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8  
9 Counsel for Plaintiffs Allison Barton and Jana Moreno, and the  
10 Putative Class

11  
12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 **ALLISON BARTON and JANA**  
15 **MORENO, individually, and on**  
16 **behalf of others similarly situated,**

17 **Plaintiffs,**

18 **vs.**

19 **THE PROCTER & GAMBLE**  
20 **COMPANY,**

21 **Defendant.**

**CASE NO. 3:24-CV-01332-GPC-SBC**

**FIRST AMENDED CLASS ACTION**  
**COMPLAINT FOR:**

- 22 **1. UNFAIR AND UNLAWFUL**
- 23 **BUSINESS ACTS AND PRACTICES**
- 24 **(CAL. BUS & PROF. CODE §17200 ET**
- 25 **SEQ.);**
- 26 **2. DECEPTIVE ADVERTISING**
- 27 **PRACTICES (CAL. BUS & PROF.**
- 28 **CODE §§ 17500, ET SEQ.); AND**
- 3. CONSUMER LEGAL REMEDIES**
- ACT (CAL. CIV. CODE § 1750, ET**
- SEQ.).**

**“DEMAND FOR JURY TRIAL”**

Plaintiffs Allison Barton and Jana Moreno on behalf of themselves and others similarly situated in California, by and through their undersigned counsel, hereby file this First Amended Class Action Complaint and state as follows based on investigation and information and belief:

1 **I. INTRODUCTION**

2 1. In violation of California consumer protection law, Defendant The Procter  
3 & Gamble Company (“Defendant”) fails to disclose, and materially omits, that its  
4 Tampax Pearl tampons and Tampax radiant tampons (collectively, the “Products”)<sup>1</sup>  
5 contain lead.

6 2. California’s Proposition 65 sets the Maximum Allowable Dose Level  
7 (“MADL”) for reproductive toxicity at 0.5 micrograms of lead per day.<sup>2</sup>

8 3. Based on independent scientific testing and analysis of the Products,  
9 ordinary and expected use of the Products exposes consumers to far more than 0.5  
10 micrograms of lead per day.

11 4. Independent scientific testing and analysis of certain other tampons,  
12 however, including tampons manufactured by Defendant, demonstrates that other  
13 tampons do not contain a detectable amount of lead.

14 5. Defendant has the ability to manufacture tampons that do not contain lead.

15 6. Defendant willfully or negligently manufactures the Products such that they  
16 contain a detectible, substantial amount of lead.

17 \_\_\_\_\_  
18 <sup>1</sup> This action includes in the definition of “Products” all sizes and configurations of  
19 Tampax Pearl tampons sold during the Class Period (defined below), including but not  
20 limited to: Tampax Pearl Light, Regular, Super, Super Plus, and Ultra tampons and all  
21 sizes and configurations of Tampax radiant tampons sold during the Class Period,  
including but not limited to: Tampax radiant Light, Regular, Super and Super Plus  
tampons, and the “Pocket radiant” variations of Defendant’s Tampax radiant tampons.

22 <sup>2</sup> This action is not brought pursuant to Proposition 65 but, as set forth herein, is brought  
23 pursuant to California’s consumer protection laws based on consumer deception due to  
24 the mislabeling of the Products. Proposition 65, however, provides a predicate basis for  
25 violation of the consumer protection law. Proposition 65 also establishes the specific  
26 levels of exposure set forth by the California legislature at which “businesses [are  
27 required] to provide warnings to Californians about significant exposures to chemicals  
28 that cause cancer, birth defects or other reproductive harm.”  
<https://oehha.ca.gov/proposition-65/about-proposition-65#:~:text=What%20is%20Proposition%2065?,into%20sources%20of%20drinking%20water>.

1 7. The World Health Organization states: “There is no level of exposure to  
2 lead that is known to be without harmful effects.”<sup>3</sup>

3 8. The lead in the Products is particularly problematic for consumers based on  
4 the intended manner of use of the Products.

5 9. The Products are intended to be inserted vaginally.

6 10. Thus, unlike food containing lead that is consumed orally, the Products do  
7 not metabolize, and the lead contained in the Products is not filtered by the liver.

8 11. The lead contained in the Products can directly enter the bloodstream.

9 12. The lead in the Products presents an unreasonable safety hazard, both due  
10 to the manner of use of the Products and the amount of lead contained in the Products.

11 13. Defendant knows or should know that the Products contain lead.

12 14. Defendant has an independent duty to disclose the lead in the Products  
13 based on the health risk associated with use of the Products and/or because the Products  
14 are unfit for consumer use.

15 15. Defendant does not disclose, and materially omits, that the Products contain  
16 lead.

17 16. Although Defendant does not disclose that the Products contain lead,  
18 Defendant makes other advertising statements on the Product labels, which are designed  
19 to increase sales of the Products.

20 17. The Product labels state, for example, that the Products are the “#1 U.S.  
21 GYNECOLOGIST RECOMMENDED TAMPON BRAND” and that they are “FREE  
22 OF PERFUME”; “FREE OF ELEMENTAL CHLORINE BLEACHING”; “TAMPON  
23 FREE OF DYES”; and “CLINICALLY TESTED GENTLE TO SKIN” (the  
24 “Representations”).

25 18. These label Representations are likely to lead reasonable consumers to  
26 believe that the Products are safe to use and free from harmful elements and ingredients.

27  
28 <sup>3</sup> <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>

1 19. These label Representations are misleading based on the lead contained in  
2 the Products.

3 20. Reasonable consumers who purchase Defendant’s Products bearing the  
4 label Representations—and without any disclosure that the Products contain lead—are  
5 misled and deceived.

6 21. Plaintiffs and Class members have suffered economic injury based on their  
7 purchase of the Products, which they would not have bought had they known that the  
8 Products contain lead.

