

1 Thiago M. Coelho (State Bar No. 324715)
thiago.coelho@wilshirelawfirm.com
2 Shahin Rezvani (State Bar No. 199614)
shahin.rezvani@wilshirelawfirm.com
3 Chumahan B. Bowen (State Bar No. 268136)
chumahan.bowen@wilshirelawfirm.com
4 Jennifer M. Leinbach (State Bar No. 281404)
jennifer.leinbach@wilshirelawfirm.com
5 Reuben Aguirre (State Bar No. 319699)
reuben.aguirre@wilshirelawfirm.com
6

7 **WILSHIRE LAW FIRM, PLC**
3055 Wilshire Blvd., 12th Floor
8 Los Angeles, California 90010
Telephone: (213) 381-9988
9 Facsimile: (213) 381-9989
10 *Attorneys for Plaintiff
and the Proposed Class*

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

13 YOLANDA PITRE, individually, and on behalf
14 of all others similarly situated,

15 *Plaintiff,*

16 v.

17 COLGATE-PALMOLIVE COMPANY and
18 TOM'S OF MAINE, INC.,

19 *Defendants.*

Case No.:

CLASS ACTION COMPLAINT:

1. INTENTIONAL MISREPRESENTATION;
2. NEGLIGENT MISREPRESENTATION;
3. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. & PROF. CODE §§ 17500 ET. SEQ.;
4. VIOLATION OF THE UNFAIR COMPETITION LAW (“UCL”), CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.;
5. BREACH OF EXPRESS WARRANTY;
6. BREACH OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT (“CLRA”) CALIFORNIA CIVIL CODE § 1770(A)(5)
7. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY.

DEMAND FOR JURY TRIAL

1 Plaintiff Yolanda Pitre (“Plaintiff”) brings this class action against Defendants Colgate-
2 Palmolive Company and Tom’s of Maine, Inc. (each a “Defendant,” and collectively,
3 “Defendants”).

4 **INTRODUCTION**

5 1. This is a class action lawsuit brought by Plaintiff, and others similarly situated, who
6 purchased toothpaste products from Defendants. Defendants distribute, market and sell Tom’s of
7 Maine toothpaste products, which they tout as safe, healthy, natural, and effective. Defendants’
8 toothpaste products were knowingly contaminated by harmful mold, disease-causing bacteria, and
9 other contaminants. Plaintiff and the putative class suffered economic damages due to Defendants’
10 misconduct and seek injunctive relief and full restitution for the purchase price of the contaminated
11 toothpaste products.

12 **JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over this matter under the Class Action Fairness Act
14 (“CAFA”), 28 U.S.C. § 1332(d)(2)(A), as the amount in controversy exceeds \$5 million, exclusive
15 of interests and costs; it is a class action of over 100 members; and the Plaintiff is a citizen of a
16 state different from at least one Defendant.

17 3. This Court has personal jurisdiction over Defendants. Defendants have sufficient
18 minimum contacts with the state of California and purposefully availed themselves, and continue
19 to avail themselves, of the jurisdiction of California through the privilege of conducting their
20 business ventures in the state of California, thus rendering the exercise of jurisdiction by the Court
21 permissible under traditional notions of fair play and substantial justice.

22 4. Venue is proper in this district under 28 U.S.C. § 1391(a) because a substantial part
23 of the events or omissions giving rise to Plaintiff’s claims occurred in this district, as Defendants
24 do business throughout this district. The plaintiff made her purchase of Tom’s of Maine toothpaste
25 in Redding, California, from a local retailer in this district and used the toothpaste in this district.

26 **THE PARTIES**

27 5. Plaintiff Yolanda Pitre is a resident of San Mateo, California who purchased Tom’s
28 of Maine Simply White Mint Paste on or around March 1, 2024, from a retailer in this district.

1 6. Before her purchase, Plaintiff saw and reviewed Defendants’ advertising claims on
2 the packaging and labeling itself, and she made her purchase of the toothpaste in reliance thereon.
3 Plaintiff specifically relied upon representations made by Defendants that the product was
4 “naturally sourced,” “good for you,” and created with “rigorous ingredient and packaging
5 standards.” Plaintiff did not receive the promised benefits or the total value of her purchase.
6 Plaintiff would not have purchased the product had she known it was contaminated and was
7 economically injured by Defendants’ misrepresentations, which induced her to purchase the
8 product at a premium. Plaintiff would purchase the product again if she was assured the product
9 was not contaminated by exposure to mold and bacteria.

10 7. Plaintiff reserves the right to seek leave to amend this complaint to add new
11 Plaintiffs, if necessary.

