know, and did not have a reason to know, that the Nutramigen Powder products they purchased were contaminated with *Cronobacter sakazakii*. Consumers expect the food they purchase to be safe for consumption and not contaminated by an organism “which can cause severe, life-threatening infections (sepsis) or meningitis (an inflammation of the membranes that protect the brain and spine).” See **Exhibit A**.

9. Plaintiffs purchased Nutramigen Powder products manufactured and sold by Defendant, unaware of the *Cronobacter sakazakii* contamination

10. Plaintiffs bring this action on their own behalf, and on behalf of all other purchasers of Nutramigen Powder products to seek damages and injunctive relief for their injuries, including their out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

PARTIES

11. Plaintiff Dion Harden (“Harden”) is a citizen and resident of Illinois residing in Cook County, Illinois. Harden brings his claims individually and on behalf of his minor child, “M.H.” Harden purchased Nutramigen Powder products manufactured by Defendant.

³ See Reckitt/Mead Johnson Nutrition Voluntarily Recalls Select Batches of Nutramigen Hypoallergenic Infant Formula Powder Because of Possible Health Risk, <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/reckittmead-johnson-nutrition-voluntarily-recalls-select-batches-nutramigen-hypoallergenic-infant> (last visited Jan. 2, 2024).

12. Plaintiff Jessica Tan (“Tan”) is a citizen and resident of Connecticut residing in Hartford County. Tan purchased Nutramigen Powder products manufactured by Defendant.

13. Defendant Mead Johnson & Company, LLC is a limited liability company organized under Delaware law and has its headquarters in Chicago, Illinois. On information and belief, Defendant has one member, Mead Johnson Nutrition Company.

14. Mead Johnson Nutrition Company⁴ is a corporation organized under the laws of Delaware. On information and belief, Mead Johnson Nutrition Company’s principal place of business is Evansville, Indiana. Thus, Mead Johnson Nutrition Company is a citizen of Delaware and Indiana. 28 U.S.C. § 1332(c)(1) (“A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”). Therefore, Defendant is also a citizen of Delaware and Indiana. *See Belleville Catering Co. v. Champaign Mkt. Place, L.L.C.*, 350 F.3d 691, 692 (7th Cir. 2003) (limited liability companies are citizens of every state of which any member is a citizen) (citing *Cosgrove v. Bartolotta*, 150 F.3d 729 (7th Cir.1998)).

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d) because: (1) there are 100 or more putative Class members, (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (iii) there is diversity because Plaintiffs and Defendant are citizens of different states.

16. Defendant’s Nutramigen Powder products are sold and purchased throughout the United States, including Illinois. Defendant transacts business within this District through the sale

⁴ As of June 15, 2017, Mead Johnson Nutrition Company is no longer a publicly traded company, but is a wholly owned subsidiary of Reckitt Benckiser PLC (RB), which is publicly traded on the London Stock Exchange.

of Nutramigen Powder products within this District, at grocery stores, drug stores, big box stores, membership stores, and sold online directly to the citizens of this District.

17. Venue is proper in this district under 28 U.S.C. § 1391 because Defendant's headquarters is in Illinois, it conducts business in this District, is subject to jurisdiction in this District, and has sold, marketed, and/or distributed contaminated Nutramigen Powder products within this District at all times relevant to this suit, and because a substantial part of the acts or occurrences giving rise to this suit occurred within this District.

FACTUAL ALLEGATIONS

The Nutramigen Powder products Recall

18. Defendant manufactures, labels, and sells Nutramigen Powder products, which appear on grocery store shelves in cans in varying sizes.

19. On December 30, 2023, Mead Johnson recalled Nutramigen Powder products sold in 12.6 and 19.8 ounce cans that were manufactured in June 2023 and distributed primarily in June - August 2023, and shortly thereafter. *See **Exhibit A***. The cans have a "Use By Date" of "1 Jan 2025." *Id.*

20. On December 31, 2023, the U.S. Food and Drug Administration ("FDA") announced that Mead Johnson had issued a recall of Nutramigen Powder products after it was discovered that some of the products were contaminated with *Cronobacter sakazakii*. *See **Exhibit A***.

21. Specifically, the FDA stated that "Reckitt/Mead Johnson Nutrition (MJN), a producer of nutrition products, announced today that it has voluntarily chosen to recall from the U.S. market select batches of Nutramigen Powder, a specialty infant formula for the dietary

management of Cows Milk Allergy (CMA) in 12.6 and 19.8 oz cans, due to a possibility of contamination with *Cronobacter sakazakii* in product sampled outside the U.S.” See **Exhibit A**.

22. Mead Johnson stated that the Nutramigen Powder products should not be used.⁵

The Prior FDA Warning Letter

23. On August 30, 2023, the FDA sent a “Warning Letter” to Reckitt/Mead Johnson Nutrition. See **Exhibit B** (hereinafter “Warning Letter”).

24. The Warning Letter explains that the FDA inspected two of Defendant’s powdered infant formula manufacturing facilities, located in Zeeland, Connecticut (“Zeeland Facility”) and Wanamingo, Minnesota (“Wanamingo Facility”). The FDA’s inspection of the Zeeland Facility took place from February 7 - 23, 2023. The FDA’s inspection of the Wanamingo Facility took place from November 28, 2022 through January 9, 2023.