9 **II. JURISDICTION AND VENUE**

10 22. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §  
11 1332(d) because this is a class action in which: (1) there are over 100 members in the  
12 proposed class; (2) members of the proposed class have a different citizenship from  
13 Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the  
14 aggregate.

15 23. This Court has personal jurisdiction over Defendant because Defendant’s  
16 contacts with the forum are continuous and substantial, and Defendant intentionally  
17 availed itself of the markets within California through the sale and distribution of the  
18 Products in California and through the privilege of conducting business in California.

19 24. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because  
20 Defendant engages in continuous and systematic business activities within the State of  
21 California. Moreover, a substantial part of the events and conduct giving rise to the  
22 claims alleged herein occurred in this district. *See also* Declaration of Allison Barton  
23 Regarding Venue Pursuant to Cal. Civ. Code § 1780(d), attached as Exh. A; and  
24 Declaration of Jana Moreno Regarding Venue Pursuant to Cal. Civ. Code § 1780(d),  
25 attached as Exh. B.

26 **III. FACTUAL ALLEGATIONS**

27 **A. Lead Is Harmful and Dangerous**

28 25. Lead affects almost every organ and system in the body and accumulates in

1 the body over time, leading to severe health risks and toxicity, including inhibiting  
2 neurological function, anemia, kidney damage, seizures, and in extreme cases, coma and  
3 death.<sup>4</sup>

4 26. The lead contained in the Products is particularly detrimental to consumer  
5 health because the Products are not consumed orally, but instead are intended to be  
6 inserted vaginally where the lead can be directly absorbed into the blood stream.

7 27. In other words, there is no “first-pass metabolism and detoxification via the  
8 liver” but instead the lead in the Products “directly enter[s] systemic circulation.”<sup>5</sup>

9 28. A study addressing Medication Routes of Administration states that the  
10 “first pass effect” for oral administration refers to the “drug metabolism whereby the  
11 drug concentration is significantly diminished before it reaches the systemic circulation,  
12 often due to the metabolism in the liver.”<sup>6</sup>

13 29. By contrast, vaginal administration bypasses the system of veins that  
14 transport blood from the digestive tract to the liver.<sup>7</sup>

15 30. Vaginal administration directly accesses the networks of blood vessels that  
16 surround vital organs, including the pelvic organs.<sup>8</sup>

17 31. Vaginal walls are permeable and allow for efficient absorption, including  
18 in absorption tests of certain medications.<sup>9</sup>

19  
20  
21 <sup>4</sup> Wani AL, et al., Lead toxicity: a review, INTERDISCIP TOXICOL. (June 2015),  
available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4961898>.

22 <sup>5</sup> Environmental International 190 (2024) 108849, Tampons as a source of exposure to  
23 metal(loid)s, Jenni A. Shearson, et al. (citing Kim and De Jesus, 2022) (hereinafter,  
“Environmental International”).

24 <sup>6</sup> Kim J, De Jesus O, Medication Routes of Administration, EUROPE PMC (March  
25 2021), available at <https://europepmc.org/article/NBK/nbk568677>.

26 <sup>7</sup> *Id.*

27 <sup>8</sup> *Id.*

28 <sup>9</sup> P. van der Bijl, et al., Comparative permeability of human vaginal and buccal mucosa  
to water, Eur J Oral Sci. (Dec. 1997), available at

1 32. Toxins can pass through the vaginal epithelium and enter systemic  
2 circulation.<sup>10</sup>

3 33. Accordingly, the lead in the Products is not diminished or filtered by  
4 metabolic function, but can be absorbed directly into the bloodstream.

5 34. According to the World Health Organization, “[e]xposure to lead can affect  
6 multiple body systems and is particularly harmful to young children and women of child-  
7 bearing age.”<sup>11</sup>

8 **B. Defendant’s Products Contain Lead in Excess of the Maximum**  
9 **Allowable Dose**

10 35. California’s Proposition 65 establishes a Maximum Allowable Dose Level  
11 (“MADL”) of .5 mcg of lead per day for reproductive toxicity.<sup>12</sup>

12 36. According to independent laboratory testing and analysis, the Tampax Pearl  
13 Products contain .181 mcg of lead per gram of Product.<sup>13</sup>

14 37. According to independent laboratory testing and analysis, the Tampax  
15 radiant Products contain .123 mcg of lead per gram of Product.<sup>14</sup>

16 38. The Products are sold in various sizes, which have different gram weights.

17 39. Per day, based on an average number of tampons used, consumers are  
18 exposed to lead in excess of the MADL, irrespective of the size of the Products used.

19 \_\_\_\_\_  
20 <https://pubmed.ncbi.nlm.nih.gov/9469607/>; *see also* Environmental International (citing  
21 (Patel et al., 1983; Vorontsova et al., 2022).

22 <sup>10</sup> Environmental International (discussing the toxic shock syndrome outbreak of the  
1980s) (citations omitted).

23 <sup>11</sup> <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>

24 <sup>12</sup> <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.

25 <sup>13</sup> Based on independent laboratory testing of super Tampax Pearl tampons. The Tampax  
26 Pearl tampons at issue are manufactured by Defendant and contain the same ingredients.

27 <sup>14</sup> Based on independent laboratory testing of super Tampax Pocket radiant tampons.  
28 The Tampax radiant tampons at issue are manufactured by Defendant and contain the  
same ingredients.

1                   **1. Consumers Use Multiple Tampons Per Day**

2           40. The Product labels specify that a single tampon should be used “FOR 8  
3 HOURS MAXIMUM” and for “UP TO 8 hr”.

4           41. The labels of the Products also provide information about Toxic Shock  
5 Syndrome (“TSS”).

6           42. The labels of the Products state: “THE RISK OF TOXIC SHOCK  
7 SYNDROME (TSS) INCREASES WITH HIGHER ABSORBENCY. IN ORDER TO  
8 REDUCE YOUR RISK OF TSS, YOU SHOULD USE THE LOWEST  
9 ABSORBENCY THAT MEETS YOUR NEEDS.”