12 8. Defendant Colgate Palmolive Company (“Colgate”) is a publicly traded company
13 whose principal place of business is located in New York.

14 9. Defendant Tom’s of Maine, Inc. (“Tom’s”) is a U.S. manufacturing company whose
15 principal place of business is located in Kennebunk, Maine. It is a majority-owned subsidiary of
16 Colgate.

17 10. Defendants, at all times herein mentioned, were business entities qualified to do
18 business and actually conducting business throughout the State of California, including in this
19 district.

20 11. Plaintiff reserves the right to amend this Complaint to add different or additional
21 defendants, including without limitation any officer, director, employee, supplier, or distributor of
22 Defendants who has knowingly and willfully aided, abetted, or conspired in the false and deceptive
23 conduct alleged herein.

24 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 12. Tom’s is based in Kennebunk, Maine, and is a subsidiary of the multinational
26 conglomerate Colgate. Tom’s’ contaminated toothpaste products are sold in major retailers in
27 California such as Sprouts Farmers Market, Whole Foods, Target, Walmart, including major
28 grocery chains, health foods stores, and other retailers.

1 13. Tom's holds itself out at adhering to a "Stewardship Model" in its approach to
2 "ingredient selection when creating safe and effective products for you. We work very hard to find
3 and combine the best naturally sourced and naturally derived ingredients."¹

4 14. Tom's claims that its ingredient processing supports human health, and that its
5 products are safe, healthy, natural, and effective. *Id.*

6 15. In November 2024, the US Food and Drug Administration ("FDA") issued a
7 warning to Defendants after it found three types of disease-causing bacteria, powder residues, and
8 black mold-like substances at Tom's of Maine facility where it manufactures toothpaste in Sanford,
9 Maine. (See FDA Letter attached as **Exhibit 1**).² At least three species of harmful bacteria were
10 found: 1) *Paracoccus yeei*, 2) *Pseudomonas aeruginosa*, and 3) *Ralstonia insidiosa*.

11 16. Three brands of Tom's' toothpaste exposed to mold and bacteria contamination in
12 Tom's' manufacturing process were identified by the FDA: Tom's Simply White Mint Paste,
13 Tom's Wicked Cool! Anticavity Toothpaste, and Tom's Silly Strawberry Anticavity, ("the
14 contaminated toothpaste product(s)"). *Id.*

15 17. In addition, the FDA stated that Tom's had received hundreds of consumer
16 complaints, which it failed to investigate. The warning letter mandates that Tom's must submit
17 multiple documents, including assessments and remediation plans for its operations, contamination
18 hazards, testing methods, and cleaning procedures. *Id.*

19 18. The FDA said despite the results of microbial tests it conducted, Tom's continued
20 to distribute merchandise based on the test results of final products, but did not investigate the
21 quality of water used in the process. *Id.*

22 19. Defendant Tom's responded to the FDA by stating it is retrospectively looking into
23 the incidents, and that the detection of the bacteria *Paracoccus yeei* in Tom's Wicked Cool!
24 Anticavity Toothpaste was due to the "sample contamination" of the testing lab's sample.

25
26 _____
¹ *Stewardship Model*, TOM'S OF MAINE, <https://www.tomsomaine.com/our-promise/stewardship-model> (last
27 visited Dec. 20, 2024).

² U.S. Food and Drug Administration, *Warning Letter Colgate-Palmolive/Tom's of Maine, Inc.*, (Nov. 5, 2024),
28 <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/colgate-palmolivetoms-maine-inc-687043-11052024> (last visited Dec. 20, 2024).

1 However, the FDA found no evidence to support this claim, particularly in light of the fact that
2 “the initial investigation stated no laboratory errors were identified.” *Id.*

3 20. The bacteria *Pseudomonas aeruginosa*—which can cause infections in the blood
4 and lungs—was also recovered in multiple Tom’s’ water samples from June 2021 to October 2022.
5 That water was used to manufacture Tom’s Simply White Clean Mint Paste, and for the final rinse
6 of numerous equipment cleaning processes, according to the FDA. *Id.*

7 21. The bacteria *Ralstonia insidiosa* was also recovered from water points of use. The
8 FDA found that batches manufactured after these incidents were released based on the microbial
9 testing of the finished over-the-counter product, despite the quality of the water used as a
10 component or to clean the equipment. The FDA warned that Tom’s’ internal investigation
11 concluded, without sufficient justification, that the growth was due to sample contamination. *Id.*