25. During both of its inspections, FDA investigators found significant violations of Title 21, Code of Federal Regulations, Part 106 (21 C.F.R. Part 106), Infant Formula Requirements Pertaining to Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Records and Reports, and Notifications (the “Infant Formula Rule”). At the conclusion of both inspections, FDA investigators issued a Form FDA-483, Inspectional Observations (“Form FDA-483”), listing the deviations the FDA found at each of Defendant’s facilities. Based on the inspectional findings, FDA determined that Defendant’s actions violated the Federal Food, Drug, and Cosmetic Act, and the Infant Formula Rule. See Sections 402(a)(4), 412(a)(3), and 301(a) of the Act [21 U.S.C. §§ 342(a)(4), 350a(a)(3), and 331(a)].

26. The FDA Warning Letter states that certain Enfamil infant formula at both facilities tested positive for *Cronobacter sakazakii*.

⁵ See <https://www.enfamil.com/nutramigen-recall-2023/> (last visited Jan. 3, 2024).

27. The Warning Letter states the FDA found that Defendant:

(a) did not establish a system of process controls covering all stages of processing that was designed to ensure that infant formula does not become adulterated due to the presence of microorganisms in the formula or in the processing environment, as required by 21 C.F.R. § 106.55(a), and

(b) did not ensure that equipment and utensils used in the manufacture, processing, packing, or holding of an infant formula were of appropriate design and were installed to facilitate their intended function and their cleaning and maintenance, in accordance with 21 C.F.R. § 106.30.

28. On information and belief, the Nutramigen Powder products were manufactured at Defendant's Zeeland facility. *See* FDA Constituent Update, attached hereto as **Exhibit C** ("The Israeli Ministry of Health notified the FDA on Dec. 14 that Nutramigen Hypoallergenic Powdered Infant Formula produced at the Mead Johnson Nutrition Zeeland, Michigan, facility, and exported from the U.S., had initially tested positive for *Cronobacter* species.").

Plaintiffs and Class Members Purchased Recalled Nutramigen Powder Products

29. Each Plaintiff purchased Nutramigen Powder products.

30. On information and belief, each Plaintiff purchased Nutramigen Powder products that were contaminated with *Cronobacter sakazakii*

31. Harden's baby daughter, "M.H.", was born in April 2023. Harden purchased Nutramigen Powder products in and after June 2023 (the month that the recalled products were manufactured) for "M.H." "M.H." consumed the Nutramigen Powder products and became ill.

32. Tan's baby son, "L.L.", was born in August 2023. Tan purchased Nutramigen Powder products in September 2023 for "L.L." "L.L." consumed the Nutramigen Powder products and became ill, including being hospitalized and diagnosed with meningitis.

33. Plaintiffs and Class members were exposed to Defendant's advertisements and marketing representing Nutramigen Powder products as healthy, uncontaminated, and safe for human consumption. As a result, Plaintiffs and Class members reasonably believed that the Nutramigen Powder products they purchased would be safe and healthy and not contaminated with *Cronobacter sakazakii*.

34. Defendant's affirmative representations that its Nutramigen Powder products were healthy, safe, hypoallergenic, and uncontaminated were false, deceptive, and likely to mislead consumers.

35. Defendant's omission of the material fact that its Nutramigen Powder products were contaminated with *Cronobacter sakazakii* was false, deceptive, and likely to mislead consumers.

36. Had Plaintiffs known that the Nutramigen Powder products they bought were contaminated with *Cronobacter sakazakii*, they would not have purchased Nutramigen Powder products.

37. Plaintiffs, and all other consumers of the recalled Nutramigen Powder products, have suffered economic losses and personal injuries.

CLASS ACTION ALLEGATIONS

38. Plaintiffs, individually and on behalf of all others similarly situated, bring this action pursuant to Fed. R. Civ. P. 23(a), (b)(1)(A), (b)(2), (b)(3), and (c)(4) on behalf of a **Nationwide Class** defined as follows:

Nationwide Class: All persons in the United States who purchased Nutramigen Powder products that were recalled by Mead Johnson on or around December 30, 2023.

39. Harden bring this action on behalf of himself and an Illinois Subclass defined as follows:

Illinois Subclass: All persons in Illinois who purchased Nutramigen Powder products that were recalled by Mead Johnson on or around December 30, 2023.

40. Tan brings this action on behalf of herself and a Connecticut Subclass defined as follows:

Connecticut Subclass: All persons in Connecticut who purchased Nutramigen Powder products that were recalled by Mead Johnson on or around December 30, 2023.

41. Excluded from the Classes are:

- a. Defendant and its officers, directors, management, employees, subsidiaries, or affiliates;
- b. All federal government entities;
- c. All states (and sub-units of government and their entities) that, by law, preclude their participation as plaintiffs in private class action litigation;
- d. The judges in this case and any members of their immediate families.

42. **Numerosity.** Approximately 675,030 cans of Nutramigen Powder products have been recalled. *See Exhibit C.* Thus, the number of members in each Class are likely in the thousands.

43. **Commonality and Predominance.** Common questions of law or fact predominate and include:

- a. Whether Defendant negligently failed to exercise reasonable care in the formulation, design, manufacturing, promotion, marketing, advertising,

packaging, labeling, distribution, and/or sale of Nutramigen Powder products;

- b. Whether Defendant failed to establish a system of process controls covering all stages of processing that was designed to ensure that infant formula does not become adulterated;
- c. Whether Defendant failed to ensure that equipment and utensils used in the manufacture, processing, packing, or holding of an infant formula were of appropriate design and were installed to facilitate their intended function and their cleaning and maintenance;
- d. Whether Defendant was negligent for failure to properly test its Nutramigen Powder products;
- e. Whether Defendant sold the contaminated Nutramigen Powder products that were unreasonably dangerous to consumers such as Plaintiffs and Class members;
- f. Whether Defendant failed to adequately warn Plaintiffs and Class members of the dangers with respect to the contaminated Nutramigen Powder products;
- g. Whether Defendant was negligent for its failure to warn the Plaintiffs and Class members about the contaminated Nutramigen Powder products;
- h. Whether Defendant misrepresented that Nutramigen Powder products were safe for human consumption;
- i. Whether Defendant omitted and concealed that Nutramigen Powder products were not safe for human consumption;

j. Whether Plaintiffs and Class members suffered damages as a result of the contaminated Nutramigen Powder products.