10          43. Based on the instruction to use a single tampon for a maximum of 8 hours,  
11 consumers will use a minimum of three tampons in a 24-hour period.

12          44. Most consumers of Defendant’s Products, however, use an average of more  
13 than three tampons in a 24-hour period.

14          45. According to Defendant’s tampax.com website, use of “3-6 products per  
15 day (pads or tampons) is normal.”<sup>15</sup>

16          46. According to Defendant’s tampax.com website, “[i]deally, a tampon should  
17 last about 4-6 hours.”<sup>16</sup>

18                   ***2. Ordinary Use of Defendant’s Tampax Pearl Tampons Exposes***  
19                   ***Consumers to Lead in Excess of the MALD***

20                   ***Tampax Pearl Light.***

21          47. The fabric portion of a single Tampax Pearl light tampon weighs an average  
22 of 1.34 grams.

23          48. Each Tampax Pearl light tampon contains approximately .243 mcg of lead.

24          49. If consumers use three Tampax Pearl light tampons in a 24-hour period they  
25 are exposed to approximately .729 mcg of lead, which exceeds the MADL.

26 \_\_\_\_\_  
27 <sup>15</sup> <https://tampax.com/en-us/tampon-truths/best-tampons-sizes-for-heavy-light-flow/>

28 <sup>16</sup> *Id.*

1 50. If consumers use six Tampax Pearl light tampons in a 24-hour period they  
2 are exposed to approximately 1.46 mcg of lead, which is almost three times the MADL.

3 ***Tampax Pearl Regular.***

4 51. The fabric portion of a single Tampax Pearl regular tampon weighs an  
5 average of 1.89 grams.

6 52. Each Tampax Pearl regular tampon contains approximately .342 mcg of  
7 lead.

8 53. If consumers use three Tampax Pearl regular tampons in a 24-hour period  
9 they are exposed to approximately 1.026 mcg of lead or double the MADL.

10 54. If consumers use six Tampax Pearl regular tampons in a 24-hour period  
11 they are exposed to approximately 2.052 mcg of lead, which is more than four times the  
12 MADL.

13 ***Tampax Pearl Super.***

14 55. The fabric portion of a single Tampax Pearl super tampon weighs an  
15 average of 2.65 grams.

16 56. Each Tampax Pearl super tampon contains approximately .480 mcg of lead.

17 57. If consumers use three Tampax Pearl super tampons in a 24-hour period  
18 they are exposed to approximately 1.44 mcg of lead, which is almost three times the  
19 MADL.

20 58. If consumers use six Tampax Pearl super tampons in a 24-hour period they  
21 are exposed to approximately 2.88 mcg of lead, which is almost six times the MADL.

22 ***Tampax Pearl Super Plus.***

23 59. The fabric portion of a single Tampax Pearl super plus tampon weighs an  
24 average of 3.53 grams.

25 60. Each Tampax Pearl super plus tampon contains approximately .639 mcg of  
26 lead, which exceeds the MADL.

27 61. If consumers use three Tampax Pearl super plus tampons in a 24-hour  
28 period they are exposed to approximately 1.92 mcg of lead, which is almost four times



1 the MADL.

2 62. If consumers use six Tampax Pearl super plus tampons in a 24-hour period,  
3 they are exposed to approximately 3.84 mcg of lead, which is almost eight times the  
4 MADL.

5 ***Tampax Pearl Ultra.***

6 63. The fabric portion of a single Tampax Pearl ultra tampon weighs an average  
7 of 4.35 grams.

8 64. Each Tampax Pearl ultra tampon contains approximately .787 mcg of lead,  
9 which exceeds the MADL.

10 65. If consumers use three Tampax Pearl ultra tampons in a 24-hour period they  
11 are exposed to approximately 2.36 mcg of lead, which is almost five times the MADL.

12 66. If consumers use six Tampax Pearl ultra tampons in a 24-hour period they  
13 are exposed to approximately 4.72 mcg of lead, which is almost ten times the MADL.

14 ***3. Ordinary Use of Defendant's Tampax Radiant Tampons Exposes***  
15 ***Consumers to Lead in Excess of the MADL***

16 ***Tampax Radiant Light.***

17 67. The fabric portion of a single Tampax radiant light tampon weighs an  
18 average of 1.348 grams.

19 68. Each Tampax radiant light tampon contains approximately .166 mcg of  
20 lead.

21 69. If consumers use three Tampax radiant light tampons in a 24-hour period  
22 they are exposed to approximately .497 mcg of lead, or to the maximum allowable dose  
23 under the MADL.

24 70. If consumers use six Tampax radiant light tampons in a 24-hour period they  
25 are exposed to approximately .995 mcg of lead, or double the MADL.

26 ***Tampax Radiant Regular.***

27 71. The fabric portion of a single Tampax radiant regular tampon weighs an  
28 average of 1.893 grams.

1           72. Each Tampax radiant regular tampon contains approximately .233 mcg of  
2 lead.

3           73. If consumers use three Tampax radiant regular tampons in a 24-hour period  
4 they are exposed to approximately .699 mcg of lead, or more than the MADL.

5           74. If consumers use six Tampax radiant regular tampons in a 24-hour period  
6 they are exposed to approximately 1.398 mcg of lead, which is almost three times the  
7 MADL.

8           ***Tampax Radiant Super.***

9           75. The fabric portion of a single Tampax radiant super tampon weighs an  
10 average of 2.437 grams.

11           76. Each Tampax radiant super tampon contains approximately .300 mcg of  
12 lead.

13           77. If consumers use three Tampax radiant super tampons in a 24-hour period  
14 they are exposed to approximately .9 mcg of lead, which is almost double the MADL.

15           78. If consumers use six Tampax radiant super tampons in a 24-hour period  
16 they are exposed to approximately 1.8 mcg of lead, which is more than three times the  
17 MADL.

