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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

EVERETT SCOTT, individually and  
on behalf of all others similarly  
situated,

Plaintiff,

v.

FIRST STREET FOOD LLC,

Defendant.

CASE NO.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1  
2 1. Plaintiff Everett Scott (“Plaintiff”) individually and on behalf of all  
3 others similarly situated brings this Consolidated Class Action Complaint against  
4 Defendant First Street Food LLC (“Defendant”) for Defendant’s reckless, and/or  
5 intentional practice of failing to disclose the presence of arsenic and cadmium  
6 (collectively “Heavy Metals”) in its First Street Long Grain Brown Rice (the  
7 “Product”).

8 2. This action seeks both injunctive and monetary relief on behalf of the  
9 proposed Class (as defined herein), including restoring monies to the members of  
10 the proposed Class, who would not have purchased the Product had they known that  
11 it contained (or was at risk of containing) the Heavy Metals and/or would not have  
12 paid a premium price for the Product had they known the Product contained Heavy  
13 Metals.

14 3. Plaintiff alleges the following based upon personal knowledge, as well  
15 as investigation by his counsel as to himself, and as to all other matters, upon  
16 information and belief. Plaintiff believes substantial evidentiary support exists for  
17 the allegations set forth herein, which will become available after a reasonable  
18 opportunity for discovery.

**NATURE OF THE ACTION**

19  
20 4. Reasonable consumers expect the rice products they purchase for their  
21 individual and family consumption will be safe for human consumption and not be  
22 contaminated (or has a material risk of being contaminated) with Heavy Metals,  
23 substances that are known to accumulate in the body and pose significant and  
24 dangerous health consequences.

25 5. Consumers lack the scientific knowledge necessary to determine  
26 whether Defendant’s Product does in fact contain Heavy Metals, or to ascertain the  
27 true nature of the ingredients and quality of the Product. Accordingly, reasonable  
28

1 consumers must and do rely on Defendant to: (1) know what its Product contains;  
2 (2) regularly test the Product to confirm its composition; and (3) properly and fully  
3 disclose those contents to consumers prior to purchase. Product contents,  
4 particularly contents like Heavy Metals, are material to a reasonable consumer's  
5 purchasing decisions.

6 6. Defendant is involved in the manufacture, design, testing, packaging,  
7 labeling, marketing, advertising, promotion, distribution, and sales of the Product  
8 throughout the United States, including in this District.

9 7. Defendant fails to disclose on its packaging that the Product contains  
10 (or has a material risk of containing) Heavy Metals.

11 8. No reasonable consumer would expect, suspect, or understand that the  
12 Product contains or has a material risk of containing Heavy Metals.

13 9. Defendant fails to disclose to consumers that the Product contains (or  
14 has a material risk of containing) Heavy Metals. Nowhere on the Product's  
15 packaging is it disclosed that it contains (or has a material risk of containing) Heavy  
16 Metals (hereinafter collectively referred to as "Omissions").

17 10. In fact the packaging of the Product describes the Product as "100%  
18 Whole Grain" which is an affirmative designation and representation meant to  
19 convey to consumers that the Product is of the highest quality. This affirmative  
20 statement is deceiving given the Heavy Metal content of the Product (hereinafter  
21 referred to as the "Misrepresentation").

22 11. It was only through testing conducted that the general public became  
23 aware of the Heavy Metal content in Defendant's Product.

24 12. Independent testing has detected the presence of cadmium and arsenic  
25 in the Product.

26 13. Lab testing found that the Product contained 317 parts per billion of  
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1 arsenic and 11.6 parts per billion of cadmium.<sup>1</sup>

2 14. Based on the Omissions and Misrepresentation, no reasonable  
3 consumer had any reason to know, suspect, or expect that the Product contained  
4 Heavy Metals. Furthermore, reasonable consumers like Plaintiff, who were  
5 purchasing the Product for consumption by themselves and their families, would  
6 consider the presence (or risk) of Heavy Metals to be a material fact when  
7 considering whether to purchase the Product. Accordingly, Plaintiff and other  
8 reasonable consumers would not have purchased the Product or would have paid  
9 substantially less for it but for the Omissions and Misrepresentation.

10 15. Defendant knows its customers trust the quality of its Product and  
11 would not expect the Product to contain or have a material risk of containing Heavy  
12 Metals. Defendant also knows that reasonable consumers seek out and wish to  
13 purchase products with ingredients free of toxins or contaminants, and that these  
14 consumers will pay more for products they believe meet these standards. Defendant  
15 further knows that reasonable consumers would not knowingly consume, or feed to  
16 their families, products that contain Heavy Metals.

17 16. Defendant knew the consumers to whom it markets the Product would  
18 find its Omissions and Misrepresentation material and that it was in a special  
19 position of public trust to those consumers.

20 17. The Omissions and Misrepresentation are deceptive, misleading,  
21 unfair, and/or false because the Product contains undisclosed Heavy Metals.

22 18. The Omissions and Misrepresentation allowed Defendant to capitalize  
23 on, and reap enormous profits from, reasonable consumers like Plaintiff who paid a  
24 premium price for the Product that omitted material information as to the Product's

25 \_\_\_\_\_  
26 <sup>1</sup> What's in your family's rice?: Arsenic, Cadmium, and Lead in Popular Rice Brands— Plus 9  
27 Safer Grains to Try (*available at* [https://hbbf.org/sites/default/files/2025-05/Arsenic-in-Rice-Report\\_May2025\\_R5\\_SECURED.pdf](https://hbbf.org/sites/default/files/2025-05/Arsenic-in-Rice-Report_May2025_R5_SECURED.pdf)).  
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1 true quality and value. Reasonable consumers, including Plaintiff, paid more for the  
2 Product than they would have had they known the truth about the Product, and  
3 Defendant continues to wrongfully induce consumers to purchase the Product.

4 19. Plaintiff brings this proposed consumer class action individually and on  
5 behalf of all other members of the Class (as defined herein), who, during the Class  
6 Period, purchased for use and not resale any of Defendant's Product.

7 **JURISDICTION AND VENUE**

8 20. This Court has original jurisdiction over all causes of action herein  
9 under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2)(A), because the matter  
10 in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and  
11 costs, and more than two-thirds of the Class reside in states other than the state in  
12 which Defendant is a citizen and in which this case is filed, and therefore any  
13 exemptions to jurisdiction under 28 U.S.C. §1332(d)(2) do not apply.