44. Common issues predominate over any individual inquiries because the focus is on Defendant's uniform practices. The Classes are definable and ascertainable.

45. **Typicality.** Plaintiffs' claims and bases for relief are typical to other Class members because all were subjected to the same unlawful course of conduct by Defendant and assert the same theory of liability and damages.

46. **Adequacy.** Plaintiffs will fairly and adequately protect and represent the interests of the other Class members. Plaintiffs' interests coincide with, and are not antagonistic to, those of the Class members.

47. Plaintiffs' counsel is competent and experienced in complex class action litigation and intend to protect Class members' interests adequately and fairly.

48. **Superiority.** Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated individuals to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweigh potential difficulties in management of this class action.

49. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude litigating it as a class action.

50. Plaintiffs also seek certification under Rule 23(b)(2), as Defendant has acted or refused to act on grounds generally applicable to the Classes as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class members and making final injunctive relief or corresponding declaratory relief appropriate with respect to the Classes as a whole. Defendant's practices challenged herein apply to and affect the Class members uniformly, and Plaintiffs' challenge to those practices hinge on Defendant's conduct with respect to the Classes as a whole, not on facts or law applicable only to Plaintiffs.

51. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein.

CAUSES OF ACTION

COUNT I

Products Liability - Breach of Express Warranty Brought by Plaintiffs on Behalf of the Nationwide Class

52. Plaintiffs incorporate by reference paragraphs 1–51 as if fully set forth herein.

53. Plaintiffs bring this claim against Defendant on behalf of themselves and all Class members.

54. The Nutramigen Powder products are “goods” under all relevant laws.

55. Plaintiffs, and each member of the Nationwide Class, formed a contract with Defendant at the time Plaintiffs and each member of the Nationwide Class purchased Defendant's Nutramigen Powder products.

56. The terms of the contract include the promises and affirmations of fact made by Defendant on the products' packaging and through marketing and advertising, as described above.

57. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain and are part of the standardized contract between Plaintiffs and the members of the Nationwide Class and Defendant.

58. As set forth above, Defendant represents through its advertising, labeling, marketing, and packaging, that its Nutramigen Powder products are safe for their intended use.

59. All conditions precedent have occurred or were performed.

60. Defendant breached express warranties on the Nutramigen Powder products and their qualities because they contained *Cronobacter sakazakii* and were unsafe for consumption at the time of purchase and did not conform to Defendant's affirmations and promises described above.

61. Plaintiffs and Class members would not have purchased the Nutramigen Powder products had they known the true nature of the harmful *Cronobacter sakazakii* contamination.

62. As a result of Defendant's breach of warranty, Plaintiffs and Class members suffered and continue to suffer damage and injury and are entitled to all damages, in addition to costs, interests, and fees, including attorney's fees, as allowed by law. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

COUNT II
Products Liability - Breach of Implied Warranty
Brought by Plaintiffs on Behalf of the Nationwide Class

63. Plaintiffs incorporate by reference paragraphs 1–51 as if fully set forth herein.

64. Plaintiffs bring this claim against Defendant on behalf of themselves and the Nationwide Class.

65. Defendant is a merchant and was at all relevant times involved in the manufacturing, distributing, warranting, and selling of the Nutramigen Powder products.

66. The Nutramigen Powder products are “goods” under the relevant laws, and Defendant knew or had reason to know of the specific use for which the Nutramigen Powder products, as goods, were purchased.

67. Defendant entered into agreements with retailers to sell the Nutramigen Powder products to be used by Plaintiffs and Class members for their personal use.

68. The implied warranty of merchantability included with the sale of each Nutramigen Powder product means that Defendant warranted that Nutramigen Powder products would be fit for the ordinary purposes for which infant formula is used and sold, and were not otherwise injurious to consumers. The implied warranty of merchantability is part of the basis for the benefit of the bargain between Defendant, and Plaintiffs and the Class members.

69. Defendant breached the implied warranty of merchantability because the Nutramigen Powder products are not fit for their ordinary purpose of being consumed by children because the Nutramigen Powder products result in *Cronobacter sakazakii* infections. Therefore, the Nutramigen Powder products are not fit for their particular purpose of safely being consumed by children.

70. Defendant’s warranty expressly applies to the purchaser of the Nutramigen Powder products, creating privity between Defendant and Class members.

71. However, privity is not required because Plaintiffs and Class members are the intended beneficiaries of Defendant’s warranties and its sale through retailers. Defendant’s

retailers were not intended to be the ultimate consumers of the Nutramigen Powder products. Defendant's warranties were designed for and intended to benefit the consumer only, including Plaintiffs and Class members.

72. Defendant has been provided with sufficient notice of its breaches of implied warranties associated with the Nutramigen Powder products.

73. All conditions precedent have occurred or been performed.

74. Had Plaintiffs, Class members, and the consuming public known that the Nutramigen Powder products were unsafe for consumption, they would not have purchased the Nutramigen Powder products.