18           ***Tampax Radiant Super Plus.***

19           79. The fabric portion of a single Tampax radiant super plus tampon weighs an  
20 average of 3.542 grams.

21           80. Each Tampax radiant super plus tampon contains approximately .436 mcg  
22 of lead.

23           81. If consumers use three Tampax radiant super plus tampons in a 24-hour  
24 period they are exposed to approximately 1.307 mcg of lead, which is more than double  
25 the MADL.

26           82. If consumers use six Tampax super plus tampons in a 24-hour period they  
27 are exposed to approximately 2.616 mcg of lead, which is more than five times the  
28 MADL.

1                   **C. Other Tampons, Including Tampons Manufactured by Defendant, Do**  
2                   **Not Contain Detectible Levels of Lead**

3                   83. Tampax pure cotton tampons are manufactured by Defendant.

4                   84. Tampax pure cotton tampons are advertised as containing an 100%  
5 ORGANIC cotton core.

6                   85. Based on independent scientific testing and analysis, Defendant’s Tampax  
7 pure cotton tampons contain such a small amount of lead (if any) that the lead is below  
8 the limit of detection.

9                   86. L. brand tampons are manufactured by Defendant.

10                  87. L. brand tampons are advertised as containing an 100% Organic Cotton  
11 Core.

12                  88. Based on independent scientific testing and analysis, L. brand tampons  
13 contain such a small amount of lead (if any) that the lead is below the limit of detection.

14                  89. Independent scientific testing and analysis of several other brands of  
15 tampons that are not manufactured by Defendant, which are advertised as containing  
16 100% organic cotton, demonstrates that the tampons contain such a small amount of lead  
17 (if any) that the lead is below the limit of detection.

18                  90. Defendant has the ability to manufacture tampons that do not contain lead.

19                  91. Defendant willfully or negligently manufactures the Products such that they  
20 contain a detectible, substantial amount of lead.

21                   **D. Defendant Fails to Disclose and Materially Omits that the Products**  
22                   **Contain Lead**

23                  92. Defendant fails to disclose the lead in the Products in violation of California  
24 consumer protection law.

25                  93. Defendant’s conduct is unlawful, misleading and constitutes a material  
26 omission, including because the Products pose a hidden health risk.

27                  94. Defendant had and has an independent duty to disclose the lead in the  
28 Products based on the unreasonable safety hazard associated with using the Products  
and/or because the Products are unfit for use.

1 95. As set forth herein, lead is dangerous to human health, and particularly  
2 dangerous based on the manner of use of the Products.

3 96. Based on the lead contained in the Products, Defendant is required to  
4 provide a “clear and reasonable” warning to consumers, including by “labeling a  
5 consumer product” pursuant to Proposition 65.

6 97. Despite this express requirement, there is no warning on the products.

7 98. Although Plaintiffs do not bring claims pursuant to Proposition 65,  
8 Defendant’s violation of Proposition 65 provides a predicate basis for violation of  
9 California’s Unfair Competition Law, as set forth below.

10 **E. Reasonable Consumers Are Likely to Be Misled and Deceived by**  
11 **Defendant’s Omission that the Products Contain Lead**

12 99. Tampax tampons are trusted brands and household names.

13 100. Reasonable consumers of Defendant’s Products, like Plaintiffs, have no  
14 reason to suspect or know that the Products contain lead.

15 101. Defendant knew, or should have known, that the Products contain lead and  
16 willfully or intentionally failed to disclose this fact to consumers.

17 102. Defendant owed consumers a duty of care to adequately test its Products  
18 for the presence of heavy metals and, if any such metals were found, to remediate or  
19 disclose their presence.

20 103. Defendant, however, failed to disclose and materially omitted that the  
21 Products contain lead.

22 104. The disclosure of lead in the Products would negatively impact Defendant’s  
23 sales of the Products and its bottom line.

24 105. If consumers knew that the Products contain lead, particularly in the  
25 amounts set forth herein, they would not purchase the Products.

26 106. There are other menstrual options besides Defendant’s Products available  
27 on the market.  
28

1 107. Consumers, however, are deprived of making the informed choice between  
2 the Products and other menstrual products because Defendant fails to disclose the  
3 presence of lead in the Products.

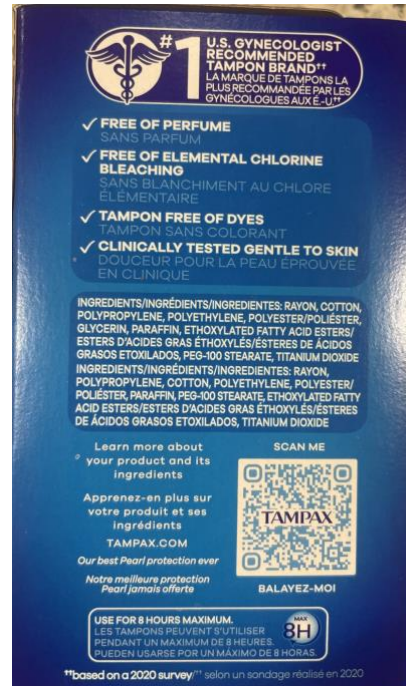
4 108. Plaintiffs and reasonable consumers suffered economic injury based on the  
5 purchase price of the Products.

6 109. If Plaintiffs had known the truth about Defendant’s Products, they would  
7 not have purchased the Products.

8 110. Plaintiffs and Class members were harmed based on money spent to  
9 purchase the Products, which they otherwise would not have spent if they had known  
10 that the Products contain lead.