14 21. This Court has personal jurisdiction over Defendant because Defendant  
15 conducts and transacts business in the state of California and contracts to supply  
16 goods within the state of California, such that it has had continuous and systematic  
17 contacts with the state of California, Defendant places its Product in the stream of  
18 commerce targeted at California, and the injury alleged herein occurred when  
19 Plaintiff purchased the Product in California.

20 22. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because  
21 Plaintiff suffered injury as a result of Defendant's acts in this District, many of the  
22 acts and transactions giving rise to this action occurred in this District, and because  
23 Defendant conducts substantial business in this District.

**PARTIES**

**Plaintiff Scott**

23. Plaintiff Everett Scott is, and at all times relevant hereto has been, a citizen of the state of California. He purchased the Product, from Walmart and Bargain Market stores in Ridgecrest, California.

24. Plaintiff purchased this Product beginning in approximately July, 2022. Plaintiff last purchased the Product shortly before he learned of the issues with Heavy Metals in the Product in March 2025.

25. Plaintiff believed that he was purchasing a high-quality rice product from Defendant. Prior to purchasing the Product, Plaintiff saw and relied upon the packaging of the Product. During the time he purchased and ate the Product, and due to the Omissions and Misrepresentation by Defendant, he was unaware the Product contained (or had a material risk of containing) any level of Heavy Metals and/or other undesirable toxins or contaminants and would not have purchased the Product if that information had been fully disclosed. Plaintiff would be willing to purchase the Product in the future if he could be certain that it did not contain (or have a material risk of containing) Heavy Metals.

**Defendant**

26. Defendant First Street Food LLC has a principal address in Oakland, MD. Defendant is involved in the production, marketing, distribution, and sale of the rice product and places it in the stream of commerce direct at California and the United States.

27. During the relevant time, Defendant controlled the manufacture, design, testing, packaging, labeling, marketing, advertising, promotion, distribution, and sales of its Product. Defendant therefore had control over how to label its Product as to its contents.

28. Defendant has been involved in the manufacture, design, testing, packaging, labeling, marketing, advertising, promotion, distribution, and sales of the Product throughout the United States, including in this District. It has done so continuously throughout the Class Period. Defendant knowingly created, allowed, oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive packaging and related marketing for the Product that did not disclose the presence of Heavy Metals. Defendant is also involved in the sourcing of ingredients, manufacturing of products, and conducting of all relevant quality assurance protocols, including testing of both the ingredients and finished product.

29. Plaintiff relied upon the Misrepresentation and material Omissions missing from the Product's packaging, which was prepared, reviewed, and/or approved by Defendant and its agents and disseminated by Defendant and its agents through packaging that contained the Omissions. The Omissions were nondisclosed material content that a reasonable consumer would consider important in purchasing the Product.

### **FACTUAL ALLEGATIONS**

30. Consumers have become increasingly concerned about the effects of dangerous contaminants in food products that they and their family members consume. Companies, such as Defendant, have capitalized on consumers' desire for safe products, and indeed consumers are willing to pay, and have paid, a premium for such food products.

31. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product contains Cadmium and Arsenic, or other unsafe and unhealthy substances, especially at the point of sale. Therefore, consumers must and do rely on Defendant to truthfully and honestly report what their Product contains on its packaging or label. Indeed, testing for toxic heavy metals requires expensive and destructive scientific testing. Given the relatively low price of the

1 Product, no reasonable consumer would engage in such testing before purchasing  
2 the Product.

3 32. However, public reports and articles recently revealed that Defendant's  
4 Product contains unsafe levels of Cadmium and Arsenic.<sup>2</sup> Indeed, these levels of  
5 Cadmium and Arsenic exceed the MADLs for this toxic heavy metal, posing serious  
6 health risks. Despite these risks, Defendant failed to include any disclosures  
7 regarding Cadmium and Arsenic levels on its Product.

8 33. Defendant knew and could not have been unaware of the Cadmium and  
9 Arsenic in the Product. By law, Defendant has a responsibility to implement  
10 controls to significantly minimize or prevent exposure to toxic heavy metals in the  
11 Product. Defendant manufactures and sources the ingredients contained within the  
12 Product. Defendant tests the Product for quality control purposes, including the  
13 levels of toxic heavy metal such as Cadmium and Arsenic contained therein.  
14 Additionally, Defendant receives Certificates of Analysis, and other certifications,  
15 from the suppliers of the ingredients used to create the Product. These documents  
16 will also disclose the levels of chemicals and toxic heavy metals, such as Cadmium  
17 and Arsenic, contained in each constituent ingredient. These documents and their  
18 own testing alert Defendant to the presence of any toxic heavy metals, such as  
19 Cadmium and Arsenic, in the Product. Accordingly, Defendant has exclusive  
20 knowledge of the Cadmium and Arsenic levels in the Product, and Plaintiff and the  
21 Class could not have known about this risk.

22 34. Consumers reasonably rely on the marketing and information on  
23 Defendant's labels in making purchasing decisions. By marketing the Product as  
24 containing Rice, and not disclosing the presence of Cadmium and Arsenic,  
25 Defendant mislead reasonable consumers.

26  
27 <sup>2</sup> <https://www.cnn.com/2025/05/15/health/arsenic-cadmium-rice-wellness>  
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1        35. Despite Defendant's knowledge of Cadmium and Arsenic in the  
2 Product, Defendant failed to provide any warning on the place that every consumer  
3 looks when purchasing a product—the packaging or labels—that the Product contains  
4 Cadmium and Arsenic.

5        36. Defendant's concealment was material because people are concerned  
6 with what is in the food that they are putting into their bodies, as well as parents and  
7 caregivers being concerned with what they are feeding to the children in their care.  
8 Consumers such as Plaintiff and the Class Members are influenced by the ingredients  
9 listed, as well as any warnings (or lack thereof) on the food packaging they buy.  
10 Defendant knows that if they had not omitted that the Product contained unsafe  
11 levels of Cadmium and Arsenic and that the Product was not safe or healthy for  
12 consumption then Plaintiff and the Class would not have paid a premium for the  
13 Product (or purchased it at all).