12 22. An FDA investigator observed a “black mold-like substance” at the base of a hose
13 reel and behind a water storage tank at the facility, which was within a foot away from equipment
14 used for toothpaste production. *Id.*

15 23. The FDA investigator observed powder residues at a stainless-steel tray adjacent to
16 the location used to compound Tom’s Silly Strawberry Anticavity toothpaste. *Id.*

17 24. The FDA also found that Tom’s failed to investigate hundreds of product complaints
18 regarding odor, color, and taste because they did not indicate a trend. According to the FDA, Tom’s
19 responded by saying it handles complaints with a “risk-based approach,” and that individual
20 complaints are not enough to deem a product inadequate. *Id.*

21 25. The FDA’s letter also stated: “Water is a major ingredient in many of your OTC
22 drug products. It is essential that you employ a water system that is robustly designed, and that you
23 effectively control, maintain, and monitor the system to ensure it consistently produces water
24 suitable for pharmaceutical use.” *Id.*

25 26. When purchasing Tom's toothpaste, Plaintiff reviewed the accompanying labels and
26 disclosures and understood them as representations and warranties by the manufacturer that the
27 toothpaste products were properly manufactured, free from defects, safe for their intended use, and
28 not adulterated or misbranded. Plaintiff relied on these representations and warranties in deciding

1 to purchase the toothpaste products manufactured by Defendants, and these representations and
2 warranties were part of the basis of the bargain.

3 27. Specifically, before her purchase, Plaintiff saw and reviewed Defendants’
4 advertising claims on the packaging and labeling itself, and she made her purchase of the
5 contaminated toothpaste in reliance thereon. Plaintiff specifically relied upon representations made
6 by Defendants that the product was “naturally sourced,” “good for you,” and created with “rigorous
7 ingredient and packaging standards.”

8 28. Had Plaintiff known that any amount of harmful mold or bacteria was or risked
9 being contained in the toothpaste products she purchased, she would not have purchased and used
10 the products at all or would have paid significantly less for them. Plaintiff would have never paid
11 a premium for toothpaste products that contained or were at risk of containing mold and bacteria.

12 29. Plaintiff suffered economic injury when she spent money to purchase toothpaste
13 products she would not otherwise have purchased, or paid less for, absent Defendants’ misconduct,
14 as alleged herein. Members of the putative class have likewise suffered economic injuries in that
15 they have spent money to purchase toothpaste products they would not otherwise have purchased,
16 or paid less for, absent Defendants’ misconduct, as alleged herein.

17 **CLASS ACTION ALLEGATIONS**

18 30. Class Definition: Plaintiff brings this action on behalf of herself and the following
19 Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3). Specifically, the
20 Classes are defined as:

21 **The National Class:** All persons in the United States who purchased the contaminated
22 Tom’s of Maine toothpaste products from the time beginning three years before this
23 Complaint is filed until the class is certified.

24 **The California Class:** All persons in California who purchased the contaminated Tom’s
25 of Maine toothpaste products from the time beginning three years before this Complaint is
26 filed until the class is certified.

26 ///

27 ///

28 ///

1 31. Plaintiff reserves the right to amend the Class definitions if further investigation and
2 discovery indicates that the Class definitions should be narrowed, expanded, or otherwise
3 modified.

4 32. **Numerosity and Ascertainability:** Plaintiff does not know the exact number of
5 members of the putative classes. Due to Plaintiff’s initial investigation, however, Plaintiff is
6 informed and believes that the total number of Class members is at least in the tens of thousands
7 and that members of the Class are numerous and geographically dispersed throughout California.
8 While the exact number and identities of the Class members are unknown at this time, such
9 information can be ascertained through appropriate investigation and discovery, including
10 Defendants’ records, either manually or through computerized searches.

11 33. **Typicality and Adequacy:** Plaintiff’s claims are typical of those of the proposed
12 Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed
13 Class. Plaintiff does not have any interests that are antagonistic to those of the proposed Class.
14 Plaintiff has retained counsel competent and experienced in the prosecution of this type of
15 litigation.