11 **F. Reasonable Consumers Are Likely to Be Misled by Defendant’s Label**  
12 **Representations**

13 111. The following are examples of the box label images of the Tampax Pearl  
14 and Tampax radiant Products:





112. As depicted above, the Tampax Pearl and Tampax radiant Products contain the following prominent, uniform Representations that the Products are: (i) “#1 U.S. GYNECOLOGIST RECOMMENDED TAMPON BRAND” (ii) “FREE OF PERFUME”; (iii) “FREE OF ELEMENTAL CHLORINE BLEACHING”; (iv) “TAMPON FREE OF DYES”; and (v) “CLINICALLY TESTED GENTLE TO SKIN”.

113. The Representations lead reasonable consumers to believe that the Products are safe to use, including because they are free from potentially harmful elements and ingredients.

114. The Representations are misleading based on the lead contained in the Products.

115. The Representations are advertising statements.

1 116. The Representations are not governed by any government or FDA  
2 regulation or requirement.

3 117. Defendant voluntarily makes the Representations on the labels of the  
4 Products to appeal to consumers and to increase sales of the Products.

5 **IV. PARTIES**

6 118. Plaintiff Allison Barton is a citizen of California who purchased the  
7 Tampax Pearl Products in this judicial district during the class period. Plaintiff's claim  
8 is typical of all Class members in this regard.

9 119. The advertising and labeling on the package of the Tampax Pearl Products  
10 purchased by Plaintiff Barton, including the Representations, is typical of the  
11 advertising, labeling and representation of the Tampax Pearl Products purchased by  
12 members of the Class.

13 120. The price paid by Plaintiff Barton for the Tampax Pearl Products is typical  
14 of the price paid by members of the Class.

15 121. Plaintiff Jana Moreno is a citizen of California who purchased the Tampax  
16 radiant Products in this judicial district during the class period. Plaintiff's claim is typical  
17 of all Class members in this regard.

18 122. The advertising and labeling on the package of the Tampax radiant Products  
19 purchased by Plaintiff Moreno, including the Representations, is typical of the  
20 advertising, labeling and representation of the Tampax radiant Products purchased by  
21 members of the Class.

22 123. The price paid by Plaintiff Moreno for the Tampax radiant Products is  
23 typical of the price paid by members of the Class.

24 124. Defendant The Procter & Gamble Company is an Ohio corporation with its  
25 principal place of business in Cincinnati, Ohio, and is a citizen of Ohio.

26 125. Defendant and its agents manufacture, market, distribute, label, promote,  
27 advertise and sell the Products.

28

1 126. At all times material hereto, Defendant was conducting business in the  
2 United States, including in California, through its services as a manufacturer and supplier  
3 to various stores in California and by, among other things, maintaining agents for the  
4 customary transaction of business in California.

5 127. Defendant and its agents promoted, marketed and sold the Products at issue  
6 in this jurisdiction and in this judicial district.

7 128. The deceptive acts and omissions giving rise to Plaintiffs' claims occurred  
8 in this jurisdiction and in this judicial district.

9 129. The unfair, unlawful, deceptive, and misleading advertising and labeling of  
10 the Products was prepared and/or approved by Defendant and its agents, and was  
11 disseminated by Defendant and its agents through labeling and advertising containing  
12 the misrepresentations and omission alleged herein.

13 **A. Plaintiffs Were Misled and Injured by Defendant's Misconduct**

14 ***Plaintiff Allison Barton***

15 130. Plaintiff Allison Barton purchased the Tampax Pearl Products on numerous  
16 occasions during the Class Period, including in the following sizes: light, regular and  
17 super.

18 131. To the best of her recollection, Plaintiff Barton purchased the Tampax Pearl  
19 Products from CVS, Target, Rite Aid and Walgreens stores located in this judicial  
20 district.

21 132. The price paid by Plaintiff Barton for the Tampax Pearl Products varied  
22 based on the number of tampons included in the box, however, to the best of her  
23 recollection, the prices ranged from approximately \$5.99 to \$13.99 per box.

24 133. To the best of her recollection, Plaintiff Barton purchased the Tampax Pearl  
25 Products from a CVS store located in this judicial district between April and July of  
26 2024.

27 134. Plaintiff Barton purchased the Products for personal use.  
28



1 135. At the time of purchase, Plaintiff Barton viewed the label box images,  
2 including the Representations.

3 136. At the time of purchase, Plaintiff Barton did not know, and had no reason  
4 to know, that the Products contain lead.

5 137. Acting reasonably under the circumstances, Plaintiff Barton relied on the  
6 reputation of the Products and the Representations and believed that the Products would  
7 be free from harmful effect and safe to use.

8 138. Unbeknownst to Plaintiff at the time of purchase, the Products contain lead.

9 139. Defendant materially omitted the fact that the Products contain lead.

10 140. Had Plaintiff Barton known at the time of purchase that the Products  
11 contain lead, Plaintiff would not have purchased the Products.

12 141. Defendant continues to sell the misbranded Products.

13 142. Plaintiff Barton would like to purchase the Products in the future if the  
14 Products did not contain lead.

15 143. Plaintiff Barton continues to suffer harm because she is not able to rely on  
16 the labeling and advertising of the Products for their truth, and thus is unable to  
17 determine whether she can purchase the Products in the future.

18 144. Unless Defendant is enjoined from failing to disclose the presence of lead  
19 in the Products in the future, Plaintiff Barton and consumers will not be able to  
20 reasonably determine whether the lead in the Products has been address and remedied.

21 145. Accordingly, Plaintiff Barton's legal remedies are inadequate to prevent  
22 future injuries.

23 ***Plaintiff Jana Moreno***

24 146. Plaintiff Jana Moreno purchased the Tampax radiant Products on numerous  
25 occasions during the Class Period in the regular size.

26 147. To the best of her recollection, Plaintiff Moreno purchased the Tampax  
27 radiant Products from CVS and Target stores located in this judicial district, including  
28 in 2020 and 2021.

1           148. The price paid by Plaintiff Moreno for the Tampax radiant Products varied  
2 based on the number of tampons included in the box, however, to the best of her  
3 recollection, the prices ranged from approximately \$8.00 to \$13.00 per box.