14        37. Plaintiff and the Class Members reasonably relied to their detriment on  
15 Defendant's misleading representations and omissions.

16        38. Defendant's false, misleading, and deceptive misrepresentations and  
17 omissions are likely to continue to deceive and mislead reasonable consumers and  
18 the general public, as they have already deceived and misled Plaintiff and the Class  
19 Members.

20        39. In making the false, misleading, and deceptive representations and  
21 omissions described herein, Defendant knew and intended that consumers would pay  
22 a premium for the Product. Had Defendant not made the false, misleading, and  
23 deceptive representations and omissions, Plaintiff and the Class Members would not  
24 have been willing to pay the same amount for the Product they purchased and,  
25 consequently, Plaintiff and the Class Members would not have been willing to  
26 purchase the Product.

27        40. Plaintiff and the Class Members all paid money for the Product;  
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however, Plaintiff and the Class Members did not obtain the full value of the advertised Product due to Defendant's misrepresentations and omissions. Plaintiff and the Class Members purchased, purchased more of, and/or paid more for the Product than they would have had they known the truth about the Product. Consequently, Plaintiff and the Class Members have suffered injury in fact and lost money because of Defendant's wrongful conduct.

### **I. Defendant Misrepresents the Product and Omits Any Mention of Heavy Metals on Its Packaging**

41. Defendant manufactures, designs, tests, packages, labels, markets, advertises, promotes, distributes, and sells its Product throughout the United States, including in California.



1  
2 42. Defendant represents, on the label of their Product, that “[f]or over 145  
3 years we have been committed to offering high quality products at great value... .”  
4 Accordingly, Defendant represents that the Product will be of high quality, or at least  
5 sufficient quality to allow it to be consumer as a food product.

6 43. Defendant’s Product is available at numerous retail and online outlets  
7 throughout the United States, including California.

8 44. Defendant intentionally misrepresented the quality of its Product and  
9 omitted the presence or material risk of Heavy Metals in the Product in order to  
10 induce and mislead reasonable consumers to purchase the Product and pay a price  
11 premium for it. The Omissions and Misrepresentation are material because the  
12 involve the safety of the product and Defendant made partial representations  
13 regarding quality of the Product.

14 45. As a result of the material Omissions and Misrepresentation, a  
15 reasonable consumer would have no reason to suspect the presence of or material  
16 risk of Heavy Metals in the Product without conducting his or his own scientific tests  
17 (which are time consuming and expensive) or reviewing third-party scientific testing  
18 of the Product.

19 46. Information regarding the true nature and/or presence of Heavy Metals  
20 in the Product was and is in the exclusive possession of Defendant and not available  
21 to consumers. Defendant chose to not disclose such information to consumers and  
22 thus concealed the presence and risk of Heavy Metals in the Product from Plaintiff  
23 and Class members.

**II. Due to the Presence and/or Material Risk of the Presence of Heavy Metals in the Product, the Omissions are Misleading**

**A. Heavy Metals**

47. Arsenic and cadmium are heavy metals whose harmful effects are well-documented, particularly in children. Exposure to heavy metals puts children at risk for lowered IQ, behavioral problems (such as attention deficit hyperactivity disorder), type 2 diabetes, and cancer, among other health issues. Heavy metals also pose health risks to adults. Even modest amounts of heavy metals can increase the risk of cancer, cognitive and reproductive problems, and other adverse conditions. These facts underscore the importance of limiting heavy metal exposure and consumption.

48. Given the negative effects of heavy metals (such as arsenic and cadmium) on child development and adult health, the presence of these substances in food is material to reasonable consumers, including Plaintiff and members of the Class, as it relates to their purchasing decisions.

49. Defendant knows that the presence (or material risk) of Heavy Metals in its Product is material to reasonable consumers, including Plaintiff and the Class members.

50. At all times during the relevant period, Defendant knew or should have known the Product included undisclosed levels of Heavy Metals and was not sufficiently tested for the presence and material risk of Heavy Metals.

51. Defendant's Product included undisclosed levels of Heavy Metals due to Defendant's failure to sufficiently monitor for their presence in the ingredients and finished product. Defendant was or should have been aware of this risk.

52. Defendant knew or should have known that Heavy Metals pose health risks to consumers.

53. Defendant knew or should have known that it owed consumers a duty of care to prevent, or at the very least, minimize the presence of Heavy Metals in the Product to the extent reasonably possible.

54. Defendant knew or should have known that it owed consumers a duty of care to adequately test for Heavy Metals in the Product and the contributing ingredients.

55. Based, in part, on Defendant's own representation that it manufactured the Product using the highest standards, Defendant knew or should have known consumers reasonably expect that the Product does not contain (or have a material risk of containing) Heavy Metals.

56. The Food and Drug Administration ("FDA") and the World Health Organization ("WHO") have declared arsenic, cadmium, and lead "dangerous to human health."<sup>3</sup>

57. The FDA has acknowledged that "exposure to these [heavy metals] are likely to have the most significant impact on public health" and has prioritized them in connection with its Toxic Elements Working Group to look at reducing the risks associated with human consumption of heavy metals.<sup>4</sup>

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<sup>3</sup> *Staff Report: Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, Feb. 4, 2021 ("House Report") at 2, available at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (last accessed May 11, 2023).

<sup>4</sup> *Environmental Contaminants in Food*, U.S. Food & Drug Administration, available at <https://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/default.htm> (last accessed May 11, 2023).



58. Heavy Metals bioaccumulate in the body, meaning the body cannot excrete the toxins as quickly as they are absorbed and the risk they pose increases over time and can remain in one's body for years.<sup>5</sup>

59. Concerns over exposure to Heavy Metals, and the knowledge of such risks associated with exposure, are not a new phenomenon, and Defendant knew or should have known of the risks associated with the presence of Heavy Metals in foods it sells to consumers.<sup>6</sup>

60. Despite the known risks of exposure to Heavy Metals, Defendant has recklessly and/or knowingly sold the Product without disclosing to consumers like Plaintiff and members of the Class that the Product contains (or has a material risk of containing) Heavy Metals.