16 34. **Commonality:** The questions of law and fact common to the Class members, some
17 of which are set out below, predominate over any questions affecting only individual Class
18 members:

- 19 (a) whether Defendants committed the conduct alleged herein;
- 20 (b) whether Defendants’ conduct constitutes the violations of laws alleged
21 herein;
- 22 (c) whether Defendants’ labeling, sale and advertising set herein are unlawful,
23 untrue, or are misleading, or reasonably likely to deceive;
- 24 (d) whether Tom’s of Maine toothpaste products are adulterated and/or
25 misbranded under California law or federal law;
- 26 (e) whether Defendants knew or should have known that the representations
27 were false or misleading;

28 ///

- 1 (f) whether Defendants knowingly concealed or misrepresented material facts
- 2 for the purpose of inducing consumers into spending money on Tom’s of
- 3 Maine toothpaste products;
- 4 (g) whether Defendants’ representations, concealments, and non-disclosures
- 5 concerning the Tom’s of Maine toothpaste products are likely to deceive the
- 6 consumer;
- 7 (h) whether Defendants’ representations, concealments, and non-disclosures
- 8 concerning the Tom’s of Maine toothpaste products violate California law
- 9 or federal law;
- 10 (i) whether Defendants should be permanently enjoined from making the claims
- 11 at issue; and
- 12 (j) whether Plaintiff and the Class are entitled to a full refund, restitution, or
- 13 other damages.

14 35. **Predominance and Superiority:** Common questions, some of which are set out
15 above, predominate over any questions affecting only individual Class members. A class action is
16 the superior method for the fair and just adjudication of this controversy. The expense and burden
17 of individual suits makes it impossible and impracticable for members of the proposed Class to
18 prosecute their claims individually and multiplies the burden on the judicial system presented by
19 the complex legal and factual issues of this case. Individualized litigation also presents a potential
20 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
21 management difficulties and provides the benefits of single adjudication, economy of scale, and
22 comprehensive supervision by a single court on the issue of Defendants’ liability. Class treatment
23 of the liability issues will ensure that all claims and claimants are before this Court for consistent
24 adjudication of the liability issues. A class action is superior to other available methods for the fair
25 and efficient adjudication of this controversy for at least the following reasons:

- 26 (a) given the complexity of issues involved in this action and the expense of
- 27 litigating the claims, few, if any, Class members could afford to seek legal
- 28 redress individually for the wrongs that Defendants committed against them,

1 and absent Class members have no substantial interest in individually
2 controlling the prosecution of individual actions;

3 (b) when Defendants’ liability has been adjudicated, claims of all Class
4 members can be determined by the Court;

5 (c) this action will cause an orderly and expeditious administration of the Class
6 claims and foster economies of time, effort and expense, and ensure
7 uniformity of decisions; and

8 (d) without a class action, many Class members would continue to suffer injury,
9 and Defendants’ violations of law will continue without redress while
10 Defendants continues to reap and retain the substantial proceeds of their
11 wrongful conduct.

12 36. **Manageability:** The trial and litigation of Plaintiff’s and the proposed Class claims
13 are manageable. Defendants have acted on grounds generally applicable to the Class, making
14 appropriate final injunctive relief and declaratory relief with respect to the Class as a whole.

15 **FIRST CAUSE OF ACTION**

16 (Intentional Misrepresentation as to Both Classes)

17 37. Plaintiff repeats and incorporates herein by reference each and every allegation
18 above if set forth fully herein.

19 38. Reasonable consumers purchase toothpaste to clean their teeth. Particularly,
20 consumers purchase Tom’s toothpaste because it is marketed as “safe,” “natural,” and “healthy,”
21 and is promoted by Tom’s in health foods stores as a healthier alternative to legacy toothpaste
22 options, for example, Colgate products, which largely make no claims to superior natural or healthy
23 sourcing in ingredients.

24 39. Defendants manufacture the contaminated toothpaste products for the express
25 purpose of making sales. Product labeling plays an important role in the consumer purchase
26 decision process for merchandise sold at mass merchandisers such as health foods stores and
27 supermarkets.

28 ///

1 40. Defendants represented to Plaintiff and the Class members that its toothpaste
2 products were safe, natural and healthy.

3 41. These statements would lead a reasonable person to conclude that the products were
4 not exposed to mold and bacteria in the manufacturing process.

5 42. Plaintiff and the Class members reasonably relied on the representation that the
6 products were safe, healthy, and natural. Based on that belief, Plaintiff and the Class members
7 purchased the products.

8 43. Consumers purchase Tom’s toothpaste because it is marketed as “safe,” “natural,”
9 and “healthy,” and is promoted by Tom’s in health foods stores as a healthier alternative to legacy
10 toothpaste options, for example, Colgate products, which largely make no claims to superior
11 natural or healthy sourcing in ingredients.

12 44. Because Defendants’ contaminated toothpaste products were exposed to mold and
13 bacteria in the manufacturing process, reasonable consumers are misled and deceived by
14 Defendants’ marketing of the products as safe, healthy, and natural.