4           149. Plaintiff Moreno purchased the Products for personal use.

5           150. At the time of purchase, Plaintiff Moreno viewed the label box images,  
6 including the Representations.

7           151. At the time of purchase, Plaintiff Moreno did not know, and had no reason  
8 to know, that the Products contain lead.

9           152. Acting reasonably under the circumstances, Plaintiff Moreno relied on the  
10 reputation of the Products and the Representations and believed that the Products would  
11 be free from harmful effect and safe to use.

12           153. Unbeknownst to Plaintiff at the time of purchase, the Products contain lead.

13           154. Defendant materially omitted the fact that the Products contain lead.

14           155. Had Plaintiff Moreno known at the time of purchase that the Products  
15 contain lead, Plaintiff would not have purchased the Products.

16           156. Defendant continues to sell the misbranded Products.

17           157. Plaintiff Moreno would like to purchase the Products in the future if the  
18 Products did not contain lead.

19           158. Plaintiff Moreno continues to suffer harm because she is not able to rely on  
20 the labeling and advertising of the Products for their truth, and thus is unable to  
21 determine whether she can purchase the Products in the future.

22           159. Unless Defendant is enjoined from failing to disclose the presence of lead  
23 in the Products in the future, Plaintiff Moreno and consumers will not be able to  
24 reasonably determine whether the lead in the Products has been address and remedied.

25           160. Accordingly, Plaintiff Moreno's legal remedies are inadequate to prevent  
26 future injuries.

27

28

1 **V. CLASS DEFINITION AND CLASS ALLEGATIONS**

2 161. Plaintiffs bring this action as a class action pursuant to Federal Rules of  
3 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of themselves, on behalf of all others  
4 similarly situated, and as a member of the Class defined as follows:

5 All citizens of California who, within four years prior to the filing  
6 of the initial Complaint, purchased Defendant’s Products in the  
7 State of California and who do not claim any personal injury from  
using the Products (the “Class”).

8 162. Excluded from the Class are: (i) Defendant, its assigns, successors, and  
9 legal representatives; (ii) any entities in which Defendant has a controlling interest;  
10 (iii) federal, state, and/or local governments, including, but not limited to, their  
11 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or  
12 subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a  
13 bankruptcy discharge in the last three years; and (v) any judicial officer presiding over  
14 this matter and their staff, and persons within the third degree of consanguinity to such  
15 judicial officer.

16 163. Plaintiffs reserve the right to amend or otherwise alter the class definition  
17 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in  
18 response to facts learned through discovery, legal arguments advanced by Defendant, or  
19 otherwise.

20 164. This action is properly maintainable as a class action pursuant to Federal  
21 Rule of Civil Procedure 23 for the reasons set forth below.

22 165. **Numerosity**: Members of the Class are so numerous that joinder of all  
23 members is impracticable. Upon information and belief, the Class consists of hundreds  
24 of thousands of purchasers throughout the State of California. Accordingly, it would be  
25 impracticable to join all members of the Class before the Court.

26 166. **Common Questions Predominate**: There are numerous and substantial  
27 questions of law or fact common to all members of the Class that predominate over any  
28 individual issues. Included within the common questions of law or fact are:

- 1 • Whether Defendant’s omission and failure to disclose that the Products
- 2 contain lead is likely to be material to reasonable consumers;
- 3 • Whether Defendant’s omission and failure to disclose that the Products
- 4 contain lead is likely to deceive reasonable consumers;
- 5 • Whether Defendant engaged in unlawful, unfair or deceptive business
- 6 practices by advertising, labeling and selling the Products;
- 7 • Whether Defendant violated California Bus. & Prof. Code § 17200, *et*
- 8 *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and/or the Consumers
- 9 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 10 • Whether Plaintiffs and the Class have sustained damage as a result of
- 11 Defendant’s unlawful conduct; and
- 12 • The proper measure of damages sustained by Plaintiffs and the Class.

13 167. **Typicality:** Plaintiffs’ claims are typical of the claims of the members of  
14 the Class they seek to represent because Plaintiffs, like the Class members, purchased  
15 Defendant’s Products. Defendant’s unlawful, unfair and/or fraudulent actions concern  
16 the same business practices described herein irrespective of where they occurred or were  
17 experienced. Plaintiffs and the Class sustained similar injuries arising out of Defendant’s  
18 conduct. Plaintiffs’ and Class member’s claims arise from the same practices and course  
19 of conduct and are based on the same legal theories.

20 168. **Adequacy:** Plaintiffs are adequate representatives of the Class they seek to  
21 represent because their interests do not conflict with the interests of the members of the  
22 Class Plaintiffs seek to represent. Plaintiffs will fairly and adequately protect the  
23 interests of the members of the Class and have retained counsel experienced and  
24 competent in the prosecution of complex class actions, including complex questions that  
25 arise in consumer protection litigation.

26 169. **Superiority and Substantial Benefit:** A class action is superior to other  
27 methods for the fair and efficient adjudication of this controversy, since individual  
28 joinder of all members of the Class is impracticable and no other group method of

1 adjudication of all claims asserted herein is more efficient and manageable for at least  
2 the following reasons:

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

21 170. Because Plaintiffs seek relief for all members of the Class, the prosecution  
22 of separate actions by individual members would create a risk of inconsistent or varying  
23 adjudications with respect to individual members of the Class, which would establish  
24 incompatible standards of conduct for Defendant.

25 171. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P.  
26 23(b)(3) are met as questions of law or fact common to Class members predominate over  
27 any questions affecting only individual members, and a class action is superior to other  
28 available methods for fairly and efficiently adjudicating the controversy.