#### **B. Arsenic**

61. The Product contains (or has a material risk of containing) arsenic, which can cause respiratory, gastrointestinal, hematological, hepatic, renal, skin, and neurological and immunological effects.<sup>7</sup> Exposure to arsenic can also cause diabetes, atherosclerosis, and cardiovascular disease.<sup>8</sup>

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<sup>5</sup> *Heavy Metals in Baby Food: What You Need to Know*, Consumer Reports, Aug. 16, 2018 (updated Sept. 29, 2021), available at <https://www.consumerreports.org/food-safety/heavy-metals-in-baby-food/> (last accessed May 11, 2023).

<sup>6</sup> See e.g., *FDA Compliance Program Guidance Manual: Toxic Elements in Food and Foodware, and Radionuclides in Food – Import and Domestic*, available at <http://wayback.archive-it.org/7993/20170404233343/https://www.fda.gov/downloads/Food/ComplianceEnforcement/UCM073204.pdf> (last accessed May 11, 2023); see also 21 CFR 172, available at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=172&showFR=1> (last accessed May 11, 2023).

<sup>7</sup> House Report at 10.

<sup>8</sup> J. Christopher States et al., *Prenatal Arsenic Exposure Alters Gene Expression in the Adult Liver to a Proinflammatory State Contributing to Accelerated*

62. Inorganic arsenic is highly toxic and a known cause of human cancers.

63. “Studies have shown that consuming products with arsenic over time can lead to impaired brain development, growth problems, breathing problems, and a compromised immune system.”<sup>9</sup>

64. Based on the risks associated with exposure to higher levels of arsenic, both the U.S. Environmental Protection Agency (“EPA”) and FDA have set limits concerning the allowable limit of arsenic at 10 parts per billion (“ppb”) for human consumption in apple juice (regulated by the FDA) and drinking water (regulated by the EPA) as a maximum contaminant level.

65. Moreover, the FDA has set the maximum allowable arsenic levels in bottled water at 10 ppb of inorganic arsenic.<sup>10</sup> The FDA has issued an action level guidance for inorganic arsenic in infant rice cereals of 100 ppb.<sup>11</sup>

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*Atherosclerosis*, PLOS ONE, June 15, 2012, available at <https://doi.org/10.1371/journal.pone.0038713> (last accessed May 11, 2023).

<sup>9</sup> Letter to FDA Acting Commissioner Janet Woodcock, signed by Senators Klobuchar, Blumenthal, Leahy, Duckworth, and Booker, June 22, 2021, available at [https://www.klobuchar.senate.gov/public/\\_cache/files/9/9/996f2cad-5295-432b-a543-f69312988a78/37D015A1AC9DDF0E31B341F629469169.6.22.2021-formatted-letter-to-fda-on-baby-food-recall.pdf](https://www.klobuchar.senate.gov/public/_cache/files/9/9/996f2cad-5295-432b-a543-f69312988a78/37D015A1AC9DDF0E31B341F629469169.6.22.2021-formatted-letter-to-fda-on-baby-food-recall.pdf) (last accessed May 11, 2023) (citing *Arsenic and Children*, Dartmouth Toxic Metals Superfund Research Program, 2021, available at <https://sites.dartmouth.edu/arsenicandyou/arsenic-and-children/> (last accessed May 11, 2023)).

<sup>10</sup> Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to Warn Consumers of Risk*, The Washington Post, Feb. 4, 2021, available at <https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed May 11, 2023).

<sup>11</sup> *Inorganic Arsenic in Rice Cereals for Infants: Action Level Guidance for Industry*, FDA, Aug. 2020, available at <https://www.fda.gov/media/97234/download#:~:text=The%20action%20level%20for%20inorganic,on%20sampling%20and%20testing%20results> (last accessed May 11, 2023).

1       **C.    Cadmium**

2       66.    The Product contains (or have a material risk of containing) cadmium,  
3    which is considered a cancer-causing agent.<sup>12</sup>

4       67.    “[A]ny cadmium exposure should be avoided.”<sup>13</sup> Exposure to even low  
5    levels of cadmium over time may build up cadmium in the kidneys and cause kidney  
6    disease and bone loss.<sup>14</sup>

7       68.    Cadmium exposure can affect the gastrointestinal system, as well as  
8    lead to hemorrhagic gastroenteritis, liver and kidney necrosis, cardiomyopathy, and  
9    metabolic acidosis.<sup>15</sup>

10      69.    Exposure to cadmium is also linked to cardiovascular disease and  
11   cancer.<sup>16</sup>

12      70.    Scientists have reported a “tripling of risk for learning disabilities and  
13   special education among children with higher cadmium exposures, at exposure  
14   levels common among U.S. children.”<sup>17</sup>

15       <sup>12</sup> *Cadmium Factsheet*, Centers for Disease Control and Prevention, available at  
16   [https://www.cdc.gov/biomonitoring/cadmium\\_factsheet.html](https://www.cdc.gov/biomonitoring/cadmium_factsheet.html) (last accessed May  
17   11, 2023).

18       <sup>13</sup> M. Nathaniel Mead, *Cadmium Confusion: Do Consumers Need Protection?*  
19   *Environmental Health Perspectives*, Dec. 2010, available at  
20   <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/> (last accessed May 11,  
21   2023).

22       <sup>14</sup> *Id.*

23       <sup>15</sup> *Cadmium Toxicity: What Health Effects are Associated with Acute High-Dose*  
24   *Cadmium Exposure?* Agency for Toxic Substances and Disease Registry, available  
25   at <https://www.atsdr.cdc.gov/csem/cadmium/Acute-Effects.html> (last accessed  
26   May 11, 2023).

27       <sup>16</sup> M. Nathaniel Mead, *Cadmium Confusion: Do Consumers Need Protection?*  
28   *Environmental Health Perspectives*, Dec. 2010, available at  
29   <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/> (last accessed May 11,  
30   2023).

31       <sup>17</sup> *Is Homemade Baby Food Better? A New Investigation: Tests Compare Toxic*  
32   *Heavy Metal Contamination in Homemade Versus Store-Bought Foods for Babies,*  
33   *Healthy Babies Bright Futures*, Aug. 2022, at 69 (“Healthy Babies Bright Futures



71. Cadmium, “displays a troubling ability to cause harm at low levels of exposure.”<sup>18</sup> The U.S. Department of Health and Human Services has determined that cadmium and cadmium compounds are known human carcinogens and the EPA has likewise determined that cadmium is a probable human carcinogen.<sup>19</sup>

72. Compounding such concerns is the fact that cadmium has a prolonged half-life as it “sequester[s] in [human] tissue.”<sup>20</sup>

### **III. The Material Omissions and Misrepresentation Misled and Deceived Reasonable Consumers**

73. The Omissions and Misrepresentation wrongfully convey to consumers that Defendant’s Product is of a superior quality and has certain characteristics that it does not actually possess.