75. As a direct and proximate result of the foregoing, Plaintiffs and Class members suffered and continue to suffer financial damage and injury, and are entitled to all damages, in addition to costs, interests and fees, including attorney's fees, as allowed by law. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

COUNT III

Negligence

Brought by Plaintiffs on Behalf of the Nationwide Class

76. Plaintiffs incorporate the allegations set forth in paragraphs 1–51 as though set forth fully herein.

77. Plaintiffs bring this Claim against Defendant on behalf of themselves and the Nationwide Class.

78. Defendant, directly or indirectly, caused Nutramigen Powder products to be sold, distributed, marketed, promoted, and/or consumed by Plaintiffs and Class members.

79. At all times relevant to this litigation, Defendant owed a duty to Plaintiffs, Class members, and the consuming public to exercise reasonable care in its designing, marketing, supplying, packaging, promoting, and selling Nutramigen Powder products, including the duty to prevent *Cronobacter sakazakii* contamination of the Nutramigen Powder products.

80. Defendant also owes a duty to Plaintiffs, Class members, and the consuming public to manufacture, distribute, and sell Nutramigen Powder products that are safe and fit for human consumption, meaning without *Cronobacter sakazakii*.

81. Plaintiffs and all Class members are reasonable consumers who expect companies, like Defendant, to manufacture, distribute, and sell infant formula products that are safe and fit for human consumption.

82. At all relevant times to this litigation, Defendant knew, or in the exercise of reasonable care, should have known that Plaintiffs and Class members purchased Nutramigen Powder products for human consumption.

83. Defendant breached its duty to design, manufacture, distribute, and sell Nutramigen Powder products that are safe and fit for human consumption when it manufactured, distributed, and sold Nutramigen Powder products contaminated with *Cronobacter sakazakii*.

84. Despite the ability and means of Defendant to design, manufacture, distribute, and sell Nutramigen Powder products without *Cronobacter sakazakii*, Defendant failed to do so. Indeed, Defendant wrongfully produced, manufactured, distributed, and sold Nutramigen Powder products that were unsafe and unfit for human consumption.

85. Defendant's negligence included:

- a. Violating state and federal laws and rules prohibiting the sale of adulterated, contaminated, and misbranded foods, which laws were designed to protect the class of persons to which Plaintiffs and Class members belong;
- b. Failing to exercise reasonable care in setting manufacturing and quality standards, proper hygiene of employees and equipment;
- c. Failing to maintain clean facilities through reasonable and necessary health and safety measures;
- d. Failing to ensure that the products that left its facilities were safe for human consumption;
- e. Selling and/or distributing Nutramigen Powder products contaminated with *Cronobacter sakazakii*;
- f. Selling and/or distributing Nutramigen Powder products while negligently and/or intentionally concealing the *Cronobacter sakazakii* contamination;
- g. Failing to promptly notify Plaintiffs and Class members of the *Cronobacter sakazakii* contamination of Nutramigen Powder products; and
- h. Systematically failing to promptly notify the consuming public of the *Cronobacter sakazakii* contamination of Nutramigen Powder products.

86. As a direct and proximate result of Defendant's breach of duty by manufacturing, distributing, and selling *Cronobacter sakazakii*-contaminated Nutramigen Powder products, Plaintiffs and all Class members have suffered and will continue to suffer injuries. Plaintiffs and Class members had purchased the Nutramigen Powder products for human consumption, and are unable to use Nutramigen Powder products for that purpose as a direct result of Defendant's

negligence. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingestion of the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

87. Plaintiffs' and Class members' injuries were foreseeable to Defendant because the FDA issue the Warning Letter to Reckitt/Mead Johnson Nutrition on August 30, 2023, regarding the FDA's inspection of two of Defendant's infant formula manufacturing facilities, and the FDA found that Defendant violated the Federal Food, Drug, and Cosmetic Act and the Infant Formula Rule because certain Enfamil infant formula product was found to contain *Cronobacter sakazakii*. See **Exhibit B**.

88. Plaintiffs and Class members have suffered damages in an amount to be determined at trial and are entitled to any incidental, consequential, and other damages and other legal and equitable relief, as well as costs and attorneys' fees, available under law.

COUNT IV
Negligent Failure to Warn
Brought by Plaintiffs on Behalf of the Nationwide Class

89. Plaintiffs incorporate by reference paragraphs 1–51 as though fully set forth herein.

90. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.

91. Defendant owed Plaintiffs and Class members a duty to warn consumers of any health risks associated with the Nutramigen Powder products.

92. Defendant knew or should have known of the contamination of *Cronobacter sakazakii* within the Nutramigen Powder products, but failed to warn Plaintiffs and Class members about it.

93. Defendant's breach of duty to warn caused Plaintiffs and Class members to suffer injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

94. Plaintiffs and Class members have suffered damages in an amount to be determined at trial and are entitled to any incidental, consequential, and other damages and other legal and equitable relief, as well as costs and attorney's fees, available under law.

COUNT V
Negligent Design Defect
Brought by Plaintiffs on Behalf of the Nationwide Class

95. Plaintiffs incorporate by reference paragraphs 1–51 as though fully set forth herein.

96. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.

97. Defendant owes a duty to Plaintiffs and Class members to design the Nutramigen Powder products in a reasonable manner.

98. The design of the Nutramigen Powder products was defective and unreasonably dangerous, causing *Cronobacter sakazakii* infections.

99. The design of the Nutramigen Powder products caused them to be not fit, suitable, or safe for their intended purpose. The dangers of the Nutramigen Powder products outweighed the benefits and rendered the Nutramigen Powder products to be unreasonably dangerous.