15 45. As a result, Plaintiff and the Class members were harmed when they purchased the
16 products. Plaintiff and the Class members paid for a product that they would not otherwise have
17 purchased.

18 46. Plaintiff’s and the Class members’ reliance on Defendants’ representations was a
19 substantial factor in causing this harm. Had Plaintiff and the Class members known that it had the
20 products were manufactured in an environment exposed to harmful mold and bacteria, they would
21 not have purchased the products.

22 47. As a direct and proximate result of Defendants’ intentional misrepresentation,
23 Plaintiff and the Class members have suffered injury and are entitled to damages in an amount to
24 be proven at trial but more than the minimum jurisdictional requirement of this Court.

25 **SECOND CAUSE OF ACTION**

26 (Negligent Misrepresentation as to Both Classes)

27 48. Plaintiff repeats and incorporates herein by reference each and every allegation
28 above if set forth fully herein.

1 49. Defendants represented to Plaintiff and the Class members that products were safe,
2 healthy, and natural.

3 50. This statement would lead a reasonable person to conclude that the products were
4 manufactured in an environment free from mold and bacteria contamination.

5 51. These representations were false. The FDA’s letter proves that the contaminated
6 toothpaste products were manufactured in a contaminated environment.

7 52. Defendants had no reasonable grounds for believing the contaminated toothpaste
8 products were safe, healthy, and natural, when it sold them.

9 53. Defendants intended that Plaintiff and the Class members rely on the
10 representations. The advertisement was placed on product packaging and on the product itself for
11 the sole purpose of inducing customers to purchase the product. Defendants understood, or should
12 have understood, that a reasonable person would believe that products marketed as safe, natural,
13 and healthy are not manufactured in an environment contaminated by dangerous and illness-
14 inducing mold and bacteria.

15 54. Plaintiff and the Class members reasonably relied on the representations that the
16 products were safe, healthy, and natural, and based on that belief, and because of it, Plaintiff and
17 the Class members purchased the contaminated toothpaste products.

18 55. As a result, Plaintiff and the Class members were harmed when they purchased the
19 contaminated toothpaste products that in fact not safe, healthy, or natural, as the products expose
20 them to unnecessary health risks. Plaintiff and the Class members also paid for products that they
21 would not otherwise have purchased.

22 56. Plaintiff and the Class members’ reliance on Defendants’ representations was a
23 substantial factor in causing this harm. Had Plaintiff and the Class members known that the
24 products were not safe, healthy, and natural, Plaintiff and the Class members would not have
25 purchased the contaminated toothpaste products.

26 57. As a direct and proximate result of Defendants’ negligent misrepresentation,
27 Plaintiff and Class members have suffered injury and are entitled to damages in an amount to be
28 proven at trial but more than the minimum jurisdictional requirement of this Court.

THIRD CAUSE OF ACTION

(Violation of California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et. seq. as to the California Class)

58. Plaintiff repeats and incorporates herein by reference each and every allegation above if set forth fully herein.

59. Defendants’ statements that the contaminated toothpaste products were safe, natural, and healthy were false. Numerous scientific studies prove that the three types of bacteria identified by the FDA, which contaminated the products during the manufacturing process, are unsafe for human consumption, are harmful to human health, are not naturally-occurring in a clean pharmaceutical manufacturing environment. These advertisements were made by Defendants on product labels and packaging to California residents, and on other advertising.

60. Plaintiff and the Class members relied on the advertisements by purchasing the products which they believed were safe, healthy, and natural. These representations were material to Plaintiff’s and the Class members’ decisions to purchase the contaminated toothpaste products.

61. As a result, Plaintiff and the Class members were damaged. Plaintiff and the Class members did not receive the benefits of their bargains and used products which were not safe, healthy, and natural. Plaintiff and the Class members paid for a product that they would not have purchased had they known the truth.

62. Plaintiff have suffered monetary injury in fact as a direct and proximate result of the violations of the False Advertising Law committed by Defendants as alleged herein in an amount to be proven at trial but more than the minimum jurisdictional amount of this Court.

FOURTH CAUSE OF ACTION

(Violation of the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq. as to the California Class)

63. Plaintiff repeats and incorporates herein by reference each and every allegation above if set forth fully herein.

64. By its actions and conduct as alleged herein, Defendants has committed one or more acts of unfair competition within the meaning of California

1 65. Business and Professions Code § 17200 (“UCL”) that constitute unfair and unlawful
2 business practices as those terms are defined under California law.