74. Defendant misleadingly causes consumers to believe its Product does not contain Heavy Metals due to the material Omissions and Misrepresentation, when in fact the Product contains or has a material risk of containing undisclosed levels of Heavy Metals, which is material information to reasonable consumers and Plaintiff.

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Report”), available at [https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2022-08/StoreVsHomemade\\_2022.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2022-08/StoreVsHomemade_2022.pdf) (last accessed May 11, 2023).

<sup>18</sup> *Id.*

<sup>19</sup> *Public Health Statement for Cadmium*, Agency for Toxic Substances and Disease Registry, available at <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=46&toxid=15> (last accessed May 11, 2023).

<sup>20</sup> Stephen J. Genius et al., *Toxic Element Contamination of Natural Health Products and Pharmaceutical Preparations*, PLOS ONE, Nov. 21, 2012, available at <https://doi.org/10.1371/journal.pone.0049676> (last accessed May 11, 2023).

1        75. Defendant wrongfully failed to disclose to reasonable consumers  
2 material information regarding the presence of (or material risk of) Heavy Metals in  
3 the Product.

4        76. Due to the Omissions and Misrepresentation, reasonable consumers,  
5 like Plaintiff, would not suspect the presence of Heavy Metals in the Product. Unlike  
6 Defendant, reasonable consumers are not able to independently detect the presence  
7 of Heavy Metals in the Product and are generally without the means to conduct their  
8 own scientific tests or to review scientific testing conducted on the Product.  
9 Moreover, information regarding the presence of Heavy Metals in the Product is in  
10 the exclusive possession of Defendant and not available to consumers. Defendant  
11 chose to not disclose such information to consumers and thus actively concealed the  
12 presence and risk of Heavy Metals in the Product.

13        77. Reasonable consumers must and do rely on Defendant to honestly  
14 report what its Product contains.

15        78. Based on the impression created by the failure to disclose the Heavy  
16 Metals on the packaging, no reasonable consumer would expect, suspect, or  
17 understand that the Product contained or had a material risk of containing Heavy  
18 Metals.

19        79. Defendant knew or should have known the Product contained or had a  
20 material risk of containing Heavy Metals.

21        80. Defendant had a duty to ensure the Product was not deceptively,  
22 misleadingly, unfairly, and falsely marketed and that all material information was  
23 properly and fully disclosed.

24        81. Defendant acted negligently, recklessly, unfairly, and/or intentionally  
25 with its deceptive packaging based on the material Omissions and  
26 Misrepresentation.

1        82. Defendant knew that properly and sufficiently monitoring the Product  
2 for Heavy Metals in the ingredients and finished products was critical.

3        83. In addition, Defendant knew or should have known that a reasonable  
4 consumer would consume the Product, leading to repeated exposure to and  
5 accumulation of Heavy Metals.

6        84. Defendant knew or should have known it could control the levels of  
7 Heavy Metals in the Product by properly monitoring and testing for Heavy Metals  
8 at ingredient sourcing, manufacturing, and packaging stages, and effecting changes  
9 when needed.

10       85. The Omissions and Misrepresentation are material and reasonably  
11 likely to deceive reasonable consumers in their purchasing decisions, such as  
12 Plaintiff.

13       86. The Omissions and Misrepresentation make the Product's packaging  
14 deceptive based on the presence or risk of Heavy Metals in the Product. Reasonable  
15 consumers, like Plaintiff, would consider the presence or risk of Heavy Metals in the  
16 Product a material fact when considering which rice products to purchase.

17       87. Defendant knew, yet failed to disclose, that it was not sufficiently or  
18 adequately monitoring or testing the Product or ingredients used in the Product for  
19 Heavy Metals.

20       88. The Omissions and Misrepresentation were misleading due to  
21 Defendant's failure to sufficiently or adequately monitor or test for and disclose the  
22 presence (or material risk) of Heavy Metals in the Product.

23       89. Defendant knew or should have known that the Product contained or  
24 may have contained undisclosed levels of Heavy Metals that were not disclosed on  
25 the packaging.

1 90. Defendant knew or should have known that reasonable consumers  
2 expected Defendant to sufficiently monitor and test the Product and ingredients for  
3 Heavy Metals to ensure the quality of the Product.

4 91. Defendant knew or should have known that reasonable consumers paid  
5 higher prices for the Product and expected Defendant to sufficiently test and monitor  
6 the Product and ingredients for the presence of Heavy Metals.

7 92. The Omissions and Misrepresentation were intended to and did, in fact,  
8 cause consumers like Plaintiff and the members of the Class to purchase a product  
9 they would not have if the true quality and ingredients were disclosed or for which  
10 they would not have paid a premium price.

11 93. As a result of Defendant's Omissions and Misrepresentation,  
12 Defendant was able to generate substantial sales, which allowed Defendant to  
13 capitalize on, and reap enormous profits from, Plaintiff and similarly situated  
14 consumers who paid the purchase price or premium for the Product.

15 94. Plaintiff and other reasonable consumers would not have purchased the  
16 Product or would have paid less for it but for Defendant's Omissions and  
17 Misrepresentation concerning the presence (or material risk of the presence) of  
18 Heavy Metals in the Product.

19 **IV. Defendant's Omissions and Misrepresentation Violate California and**  
20 **Other Similar State Laws**

21 95. California law is designed to ensure that a company's claims about its  
22 products are truthful and accurate.

23 96. Defendant has engaged in this long-term advertising campaign omitting  
24 the fact that the Product contains (or has a material risk of containing) Heavy Metals.

25 **V. Plaintiff's Reliance Was Reasonable and Foreseeable by Defendant**

26 97. Plaintiff read and relied upon the packaging of the Product when  
27 making his purchasing decision. Had he known Defendant omitted and failed to  
28

1 disclose the presence of Heavy Metals on the Product's packaging, he would not  
2 have purchased the Product.