1 172. Plaintiffs and Plaintiffs’ counsel are unaware of any difficulties that are  
2 likely to be encountered in the management of this action that would preclude its  
3 maintenance as a class action.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Unfair and Unlawful Business Acts and Practices**  
7 **(Business and Professions Code § 17200, *et seq.*)**  
8 **(for Plaintiffs and the Class)**

9 173. Plaintiffs re-allege and incorporate by reference the allegations contained  
10 in the preceding paragraphs of this complaint, as though fully set forth herein.

11 174. Defendant’s conduct constitutes an unfair business act and practice  
12 pursuant to California Business & Professions Code §§ 17200, *et seq.* (the “UCL”). The  
13 UCL provides, in pertinent part: “Unfair competition shall mean and include unlawful,  
14 unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
15 advertising . . . .”

16 175. Plaintiffs bring this claim seeking restitution of the amounts Defendant  
17 acquired through the unfair, unlawful, and fraudulent business practices, as described  
18 herein; and injunctive relief to stop Defendant’s misconduct, as described herein.

19 176. Defendant’s knowing conduct, as alleged herein, constitutes an “unfair”  
20 and/or “fraudulent” business practice, as set forth in California Business & Professions  
21 Code §§ 17200-17208.

22 177. Defendant’s conduct was and continues to be unfair and fraudulent because,  
23 directly or through its agents and employees, Defendant omitted and failed to disclose  
24 that the Products contain lead.

25 178. Defendant was and is aware that its omission is material to consumers.

26  
27 179. Defendant was and is aware that its omission is misleading based on the  
28 Representations made on the Product labels, as described and depicted herein.

1           180. Defendant had an improper motive—to derive financial gain at the expense  
2 of accuracy or truthfulness—in its practices related to the labeling and advertising of the  
3 Products.

4           181. There were reasonable alternatives available to Defendant to further  
5 Defendant’s legitimate business interests, other than the conduct described herein.

6           182. Defendant’s misrepresentation and omission of material facts, as set forth  
7 herein, also constitute an “unlawful” practice because they violate California Civil Code  
8 §§ 1572, 1573, 1709, 1710, 1711, and 1770 and the laws and regulations cited herein, as  
9 well as the common law.

10           183. Defendant’s conduct in making the omission described herein constitutes a  
11 knowing failure to adopt policies in accordance with and/or adherence to applicable  
12 laws, as set forth herein, all of which are binding upon and burdensome to its  
13 competitors.

14           184. This conduct engenders an unfair competitive advantage for Defendant,  
15 thereby constituting an unfair business practice under California Business & Professions  
16 Code §§ 17200-17208.

17           185. In addition, Defendant’s omission that the Products contain lead constitutes  
18 an “unlawful” practice because, as described herein, the Product labels fail to comply  
19 with California’s Proposition 65.

20           186. Accordingly, Proposition 65 provides a predicate violation for a violation  
21 of the UCL.

22           187. Plaintiffs and members of the Class could not have reasonably avoided  
23 injury. Defendant’s uniform Representations and material omission regarding the  
24 Products were likely to deceive, and Defendant knew or should have known that its  
25 Representations and omission were misleading.

26  
27           188. Plaintiffs purchased the Products with the reasonable belief that the  
28 Products were safe and did not contain harmful elements or ingredients, and without

1 knowledge of Defendant’s material omission that the Products contain lead.

2 189. Plaintiffs and members of the Class have been directly and proximately  
3 injured by Defendant’s conduct in ways including, but not limited to, the monies paid to  
4 Defendant for the Products, interest lost, and consumers’ unwitting support of a business  
5 enterprise that promotes deception and undue greed to the detriment of consumers, such  
6 as Plaintiffs and Class members.

7 190. As a result of the business acts and practices described above, Plaintiffs and  
8 members of the Class are entitled to such Orders and judgments that may be necessary  
9 to disgorge Defendant’s ill-gotten gains and to restore to any person in interest any  
10 money paid for the Products as a result of the wrongful conduct of Defendant.

11 191. Pursuant to Civil Code § 3287(a), Plaintiffs and the Class are further  
12 entitled to pre-judgment interest as a direct and proximate result of Defendant’s unfair  
13 and fraudulent business conduct. The amount on which interest is to be calculated is a  
14 sum certain and capable of calculation, and Plaintiffs and the Class are entitled to interest  
15 in an amount according to proof.

16 192. As a result of the business acts and practices described above, pursuant to  
17 § 17203, Plaintiffs and members of the Class are entitled to an order enjoining such  
18 future wrongful conduct on the part of Defendant.

19 **SECOND CAUSE OF ACTION**  
20 **Deceptive Advertising Practices**  
21 **(California Business & Professions Code §§ 17500, *et seq.*)**  
22 ***(for Plaintiffs and the Class)***

23 193. Plaintiffs re-allege and incorporate by reference the allegations contained  
24 in the preceding paragraphs of this complaint, as though fully set forth herein.

25 194. California Business & Professions Code § 17500 prohibits “unfair,  
26 deceptive, untrue or misleading advertising . . . .”

27 195. Defendant violated § 17500 by making the Representations and failing to  
28 disclose that the Products contain lead; and by representing that the Products possess



1 characteristics and value that they do not have.

2 196. Defendant's deceptive practices were designed to induce reasonable  
3 consumers like Plaintiffs to purchase the Products.

4 197. Defendant's uniform Representations and material omission that the  
5 Products contain lead were likely to deceive, and Defendant knew or should have known  
6 that they were misleading.

7 198. Plaintiffs purchased the Products in reliance on the Product labeling,  
8 including that the Product labeling was accurate as alleged herein, and without  
9 knowledge of Defendant's misrepresentations and omission.

10 199. Plaintiffs and members of the Class have been directly and proximately  
11 injured by Defendant's conduct in ways including, but not limited to, the price paid to  
12 Defendant for the Products, interest lost, and consumers' unwitting support of a business  
13 enterprise that promotes deception and undue greed to the detriment of consumers, such  
14 as Plaintiffs and Class members.