3 66. Defendants’ business practices are unfair under the UCL because Defendants have
4 acted in a manner that is immoral, unethical, oppressive, unscrupulous and/or substantially
5 injurious to Plaintiff and the Class members. These business practices, described above, include
6 creating false advertisements. The false advertisements are substantially injurious because they
7 induce consumers to make purchases that they would not otherwise make, in expectation of
8 receiving benefits that they do not receive. Further, the impact of the practice against Plaintiff and
9 the Class members far outweighs any possible justification or motive on the part of Defendants.
10 The impact on Plaintiff and the Class members has been described. Defendants have no
11 justification for including a false inducement to purchase its product. Plaintiff and the Class
12 members could not reasonably have avoided this injury because they relied on Defendants’
13 advertisement as to the quality and characteristics of the products being sold, as all consumers who
14 rely on the verity of product advertising must do.

15 67. Defendants’ false advertisement is violative of public policy as expressed in the
16 False Advertising Law. Each of these statutes strictly forbids false advertisement such as
17 Defendants have disseminated and/or caused to be disseminated and represent expressions of
18 public policy against this practice.

19 68. Defendants’ business practices are also unfair because they significantly threaten or
20 harm competition. Competition is fostered by an environment in which information can be relied
21 upon, so that consumers can make wise decisions, and so that products which accurately reflect
22 the consumers’ wishes can flourish.

23 69. As shown above, Defendants’ business practices are also unlawful because they
24 violate the False Advertising Law.

25 70. Defendants’ business practices are also unfair and unlawful under the UCL because
26 they constitute representations to the public which are likely to deceive the public. Defendants’
27 representations indicate that the products are safe, healthy, and natural, when in fact the products
28 have been contaminated by exposure to harmful mold and bacteria. The public, receiving these

1 representations, is likely to believe that the products are safe, healthy, and natural, and is so
2 deceived.

3 71. Defendants' representations are likely to deceive the public because they are untrue
4 and because they create the impression that the products are safe, healthy, and natural. A reasonable
5 consumer would be likely to believe that, if Defendants describe their product in this way, the
6 products are not exposed to and contaminated by harmful mold and bacteria in the manufacturing
7 process.

8 72. Plaintiff and the Class members relied on these representations when they purchased
9 the contaminated toothpaste products, which they would not have otherwise purchased.

10 73. Plaintiff has suffered monetary injury in fact as a direct and proximate result of the
11 acts of unfair competition committed by Defendants as alleged herein in an amount to be proven
12 at trial but more than the minimum jurisdictional amount of this Court.

13 **FIFTH CAUSE OF ACTION**

14 (Breach of Express Warranty as to Both Classes)

15 74. Plaintiff repeats and incorporates herein by reference each and every allegation
16 above if set forth fully herein.

17 75. Defendants expressly warranted through advertising, marketing materials, and
18 product labeling that the contaminated toothpaste products were safe, healthy, and natural.

19 76. Plaintiff relied on these express representations and warranties in purchasing the
20 products.

21 77. Contrary to Defendants' express warranties, the products did not conform to the
22 advertised representations. Specifically, the products were unsafe, unnatural, and unhealthy.

23 78. As a direct and proximate result of Defendants' breach of express warranty, Plaintiff
24 suffered damages, including but not limited to financial loss, inconvenience, and pain and suffering
25 caused by concerns that they had unnecessarily compromised their health and safety by using the
26 contaminated toothpaste products.

27
28 ///

SIXTH CAUSE OF ACTION

(California Civil Code § 1770(a)(5) “California Consumer Legal Remedies Act” as to the California Class)

79. Plaintiff repeats and incorporates herein by reference each and every allegation above if set forth fully herein.

80. Defendants’ conduct constitutes unfair or deceptive acts or practices in violation of the California Civil Code § 1770(a)(5) (“CLRA”), which prohibits representing that goods have characteristics, uses, or benefits which they do not have.

81. Defendants’ actions were intended to and did result in the sale of the toothpaste products to Plaintiff and other consumers under false pretenses.

82. Concurrent with the filing of this Complaint, Plaintiff has sent a letter to Defendants placing them on notice of the CLRA violation.

83. Plaintiff intends to amend his Complaint to confirm that Defendants’ conduct remains in violation of the CLRA if Defendants do not rectify their conduct with regard to the contaminated toothpaste products within 30-days.

SEVENTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability, Cal. Civ. Code § 1791.1(a) as to the California Class)

1. Plaintiff repeats and incorporates herein by reference each and every allegation above if set forth fully herein.

2. Plaintiffs and members of the Class are buyers.

3. The contaminated toothpaste products are consumer goods.

4. Defendants are manufacturers of the contaminated toothpaste products.

5. Defendants impliedly warranted to the Plaintiffs that the toothpaste products were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792; however, the products do not have the quality that a buyer would reasonably expect, and were therefore not merchantable.