3 98. Reasonable consumers, like Plaintiff, would consider the packaging of  
4 a product when deciding whether to purchase it.

5 **VI. Defendant's Knowledge and Notice of Its Breach of Implied Warranties**

6 99. Defendant had sufficient notice of its breach of implied warranties.  
7 Defendant has, and had, exclusive knowledge of the physical and chemical make-up  
8 of the Product. Defendant also had exclusive knowledge of its suppliers, and  
9 whether any suppliers provided ingredients that contained Heavy Metals.

10 100. Defendant has not changed its packaging to include any disclaimer that  
11 the Product contains (or are at the risk of containing) Heavy Metals.

12 **VII. Privity Exists with Plaintiff and the Proposed Class**

13 101. Defendant knew that reasonable consumers such as Plaintiff and the  
14 proposed members of the Class would be the end purchasers of the Product and the  
15 targets of its advertising.

16 102. Defendant intended that the packaging and implied warranties would  
17 be considered by the end purchasers of the Product, including Plaintiff and the  
18 proposed members of the Class.

19 103. Defendant directly marketed to Plaintiff and the proposed Class  
20 through the Product's packaging.

21 104. Plaintiff and the proposed members of the Class are the intended  
22 beneficiaries of the implied warranties.

23 **CLASS ACTION ALLEGATIONS**

24 105. Plaintiff brings this action as a class action pursuant to Federal Rules of  
25 Civil Procedure 23(a), 23(b)(2), and 23(b)(3), on behalf of himself and all others  
26 similarly situated, as members of the following class against Defendant:  
27  
28

1 All persons who, during the fullest period allowed by law, purchased  
the Product for household use, and not for resale (the “Class”).

2 All persons who, during the fullest period allowed by law, purchased  
3 the Product for household use, and not for resale in the State of  
California (the “California Subclass”).

4  
5 106. Excluded from the Class and Subclass (collectively, “Class”) are  
6 Defendant, any of Defendant’s parent companies, subsidiaries and/or affiliates,  
7 officers, directors, legal representatives, employees, or co-conspirators, all  
8 governmental entities, and any judge, justice, or judicial officer presiding over this  
9 matter.

10 107. This action is brought and may be properly maintained as a class action.  
11 There is a well-defined community of interests in this litigation and the members of  
the Class are easily ascertainable.

12 108. The members of the proposed Class are so numerous that individual  
13 joinder of all members is impracticable, and the disposition of the claims of the  
14 members of all Class in a single action will provide substantial benefits to the parties  
15 and Court.

16 109. Questions of law and fact common to Plaintiff and the Class include,  
17 but are not limited to, the following:

- 18 a. Whether Defendant owed a duty of care;  
19 b. Whether Defendant owed a duty to disclose;  
20 c. Whether Defendant knew or should have known that the Product  
21 contained or may contain Heavy Metals;  
22 d. Whether Defendant failed to disclose that the Product contained or  
23 may contain Heavy Metals;  
24 e. Whether the claims of Plaintiff and the Class serve a public benefit;  
25 f. Whether Defendant’s packaging is false, deceptive, and misleading  
26 based on the Omissions and Misrepresentation;  
27  
28

- g. Whether the Omissions and Misrepresentation are material to a reasonable consumer;
- h. Whether the inclusion of Heavy Metals in the Product is material to a reasonable consumer;
- i. Whether the Omissions and Misrepresentation are likely to deceive a reasonable consumer;
- j. Whether Defendant had knowledge that the Omissions and Misrepresentation were material and false, deceptive, and misleading;
- k. Whether Defendant breached its duty of care;
- l. Whether Defendant breached its duty to disclose;
- m. Whether Defendant violated the laws of the State of California;
- n. Whether Defendant breached its implied warranties;
- o. Whether Defendant engaged in unfair trade practices;
- p. Whether Defendant engaged in false advertising;
- q. Whether Plaintiff and members of the Class are entitled to actual, statutory, treble, and punitive damages; and
- r. Whether Plaintiff and members of the Class are entitled to declaratory and injunctive relief.

110. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other members of the Class. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

111. Plaintiff's claims are typical of those of the members of the Class in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

112. Plaintiff will fairly and adequately represent and protect the interests of the Class, have no interests incompatible with the interests of the Class, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

113. Class treatment is superior to other options for resolution of the controversy because the relief sought for each member of the Class is small such that, absent representative litigation, it would not be feasible for members of the Class to redress the wrongs done to them.

114. Questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

115. As a result of the foregoing, class treatment is appropriate.

**COUNT I**  
**Violations of The California Unfair Competition Law, California Business & Professions Code §§17200, *et seq.*, Against Defendant on Behalf of the Class, or Alternatively, the California Subclass**

116. Plaintiff incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein.

117. Plaintiff brings this claim individually and on behalf of the Class members against Defendant.

118. The Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

119. Plaintiff, the Class members, and Defendant are each a “person” under California Business & Professions Code §17201.

**Fraudulent**

120. Defendant’s failure to disclose the presence (or material risk of presence) of Heavy Metals in the Product is likely to deceive the public.



**Unlawful**

121. As alleged herein, Defendant's failure to disclose the presence (or material risk of presence) of Heavy Metals in the Product violates at least the following laws:

- The CLRA, California Business & Professions Code §§1750, *et seq.*;
- The False Advertising Law, California Business & Professions Code §§17500, *et seq.*, and
- The Sherman Food, Drug, and Cosmetic Law, California Health & Safety Code §§109875, *et seq.*

**Unfair**

122. Defendant committed unfair practices by selling the Product without adequate testing or screening for the Heavy Metals, which rendered the Product adulterated and misbranded.

123. Defendant's conduct with respect to the packaging and sale of the Product is unfair because Defendant's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of Defendant's conduct, if any, does not outweigh the gravity of the harm to its victims.

124. Defendant's conduct with respect to the packaging and sale of the Product is also unfair because it violates public policy as declared by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the False Advertising Law.

125. Defendant's conduct with respect to the packaging and sale of the Product is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one that consumers, themselves, can reasonably avoid.

126. Defendant was obligated to disclose the presence of Heavy Metals in the Product because:

1 a. Defendant had exclusive knowledge of the presence of Heavy Metals  
2 in the Product that was not known or reasonably accessible to Plaintiff  
3 and the Class; and

4 b. Defendant actively concealed the presence of Heavy Metals from  
5 Plaintiff and the Class.