100. There are other infant formula products that were available to Plaintiffs and Class members that do not cause *Cronobacter sakazakii* infections.

101. The risk/benefit profile of the Nutramigen Powder products was unreasonable, and the Nutramigen Powder products should not have been sold in the market.

102. The Nutramigen Powder products did not perform as a reasonable consumer would expect.

103. Defendant's negligent design of the Nutramigen Powder products was the proximate cause of the damages to Plaintiffs and Class members.

104. Plaintiffs and Class members suffered damages in an amount to be determined at trial and are entitled to any incidental, consequential, and other damages and other legal and equitable relief, as well as costs and attorney's fees, available under the law. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

COUNT VI
Breach of Implied Warranty of Merchantability
Brought by Plaintiffs on Behalf of the Nationwide Class

105. Plaintiffs incorporate by reference paragraphs 1–51 as though fully set forth herein.

106. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.

107. Defendant is a merchant engaged in the sale of goods to Plaintiffs and Class members.

108. There was a sale of goods from Defendant to Plaintiffs and Class members.

109. As the developer, manufacturer, marketer, distributor, and/or seller of the defective Nutramigen Powder products, Defendant impliedly warranted to Plaintiffs and Class members that the Nutramigen Powder products were fit for their intended purpose in that they would be safe for Plaintiffs and Class members to consume.

110. Contrary to these representations and warranties, the Nutramigen Powder products were not fit for their ordinary use, and did not conform to Defendant's affirmations of fact and promises because use of the Nutramigen Powder products was accompanied by the risk of adverse health effects that do not conform to the packaging and consumer standards.

111. Defendant breached the implied warranty in the contract for the sale of Nutramigen Powder products by knowingly selling to Plaintiffs and Class members a product that Defendant knew would expose children to significant health risks, thus meaning Defendant knew that the Nutramigen Powder products were not fit for their intended purpose.

112. Defendant was on notice of this breach, as it was aware of the adverse health effects caused by *Cronobacter sakazakii*, the issues at its Zeeland facility, and the presence of *Cronobacter sakazakii* in the Nutramigen Powder products tested by the Israeli Health Ministry. See **Exhibit B** and **Exhibit C**.

113. Plaintiffs and Class members did not receive the goods they bargained for because the goods were not merchantable as they did not conform to the ordinary standards for goods of the same average grade, quality, and value.

114. Plaintiffs and Class members are the intended beneficiaries of Defendant's implied warranties.

115. The Nutramigen Powder products were not altered by Plaintiffs or Class members.

116. Plaintiffs and Class members used the Nutramigen Powder products in the ordinary manner in which such products are intended to be used.

117. The Nutramigen Powder products were defective when they left the exclusive control of Defendant.

118. The Nutramigen Powder products were defectively designed and/or manufactured and unfit for their intended purpose, and Plaintiffs and Class members did not receive the goods that they bargained for.

119. Plaintiffs and Class members purchased the Nutramigen Powder products that contained the defect, which was undiscoverable by them at the time of purchase and at any time during the class period.

120. Defendant breached the implied warranty of merchantability to Plaintiffs and Class members.

121. Defendant's attempt to limit or disclaim the implied warranty of merchantability in a manner that would exclude coverage of the defect is unenforceable and void.

122. Plaintiffs and Class members have been damaged by Defendant's breach of the implied warranty of merchantability.

123. As a result of the defect in the Nutramigen Powder products, Plaintiffs and Class members have suffered damages including, but not limited to, the cost of the defective products, loss of use of the products and other related damage. Plaintiffs and Class members suffered damages in the amount to be determined at trial and are entitled to any incidental, consequential, and other damages and other legal and equitable relief, as well as costs and attorney's fees, available under the law. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

COUNT VII

**Strict Liability – Failure to Warn
Brought by Plaintiffs on Behalf of the Nationwide Class**

124. Plaintiffs incorporate by reference paragraphs 1–51 as though fully set forth herein.

125. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.

126. Defendant had a duty to warn Plaintiffs and Class members regarding the defect and the true risks associated with the Nutramigen Powder products contaminated with *Cronobacter sakazakii*.

127. Defendant was in a superior position to know of the *Cronobacter sakazakii* contamination, yet, as outlined above, chose to do nothing when the defect became known to it.

128. Defendant failed to provide adequate warnings regarding the risks of *Cronobacter sakazakii* within the Nutramigen Powder products after knowledge of the defect was known only to it.

129. Defendant had information regarding the true risks but failed to warn Plaintiffs and Class members or strengthen its warnings.

130. Despite its knowledge of the defect and obligation to unilaterally strengthen the warnings, Defendant instead chose to actively conceal this knowledge from the public.

131. Plaintiffs and Class members would not have purchased, chosen, or paid for the Nutramigen Powder products had they known of the defect and the risks of purchasing contaminated Nutramigen Powder products.