///

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

1 6. Cal. Civ. Code § 1791.1(a) states:

2 “Implied warranty of merchantability” or “implied warranty that goods are
3 merchantable” means that the consumer goods meet each of the following:

- 4 1. Pass without objection in the trade under the contract description.
5 2. Are fit for the ordinary purposes for which such goods are used.
6 3. Are adequately contained, packaged, and labeled.
7 4. Conform to the promises or affirmations of fact made on the container or label.

8 7. The contaminated toothpaste products are not fit for the ordinary purpose of
9 cleaning one’s teeth because they present an unnecessary danger to the user’s health.

10 8. The contaminated toothpaste products do not conform to Defendants’ claims that
11 they are safe, healthy, and natural.

12 9. The contaminated toothpaste products are not adequately labeled because the
13 labeling fails to disclose contamination. The Defendants failed to warn about that dangerous mold
14 and bacteria contaminating the primary ingredient they used to manufacture the toothpaste, water.

15 10. Defendants breached the implied warranty of merchantability by manufacturing and
16 selling contaminated toothpaste, which has deprived the Plaintiffs of the benefit of their bargain,
17 causing the toothpaste to lose all value.

18 11. Notice of breach is not required because Plaintiffs and the Class did not purchase
19 the products directly from Defendants. Furthermore, Defendants had notice of these issues by their
20 knowledge of the issues through complaints and Defendants’ own internal investigation. For
21 example, approximately 400 complaints related to odor, color, and taste in Defendants’ toothpaste
22 products, including those for children, were not investigated by Defendants. These complaints were
23 not investigated because Defendants’ procedure requires an investigation “only if a trend is
24 identified.” Defendants only investigate complaints related to adverse events, foreign matter, and
25 incorrect products, and Defendants refused to recall the contaminated toothpaste products.

26 12. As a direct and proximate result of Defendants’ failure to sell merchantable
27 toothpaste products, Plaintiff and the Class received goods whose dangerous condition makes them
28 valueless. Plaintiffs and the Class have been damaged by the products’ total loss of value and
29 inability to use the contaminated toothpaste products.

///

1 F. An order requiring Defendants to pay restitution to restore all funds acquired by
2 means of any act or practice declared by this Court to be an unlawful or unfair business act or
3 practice, untrue or misleading advertising, or a violation of the Unfair Competition Law or other
4 California law, plus pre- and post-judgment interest thereon;

5 G. An order requiring Defendants to disgorge or return all monies, revenues, and
6 profits obtained by means of any wrongful or unlawful act or practice;

7 H. An order requiring Defendants to pay all actual and statutory damages permitted
8 under the counts alleged herein;

9 I. An order awarding attorneys' fees and costs to Plaintiff and the Class; and

10 J. An order providing for all other such equitable relief as may be just and proper.
11

12 Respectfully submitted,

13 Dated: December 20, 2024

WILSHIRE LAW FIRM, PLC

14
15 By: 
16 _____
17 Thiago M. Coelho
18 Shahin Rezvani
19 *Attorneys for Plaintiff*

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury as to all causes of action triable by jury.

22 Dated: December 20, 2024

WILSHIRE LAW FIRM, PLC

23
24 By: 
25 _____
26 Thiago M. Coelho
27 Shahin Rezvani
28 *Attorneys for Plaintiff*

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

CIVIL COVER SHEET

This civil cover sheet does not replace or supplement the filing and service of pleadings or other papers. The information on this form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket. Instructions are on the reverse of this form.

I. PLAINTIFF(S)

YOLANDA PITRE, individually and on behalf of all others similarly situated

County of Residence of First Listed Plaintiff: San Francisco

Attorney or Pro Se Litigant Information (Firm Name, Address, and Telephone Number)

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor, Los Angeles, CA 90010
Telephone: (213) 381-9988 || Facsimile: (213) 381-9989

DEFENDANT(S)

COLGATE-PALMOLIVE COMPANY and TOM' S OF MAINE, INC.

County of Residence of First Listed Defendant:

Defendant's Attorney's Name and Contact Information (if known)

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

- U.S. Government Plaintiff, Federal Question, U.S. Government Defendant, Diversity

III. CAUSE OF ACTION

Cite the U.S. Statute under which you are filing: 28 U.S.C. § 1332
Brief description of case: False advertising; breach of express and implied warranties

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

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from Another District, Multidistrict Litigation-Transfer, Multidistrict Litigation-Direct File

VI. FOR DIVERSITY CASES ONLY: CITIZENSHIP OF PRINCIPAL PARTIES

Table with columns: Plaintiff, Defendant. Rows for Citizen of California, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In California, Incorporated and Principal Place of Business In Another State, Foreign Nation.