6 127. Plaintiff and the Class members relied upon the Product's packaging  
7 provided to them by Defendant when making their purchasing decisions. Had  
8 Plaintiff and the Class members known Defendant failed to disclose the presence of  
9 Heavy Metals on the Product's packaging, they would not have purchased the  
10 Product.

11 128. In accordance with California Business & Professions Code §17203,  
12 Plaintiff seeks an order enjoining Defendant from continuing to conduct business  
13 through fraudulent or unlawful acts and practices and to commence a corrective  
14 advertising campaign.

15 129. Defendant's conduct is ongoing and continuing, such that prospective  
16 injunctive relief is necessary, especially given Plaintiff's desire to purchase the  
17 Product in the future if he can be assured that the Product is safe for consumption  
18 and does not contain Heavy Metals.

19 130. On behalf of himself and the Class, Plaintiff also seeks an order for the  
20 restitution of all monies from the sale of the Product, which was unjustly acquired  
21 through acts of fraudulent, unfair, or unlawful competition.

22 131. Plaintiff and California Subclass Members seek restitution if monetary  
23 damages are not available. Indeed, restitution under the Unfair Competition Law can  
24 be awarded in situations where the entitlement to damages may prove difficult. But  
25 even if damages were available, such relief would not be adequate to address the  
26 injury suffered by Plaintiff and California Subclass Members. Unlike damages, the  
27 Court's discretion in fashioning equitable relief is very broad. Thus, restitution  
28

1 would allow recovery even when normal consideration associated with damages  
2 would not.

3 **COUNT II**  
4 **Violation of California's False Advertising Law, California Business &**  
5 **Professions Code §§17500, *et seq.*, Against Defendant on Behalf of the Class,**  
6 **or Alternatively, the California Subclass**

7 132. Plaintiff incorporates by reference the allegations contained in the  
8 paragraphs above as if set forth fully herein.

9 133. Plaintiff brings this claim individually and on behalf of the Class  
10 members against Defendant.

11 134. California's False Advertising Law prohibits any statement or omission  
12 in connection with the sale of goods "which is untrue or misleading." Cal. Bus. &  
13 Prof. Code §17500.

14 135. As set forth herein, Defendant's failure to disclose the presence (or risk  
15 of presence) of Heavy Metals in the Product is likely to deceive the public.

16 136. Defendant knew the Product contained undisclosed levels of Heavy  
17 Metals. Defendant had a duty to disclose the presence of Heavy Metals, and by  
18 omitting their presence, misled consumers.

19 137. Defendant knew, or reasonably should have known, that these  
20 Omissions and Misrepresentation were misleading to reasonable consumers.

21 138. Had Defendant disclosed the presence (or risk of presence) of Heavy  
22 Metals in the Product or made consumers aware of its failure to disclose, Plaintiff  
23 and members of the Class would not have purchased the Product.

24 139. Defendant's conduct is ongoing and continuing, such that prospective  
25 injunctive relief is necessary, especially given Plaintiff's desire to purchase the  
26 Product in the future if they can be assured that the Product does not contain Heavy  
27 Metals.  
28

140. Plaintiff and the members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Product.

141. Plaintiff and California Subclass Members seek restitution if monetary damages are not available. Indeed, restitution under the False Advertising Law can be awarded in situations where the entitlement to damages may prove difficult. But even if damages were available, such relief would not be adequate to address the injury suffered by Plaintiff and California Subclass Members. Unlike damages, the Court's discretion in fashioning equitable relief is very broad. Thus, restitution would allow recovery even when normal consideration associated with damages would not.

**COUNT III**  
**Violations of California's Consumers Legal Remedies Act, California Civil Code §§1750, *et seq.*, Against Defendant on Behalf of the Class, or Alternatively, the California Subclass**

142. Plaintiff incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein.

143. Plaintiff brings this claim individually and on behalf of the Class members against Defendant.

144. Plaintiff and each proposed Class member are "consumers," as that term is defined in California Civil Code §1761(d).

145. The Product is a "good," as that term is defined in California Civil Code §1761(a).

146. Plaintiff, the Class members, and Defendant are each a "person" as that term is defined in California Civil Code §1761(c).

147. Plaintiff and each of the Class member's purchases of the Product constitute "transactions" as that term is defined in California Civil Code §1761(c).

148. Defendant's conduct alleged herein violates at least the following provisions of California's Consumers Legal Remedies Act (the "CLRA"):

- a. California Civil Code §1770(a)(5), by failing to make any mention of Heavy Metals in the Product;
- b. California Civil Code §1770(a)(7), by knowingly, recklessly, and/or intentionally representing that the Product was of a particular standard, quality, or grade, when they were of another; and
- c. California Civil Code §1770(a)(9), by knowingly, recklessly, and/or intentionally advertising the Product with intent not to sell it as advertised.

149. The Omissions and Misrepresentation were material as reasonable consumers such as Plaintiff and the members of the Class would deem the presence of Heavy Metals important in determining whether to purchase the Product.

150. Defendant was obligated to disclose the presence of Heavy Metals in the Product because:

- a. Defendant had exclusive knowledge of the presence of Heavy Metals in the Product, which was not known or reasonably accessible to Plaintiff and the members of the Class; and
- b. Defendant actively concealed the presence of Heavy Metals from Plaintiff and the members of the Class.

151. As a direct and proximate result of these violations, Plaintiff and the Class members have been harmed, and such harm will continue unless and until Defendant is enjoined from using the misleading marketing described herein in any manner in connection with the advertising and sale of the Product.

152. Contemporaneously with this complaint, counsel for Plaintiff and the Class members sent written notice (via U.S. certified mail, return receipt requested) that its conduct is in violation of the CLRA. If Defendant fails to provide appropriate relief for its violations of the CLRA §§1770(a)(5), (7), and (9) within thirty days of

1 receipt of Plaintiff's notification, Plaintiff will amend this Complaint to seek all  
2 available damages under CLRA §1780.

3 **COUNT IV**  
4 **Breach of Implied Warranty of Merchantability Against Defendant on Behalf**  
5 **of the Class or, Alternatively, the State Subclass**

6 153. Plaintiff incorporates by reference the allegations contained in the  
7 paragraphs above as if set forth fully herein.