132. The *Cronobacter sakazakii* contamination proximately caused Plaintiffs' and Class members' damages.

133. Plaintiffs and Class members have suffered damages in an amount to be determined at trial and are entitled to any incidental, consequential, and other damages and other legal and

equitable relief, as well as costs and attorneys' fees, available under the law. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

COUNT VIII

**Strict Liability – Design Defect
Brought by Plaintiffs on Behalf of the Nationwide Class**

134. Plaintiffs incorporate by reference paragraphs 1–51 as though fully set forth herein.
135. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.
136. The design of the Nutramigen Powder products was defective and unreasonably dangerous.
137. Use of Defendant's Nutramigen Powder products by Plaintiffs and Class members caused exposure to *Cronobacter sakazakii* infections.
138. The design of the Nutramigen Powder products by Defendant rendered them not reasonably fit, suitable, or safe for their intended purposes.
139. The dangers of the Nutramigen Powder products outweighed the benefits and rendered the Nutramigen Powder products unreasonably dangerous to Plaintiffs and Class members.
140. There are other infant formula products that do not cause *Cronobacter sakazakii* infections, meaning that there were other means of production available to Defendant.
141. The Nutramigen Powder products were unreasonably unsafe, and the Nutramigen Powder products should have had stronger and clearer warnings or should not have been sold in the market.

142. The Nutramigen Powder products did not perform as an ordinary consumer would expect.

143. Plaintiffs and Class members have suffered damages in an amount to be determined at trial and are entitled to any incidental, consequential, and other damages and other legal and equitable relief, as well as costs and attorneys' fees, available under the law. Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

COUNT IX
Fraudulent Concealment
Brought by Plaintiffs on Behalf of the Nationwide Class

144. Plaintiffs incorporate the allegations set forth in paragraphs 1–51 as though set forth fully herein.

145. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.

146. Defendant concealed and suppressed material facts regarding the Nutramigen Powder products – most importantly, the fact that they were contaminated with *Cronobacter sakazakii*.

147. As alleged above, Defendant knew, or should have known, that the Nutramigen Powder products were defective due to the contamination of *Cronobacter sakazakii*. As a consequence, the contaminated Nutramigen Powder products were no longer safe and fit for human consumption.

148. The contamination of *Cronobacter sakazakii* within a product meant for human consumption poses a serious health risk to those children who consumed the Nutramigen Powder

products. Therefore, the Nutramigen Powder products are unreasonably dangerous because they can cause severe, life-threatening conditions, including infections (sepsis) or meningitis.

149. Defendant acquired knowledge of the *Cronobacter sakazakii* contamination prior to Plaintiffs and Class members purchasing the Nutramigen Powder products through sources not available to consumers including, but not limited to, the FDA, FDA testing at its facilities, and testing of Nutramigen Powder products by the Israeli Health Ministry.

150. While Defendant knew about the *Cronobacter sakazakii* contamination, and the safety risks with human consumption of *Cronobacter sakazakii* contaminated food, Defendant nevertheless concealed and failed to disclose the defective nature of the Nutramigen Powder products to Plaintiffs and Class members at the time of purchase.

151. Defendant had a duty to disclose the *Cronobacter sakazakii* contamination because it:

- a. Had exclusive and/or far superior knowledge of the defect and access to the facts;
- b. Knew the facts were not known or reasonably discoverable to Plaintiffs and Class members;
- c. Concealed the facts and defect from Plaintiffs and Class members;
- d. Continued to manufacture, produce, distribute and sell the defective Nutramigen Powder products, while purposefully withholding material facts from Plaintiffs and Class members that would have prevented Plaintiffs and Class members from purchasing the contaminated Nutramigen Powder products.

152. In failing to disclose the material facts to Plaintiffs and Class members, Defendant intended to hide from Plaintiffs and Class members that they were purchasing and consuming Nutramigen Powder products with harmful defects that rendered them unfit for human use, and thus acted with scienter and/or intent to defraud.

153. These omitted and concealed facts are material because, had Plaintiffs and Class members known of the defect, they would not have purchased the Nutramigen Powder products. Indeed, Plaintiffs and Class members trusted Defendant to manufacture, sell, distribute, and produce infant formula that was safe and fit for human consumption or to not put into the stream of commerce infant formula that was unfit for human consumption.

154. Defendant concealed and suppressed these material facts in order to mislead Plaintiffs, Class members, and the consuming public into believing that the Nutramigen Powder products were safe and fit for human consumption, as reasonably expected by consumers.

155. Plaintiffs and Class members were unaware of these material facts and would not have purchased the Nutramigen Powder products had they known.

156. Because of the concealment of the *Cronobacter sakazakii* contamination within the Nutramigen Powder products, Plaintiffs and Class members purchased the Nutramigen Powder products that were not safe for consumption. As a direct result of purchasing Nutramigen Powder products contaminated with *Cronobacter sakazakii*, Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

157. Accordingly, Defendant is liable for Plaintiffs' and Class members' damages in an amount to be determined at trial. Plaintiffs and Class members are entitled to any incidental, consequential, and other damages and other legal and equitable relief, as well as costs and attorneys' fees, available under law.

COUNT X
Unjust Enrichment
Brought by Plaintiffs on Behalf of the Nationwide Class

158. Plaintiffs incorporate the allegations set forth in the paragraphs 1–51 as though set forth fully herein.

159. Plaintiffs bring this count on behalf of themselves and the Nationwide Class in the alternative to their other causes of action.

160. Plaintiffs and Class members conferred benefits on Defendant in the form of monies paid to purchase Defendant's *Cronobacter sakazakii*-contaminated and worthless Nutramigen Powder products.

161. Defendant voluntarily accepted and retained this benefit.

162. Because this benefit was obtained unlawfully, namely by selling and accepting compensation for Nutramigen Powder products unfit for human consumption, it would be unjust and inequitable for Defendant to retain the benefit without paying the value thereof.

163. Defendant received benefits in the form of revenues from purchases of the Nutramigen Powder products to the detriment of Plaintiffs and Class members because they purchased Nutramigen Powder products that were not what they bargained for and were not safe and healthy, as claimed by Defendant.