15 200. The above acts of Defendant were and are likely to deceive reasonable  
16 consumers in violation of § 17500.

17 201. In making the Representations and omission alleged herein, Defendant  
18 knew or should have known that the Representations and omission were deceptive and/or  
19 misleading and acted in violation of § 17500.

20 202. As a direct and proximate result of Defendant's unlawful conduct in  
21 violation of § 17500 Plaintiffs and members of the Class request an Order requiring  
22 Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies  
23 wrongfully acquired by Defendant by means of such acts of false advertising, as well as  
24 interests and attorneys' fees.

25  
26 203. As a direct and proximate result of Defendant's unlawful conduct in  
27 violation of § 17500, Plaintiffs and members of the Class request an Order pursuant to §  
28 17535 enjoining such future wrongful conduct on the part of Defendant.

1                                   **THIRD CAUSE OF ACTION**  
2                                   **Consumer Legal Remedies Act**  
3                                   **(Cal. Civ. Code § 1750, *et seq.*)**  
4                                   ***(for Plaintiffs and the Class)***

5           204. Plaintiffs re-allege and incorporate by reference the allegations contained  
6 in the preceding paragraphs of this complaint, as though fully set forth herein.

7           205. Plaintiffs bring this action pursuant to California’s Consumer Legal  
8 Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”).

9           206. The CLRA provides that “unfair methods of competition and unfair or  
10 deceptive acts or practices undertaken by any person in a transaction intended to result  
11 or which results in the sale or lease of goods or services to any consumer are unlawful.”

12           207. The Products are “goods,” as defined by the CLRA in California Civil Code  
13 §1761(a).

14           208. Defendant is a “person,” as defined by the CLRA in California Civil Code  
15 §1761(c).

16           209. Plaintiffs and members of the Class are “consumers,” as defined by the  
17 CLRA in California Civil Code §1761(d).

18           210. Purchase of the Products by Plaintiffs and members of the Class are  
19 “transactions,” as defined by the CLRA in California Civil Code §1761(e).

20           211. Defendant violated Section 1770(a)(5) by representing that the Products  
21 have “characteristics, . . . uses [or] benefits . . . which [they] do not have” by making the  
22 Representations and materially omitting and failing to disclose that the Products contain  
23 lead, as described herein.

24           212. Defendant also violated section 1770(a)(7) by representing that the  
25 Products “are of a particular standard, quality, or grade . . . if they are of another” by  
26 making the Representations and materially omitting and failing to disclose that the  
27 Products contain lead.  
28

1           213. In addition, Defendant violated section 1770(a)(9) by advertising the  
2 Products “with intent not to sell them as advertised” in that the Products are  
3 misrepresented and misbranded as described herein.

4           214. Defendant’s uniform Representations and omission regarding the Products  
5 were likely to deceive, and Defendant knew or should have known that its  
6 Representations and omission were deceptive and/or misleading.

7           215. Plaintiffs and members of the Class relied on Defendant’s unlawful conduct  
8 and could not have reasonably avoided injury.

9           216. Plaintiffs and members of the Class were unaware of the existence of facts  
10 that Defendant suppressed and failed to disclose, including that the Products contain  
11 lead.

12           217. Plaintiffs and members of the Class would not have purchased the Products  
13 had they known the truth about the lead in the Products.

14           218. Plaintiffs and members of the Class have been directly and proximately  
15 injured by Defendant’s conduct.

16           219. Such injury includes, but is not limited to, the purchase price of the Products  
17 and/or the price of the Products at which they were offered.

18           220. Moreover, Defendant’s conduct is malicious, fraudulent, and/or wanton in  
19 that Defendant intentionally misled and withheld material information from consumers,  
20 including to increase the sale of the Products.

21           221. Pursuant to California Civil Code § 1782(a), on July 24, 2024, Plaintiff  
22 Barton on her own behalf, and on behalf of members of the Class, provided notice to  
23 Defendant of the alleged violations of the Consumer Legal Remedies Act by notice letter  
24 setting forth Plaintiff’s claims.

25           222. On July 29, 2024, Plaintiff Barton on her own behalf, and on behalf of  
26 members of the Class, filed the original Class Action Complaint in this case, setting forth  
27 Plaintiff’s claims. *See* Doc. No. 1.

28           223. Despite giving Defendant more than 30-days from the date of the

1 notification letter and original Class Action Complaint to provide appropriate relief for  
2 violations of the CLRA, Defendant has failed to provide any such relief. As such,  
3 Plaintiffs seek compensatory, monetary and punitive damages, and requests that this  
4 Court enter such Orders or judgments as may be necessary to restore to any person in  
5 interest any money which may have been acquired by means of such unfair business  
6 practices, and for such other relief as is provided in California Civil Code § 1780 and in  
7 the Prayer for Relief.

8 224. As a direct and proximate result of Defendant’s unlawful conduct in  
9 violation of the CLRA, Plaintiffs and members of the Class request an Order pursuant  
10 to § 1780 enjoining such future wrongful conduct on the part of Defendant.

11 **PRAYER**

12 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
13 situated, pray for judgment against Defendant as follows:

14 A. For an order certifying the Class under Rule 23 of the Federal Rules of Civil  
15 Procedure; naming Plaintiffs as representatives of the Class; and naming Plaintiffs’  
16 attorneys as Class Counsel to represent the Class;

17 B. For an order declaring that Defendant’s conduct violates the statutes and  
18 laws referenced herein;

19 C. For an order awarding, as appropriate, compensatory and monetary  
20 damages to Plaintiffs and the Class;

21 D. For an order awarding injunctive relief;

22 E. For an order awarding attorneys’ fees and costs;

23 F. For an order awarding pre-and post-judgment interest; and

24 G. For such other and further relief as the Court deems just and proper.

25  
26  
27  
28

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: September 4, 2024

Respectfully submitted,

KAMBERLAW, LLP

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