8 154. Plaintiff brings this claim individually and on behalf of the Class  
9 members against Defendant.

10 155. Defendant is a merchant engaging in the sale of goods to Plaintiff and  
11 the members of the Class.

12 156. There was a sale of goods from Defendant to Plaintiff and the members  
13 of the Class.

14 157. As set forth herein, Defendant manufactured and sold the Product, and  
15 prior to the time the Product was purchased by Plaintiff and the members of the  
16 Class, impliedly warranted that the Product were of merchantable quality and fit for  
17 their ordinary use (consumption by consumers).

18 158. Plaintiff relied on these implied warranties when he purchased the  
19 Product.

20 159. The Product was not fit for its ordinary use (consumption by  
21 consumers) as they include undisclosed levels of Heavy Metals that do not conform  
22 to the packaging.

23 160. These promises became part of the basis of the bargain between  
24 Defendant and Plaintiff and the members of the Class, and thus constituted implied  
25 warranties.

26 161. Defendant breached its implied warranties by selling Product that  
27 contain Heavy Metals.  
28

1 162. Privity exists because Defendant manufactured and sold the Product  
2 directly to Plaintiff and the members of the Class.

3 163. Defendant impliedly warranted to Plaintiff and the members of the  
4 Class that the Product did not contain contaminants such as Heavy Metals by failing  
5 to mention or disclose the presence of Heavy Metals.

6 164. As a direct and proximate result of Defendant's breach of its implied  
7 warranties, Plaintiff and the members of the Class suffered actual damages as they  
8 purchased the Product that was worth less than the price paid and that they would  
9 not have purchased at all had they known of the presence of Heavy Metals.

10 165. Plaintiff, on behalf of himself and the members of the Class, seek actual  
11 damages for Defendant's failure to deliver goods that conform to its implied  
12 warranties and resulting breach.

13  
14 **COUNT V**  
15 **Unjust Enrichment Against Defendant on Behalf of the Class or,**  
16 **Alternatively, the State Subclass**

17 166. Plaintiff incorporates by reference the allegations contained in the  
18 paragraphs above as if set forth fully herein.

19 167. Plaintiff brings this claim individually and on behalf of the Class  
20 members against Defendant.

21 168. Substantial benefits have been conferred on Defendant by Plaintiff and  
22 the members of the Class through the purchase of the Product. Defendant knowingly  
23 and willingly accepted and enjoyed these benefits.

24 169. Defendant either knew or should have known that the payments  
25 rendered by Plaintiff were given and received with the expectation that the Product  
26 would not contain Heavy Metals. As such, it would be inequitable for Defendant to  
27 retain the benefit of the payments under these circumstances.  
28

1 170. Defendant was obligated to disclose the presence of Heavy Metals in  
2 the Product because:

3 a. Defendant had exclusive knowledge of the presence of Heavy Metals  
4 in the Product that were not known or reasonably accessible to Plaintiff  
5 and the members of the Class; and

6 b. Defendant actively concealed the presence of Heavy Metals from  
7 Plaintiff and the members of the Class.

8 171. Defendant's acceptance and retention of the benefits of the payments  
9 from Plaintiff and the members of the Class under the circumstances alleged herein  
10 make it inequitable for Defendant to retain the benefits without payment of the value  
11 to Plaintiff and the members of the Class.

12 172. Plaintiff and the members of the Class are entitled to recover from  
13 Defendant all amounts wrongfully collected and improperly retained by Defendant,  
14 plus interest thereon.

15 173. Plaintiff and the members of the Class seek actual damages, injunctive  
16 and declaratory relief, attorneys' fees, costs, and any other just and proper relief  
17 available under the laws.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff, on behalf of himself and all others similarly  
20 situated, pray for judgment against Defendant as to each and every count, including:

21 (a) An order declaring this action to be a proper class action, appointing  
22 Plaintiff and his counsel to represent the Class, and requiring Defendant  
23 to bear the costs of class notice;

24 (b) An order enjoining Defendant from selling the Product until the Heavy  
25 Metals are removed or full disclosure of the presence of same appears  
26 on all packaging;



- (c) An order requiring Defendant to engage in a corrective advertising campaign and engage in any further necessary affirmative injunctive relief, such as recalling existing Product;
- (d) An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendant from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;
- (e) An order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of law, plus pre- and post-judgment interest thereon;
- (f) An order requiring Defendant to disgorge or return all moneys, revenues, and profits obtained by means of any wrongful or unlawful act or practice;
- (g) An order requiring Defendant to pay all actual and statutory damages permitted under the counts alleged herein, in an amount to be determined by this Court, but at least \$5,000,000;
- (h) An order requiring Defendant to pay punitive damages on any count so allowable;
- (i) An order awarding attorneys' fees and costs to Plaintiff and the Class; and
- (j) An order providing for all other such equitable relief as may be just and proper.

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims so triable.

Dated: June 16, 2025

**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**

*/s/ Trenton R. Kashima*

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*\*Pro hac vice forthcoming*

## CIVIL COVER SHEET

Case 1:25-cv-00732-CDB Document 1-1 Filed 06/16/25 Page 1 of 2

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

## I. (a) PLAINTIFFS

EVERETT SCOTT, individually and on behalf of all others  
similarly situated

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

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

Milberg Coleman Bryson Phillips Grossman, 402 W.  
Broadway St. Ste 1760 San Diego, CA 92101  
(619) 810-7047

## DEFENDANTS

FIRST STREET FOOD LLC

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

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

Attorneys (If Known)

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

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

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

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT  | TORTS  | FORFEITURE/PENALTY  | BANKRUPTCY  | OTHER STATUTES  |
|---|--|---|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice<br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input checked="" type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>INTELLECTUAL PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)<br><input type="checkbox"/> 485 Telephone Consumer Protection Act<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education<br><b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement  |   |   |   |

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Class Action Fairness Act, 28 U.S.C. §1332(d)

Brief description of cause:  
fraudulent, misleading business practices; unjust enrichment; breach of warranty

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** 5,000,000.00 **CHECK YES only if demanded in complaint:**  
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

6/16/2025

SIGNATURE OF ATTORNEY OF RECORD

/s/ Trenton R. Kashima

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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