164. Defendant has been unjustly enriched in retaining the revenues derived from the purchases of the Nutramigen Powder products by Plaintiffs and Class members. Retention of those

monies under these circumstances is unjust and inequitable because the *Cronobacter sakazakii* contamination caused injuries to Plaintiffs and Class members. Plaintiffs and Class members would not have purchased the Nutramigen Powder products had they known that they were contaminated by *Cronobacter sakazakii*.

165. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiffs and Class members for its unjust enrichment.

COUNT XI
Punitive Damages
Brought by Plaintiffs on Behalf of the Nationwide Class

166. Plaintiffs incorporate by reference paragraphs 1–51 as though fully set forth herein.

167. Plaintiffs bring this count on behalf of themselves and the Nationwide Class.

168. Defendant knew or should have known that the Nutramigen Powder products were contaminated with *Cronobacter sakazakii* and thereby unfit for human consumption.

169. Defendant failed to disclose these facts to the consuming public, including Plaintiffs and Class members.

170. Defendant risked the safety of recipients of its products, including Plaintiffs and Class members, when Defendant knew of the *Cronobacter sakazakii*-contamination with the Nutramigen Powder products and suppressed this knowledge from the general consuming public, including Plaintiffs and Class members.

171. Defendant made the conscious decisions not to redesign, re-label, warn or inform the unsuspecting recipients of its *Cronobacter sakazakii* contaminated Nutramigen Powder products, despite knowing that the products were defective.

172. Defendant knew or should have known that this conduct would result in injury or damage.

173. Defendant's intentional, reckless, fraudulent, and malicious failure to disclose information regarding the health and safety risks of consuming the contaminated Nutramigen Powder products deprived Plaintiffs and Class members of the necessary information to enable them to weigh the true risks of consuming the contaminated Nutramigen Powder products against their benefits.

174. Defendant acted with wanton and reckless conscious indifference and utter disregard of the consequences of its actions upon the health, safety and rights of others, including Plaintiffs and Class members.

175. As a direct and proximate result of Defendant's conscious and deliberate disregard for the rights and safety of consumers such as Plaintiffs and Class members, Plaintiffs and Class members have suffered severe and permanent personal and economic injuries as set forth above. As a result of Defendant's failures, acts, and omissions, Plaintiffs and Class members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the contaminated Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

176. Defendant's outrageous conduct warrants an award of punitive damages.

177. The aforesaid conduct of Defendant was committed with knowing, conscious, and deliberate disregard for the rights and safety of consumers, including Plaintiffs and Class members, thereby entitling Plaintiffs and Class members to punitive damages in an amount appropriate to punish Defendant and deter it and others from similar conduct in the future.

COUNT XII

**Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
815 ILCS 505/1, *et seq.***

Brought by Plaintiff Harden on Behalf of the Illinois Subclass

178. Harden incorporates by reference paragraphs 1–51 as if fully set forth herein.

179. This count is brought by Harden on behalf of the Illinois Subclass.

180. Harden is (and was during all relevant times) a resident of Illinois and made purchases of Nutramigen Powdered products in Illinois. Illinois Subclass members are or were residents of Illinois and/or made purchases of Nutramigen in Illinois.

181. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

182. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS 505/2.

183. The ICFA applies to Defendant’s acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

184. Defendant is a “person,” as defined by 815 ILCS 505/1(c).

185. Harden and each member of the Illinois Subclass are “consumers,” as defined by 815 ILCS 505/1(e), because they purchased contaminated Nutramigen Powder products.

186. Nutramigen Powder products are “merchandise,” as defined by 815 ILCS 505/1(b).

187. Defendant made false and fraudulent statements, and misrepresented, concealed, and omitted material facts regarding the Nutramigen Powder products, including the

misrepresentation that the Nutramigen Powder products were safe for human consumption, and the omission that the Nutramigen Powder products contained *Cronobacter sakazakii*.

188. Defendant's aforementioned misrepresentations, omissions, and concealment regarding the Nutramigen Powder products constitute deceptive and unconscionable acts or practices prohibited by the ICFA.

189. Defendant's aforementioned misrepresentations, omissions, and concealment possess the tendency or capacity to mislead and create the likelihood of consumer confusion.

190. Defendant's aforementioned misrepresentations, omissions, and concealment were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of the Nutramigen Powder products to Harden and Illinois Subclass members.

191. Defendant's aforementioned misrepresentations, omissions, and concealment are unconscionable because they offend public policy and/or cause substantial injury to consumers.

192. Defendant's aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the Food, Drug, and Cosmetic Act (regarding a false or misleading label) and the Illinois Food, Drug & Cosmetic Act ("IFDCA"), 410 ILCS 620/3-3.3. The Nutramigen Powder products were adulterated and misbranded, in violation of the IFDCA. 410 ILCS 620/2.11; 410 ILCS 620/14(a)(2)(A), (a)(2)(B), (d).

193. Defendant intended that Harden and Illinois Subclass members rely on its respective aforementioned false statements, misrepresentations, omissions, and concealment of material facts in purchasing Nutramigen Powder products.

194. Harden and Illinois Subclass members reasonably relied on Defendant's respective misrepresentations, omissions, and concealment when they purchased the Nutramigen Powder products.

195. Acting as reasonable consumers, had Harden and Illinois Subclass members been aware of the true facts regarding the presence of *Cronobacter sakazakii* in the Nutramigen Powder products, they would have declined to purchase these products.