VII. REQUESTED IN COMPLAINT

- Check if the complaint contains a jury demand.
Check if the complaint contains a monetary demand. Amount: 5,000,001.00
Check if the complaint seeks class action status under Fed. R. Civ. P. 23.
Check if the complaint seeks a nationwide injunction or Administrative Procedure Act vacatur.

VIII. RELATED CASE(S) OR MDL CASE

Provide case name(s), number(s), and presiding judge(s).

IX. DIVISIONAL ASSIGNMENT pursuant to Civil Local Rule 3-2

(Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [] SAN JOSE [] EUREKA-MCKINLEYVILLE

DATE 12/20/2024

SIGNATURE OF ATTORNEY OR PRO SE LITIGANT /s/ Shahin Rezvani

COMPLETING THE CIVIL COVER SHEET

Complete the form as follows:

- I. Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.
- Attorney/Pro Se Litigant Information.** Enter the firm name, address, telephone number, and email for attorney of record or pro se litigant. If there are several individuals, list them on an attachment.
- II. Jurisdiction.** Under Federal Rule of Civil Procedure 8(a), pleadings must establish the basis of jurisdiction. If multiple bases for jurisdiction apply, prioritize them in the order listed:
- (1) *United States plaintiff.* Jurisdiction based on 28 U.S.C. §§ 1345 and 1348 for suits filed by the United States, its agencies or officers.
 - (2) *United States defendant.* Applies when the United States, its agencies, or officers are defendants.
 - (3) *Federal question.* Select this option when jurisdiction is based on 28 U.S.C. § 1331 for cases involving the U.S. Constitution, its amendments, federal laws, or treaties (but use choices 1 or 2 if the United States is a party).
 - (4) *Diversity of citizenship.* Select this option when jurisdiction is based on 28 U.S.C. § 1332 for cases between citizens of different states and complete Section VI to specify the parties’ citizenship. Note: Federal question jurisdiction takes precedence over diversity jurisdiction.
- III. Cause of Action.** Enter the statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless jurisdiction is based on diversity. Example: U.S. Civil Statute: 47 U.S.C. § 553. Brief Description: Unauthorized reception of cable service.
- IV. Nature of Suit.** Check one of the boxes. If the case fits more than one nature of suit, select the most definitive or predominant.
- V. Origin.** Check one of the boxes:
- (1) *Original Proceedings.* Cases originating in the United States district courts.
 - (2) *Removed from State Court.* Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. § 1441. When the petition for removal is granted, check this box.
 - (3) *Remanded from Appellate Court.* Check this box for cases remanded to the district court for further action, using the date of remand as the filing date.
 - (4) *Reinstated or Reopened.* Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) *Transferred from Another District.* Check this box for cases transferred under Title 28 U.S.C. § 1404(a). Do not use this for within-district transfers or multidistrict litigation (MDL) transfers.
 - (6) *Multidistrict Litigation Transfer.* Check this box when a multidistrict (MDL) case is transferred into the district under authority of Title 28 U.S.C. § 1407.
 - (7) *Multidistrict Litigation Direct File.* Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- VI. Residence (citizenship) of Principal Parties.** Mark for each principal party *only* if jurisdiction is based on diversity of citizenship.
- VII. Requested in Complaint.**
- (1) *Jury demand.* Check this box if plaintiff’s complaint demanded a jury trial.
 - (2) *Monetary demand.* For cases demanding monetary relief, check this box and enter the actual dollar amount being demanded.
 - (3) *Class action.* Check this box if plaintiff is filing a class action under Federal Rule of Civil Procedure 23.
 - (4) *Nationwide injunction.* Check this box if plaintiff is seeking a nationwide injunction or nationwide vacatur pursuant to the Administrative Procedures Act.
- VIII. Related Cases.** If there are related pending case(s), provide the case name(s) and number(s) and the name(s) of the presiding judge(s). If a short-form MDL complaint is being filed, furnish the MDL case name and number.
- IX. Divisional Assignment.** Identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.” Note that case assignment is made without regard for division in the following case types: Property Rights (Patent, Trademark and Copyright), Prisoner Petitions, Securities Class Actions, Anti-Trust, Bankruptcy, Social Security, and Tax.