196. Acting as reasonable consumers, Harden and Illinois Subclass members could not have avoided the injuries suffered by purchasing the Nutramigen Powder products because they did not have any reason to suspect that the products contained *Cronobacter sakazakii*. Moreover, the detection of *Cronobacter sakazakii* in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not possible without Harden and Illinois Subclass members first purchasing the Nutramigen Powder products.

197. As a direct and proximate result of Defendant's false, misleading, and deceptive acts and practices set forth above, Harden and members of the Illinois Subclass suffered damages by purchasing the Nutramigen Powder products because they would not have purchased them had they known the truth, and they received a product that was worthless because it contains unsafe *Cronobacter sakazakii*.

198. As a result of Defendant's failures, acts, and omissions, Harden and Illinois Subclass members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time and money spent to address symptoms and consequences of ingesting the Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

199. These damages were reasonably foreseeable because the *Cronobacter sakazakii* is known to cause illnesses.

200. Harden and Illinois Subclass members seek actual and punitive damages for Defendant's persistent and knowing violations, injunctive and declaratory relief, and reasonable attorneys' fees and costs.

COUNT XIII
Violation of the Connecticut Unfair Trade Practices Act
Conn. Gen. Stat. Ann. § 42-110a, et seq.
Brought by Plaintiff Tan on Behalf of the Connecticut Subclass

201. Tan incorporates paragraphs 1–51 as if fully set forth herein.

202. This count is brought by Tan individually and on behalf of the Connecticut Subclass.

203. Tan is (and was during all relevant times) a resident of Connecticut and made purchases of Nutramigen Powdered products in Connecticut. Connecticut Subclass members are or were residents of Connecticut and/or made purchases of Nutramigen in Connecticut.

204. Defendant is a “person” as defined by C.G.S.A. § 42-110a(3).

205. At all relevant times mentioned herein, Defendant engaged in “trade” or “commerce” in Connecticut as defined by C.G.S.A. § 42-110a(4), in that it engaged in the “advertising,” “sale,” and “distributions” of any “goods,” “services,” “property,” “articles,” “commodities,” or “things of value” in Connecticut.

206. The Connecticut Unfair Trade Practices Act (“CUTPA”), Conn. Gen. Stat. Ann. § 42-110a, et seq., prohibits any unfair methods of competition and any unfair or deceptive acts or practices in the conduct of any trade or commerce.

207. Defendant made false and fraudulent statements, and misrepresented, concealed, and omitted material facts regarding Nutramigen Powder products, including the misrepresentation that its Nutramigen Powder products were safe for human consumption and the omission that Nutramigen Powder products were contaminated with *Cronobacter sakazakii*.

208. Defendant's misrepresentations, omissions, and concealment regarding Nutramigen Powder products constitute unfair and/or deceptive acts or practices prohibited by the CUTPA.

209. Defendant's aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the Food, Drug, and Cosmetic Act (regarding a false or misleading label).

210. Defendant's aforementioned misrepresentations, omissions, and concealment possess the tendency or capacity to mislead and create the likelihood of consumer confusion, and did in fact deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

211. Defendant's aforementioned misrepresentations, omissions, and concealment were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of Nutramigen Powder products to Plaintiff and Connecticut Subclass members.

212. Defendant intended that Plaintiff and Connecticut Subclass members rely on the aforementioned false statements, misrepresentations, omissions, and concealment of material fact in purchasing Nutramigen Powder products.

213. Tan and Connecticut Subclass members reasonably relied on Defendant's misrepresentations, omissions, and concealment when they purchased Nutramigen Powder products.

214. Acting as reasonable consumers, had Tan and Connecticut Subclass members been aware of the true facts regarding the presence of *Cronobacter sakazakii* in Nutramigen Powder products, they would have declined to purchase these products.

215. Tan and Connecticut Subclass members suffered injury, including but not limited to out-of-pocket expenses for purchasing products that were not only worthless but harmful, time

and money spent to address symptoms and consequences of ingesting the Nutramigen Powder products, personal injuries, emotional distress, and annoyance.

216. Acting as reasonable consumers, Tan and Connecticut Subclass members could not have avoided the injuries suffered by purchasing Nutramigen Powder products because they did not have any reason to suspect that they were contaminated. Moreover, the detection of *Cronobacter sakazakii* in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not possible without Tan and Connecticut Subclass members first purchasing Nutramigen Powder products.

217. As a direct and proximate result of Defendant's unfair and deceptive acts or practices, Tan and members of the Connecticut Subclass suffered damages by purchasing Nutramigen Powder products because they would not have purchased Nutramigen Powder products had they known the truth, and they received a product that was worthless because it was contaminated with *Cronobacter sakazakii*.

218. Tan and Connecticut Subclass members seek actual damages, statutory and punitive damages for Defendant's persistent and knowing violations, injunctive and declaratory relief, as well as reasonable attorneys' fees and costs under CUTPA.

PRAYER FOR RELIEF FOR ALL COUNTS

WHEREFORE, Plaintiffs, on behalf of themselves and Class members, respectfully request that this Court:

- A. Certify the Classes as proposed herein, designating Plaintiffs as Class representatives, and appointing undersigned counsel as Class Counsel;

- B. Declaring that Defendant is financially responsible for notifying the members of the Class about the pendency of this action;
- C. Award all actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class members are entitled;
- D. Award pre-judgment and post-judgment interest;
- E. Grant appropriate injunctive and/or declaratory relief;
- F. Award reasonable attorney's fees and costs; and
- G. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand trial by jury in this action of all issues so triable.

Plaintiffs DION HARDEN, individually and on behalf of M.H., a minor, and JESSICA TAN, individually, and on behalf of all others similarly situated,

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