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

JESSICA DAVID and HEATHER AGE,  
individually, and on behalf of all others similarly  
situated.

Case No.: 3:21-cv-2059

**Plaintiff,**

## **CLASS ACTION COMPLAINT**

PLUM, PBC.; and DOES 1 through 10, inclusive,  
Defendants

## **DEMAND FOR JURY TRIAL**

Plaintiffs Jessica David and Heather Age (“Plaintiffs”), on behalf of themselves and the Class and Subclasses of all others similarly situated, bring this class action against Defendant Plum, PBC. (“Plum” or “Defendant”), based on Defendant’s misleading, deceptive and unfair business practices with respect to the marketing, advertising, labeling, packaging and sale of its baby food products, which contain levels of toxic heavy metals.

## NATURE OF ACTION

1. This case involves a straightforward and systematic course of false, misleading, and unlawful conduct: Defendant has misrepresented and falsely advertised that the baby food products it sells are “natural”, “organic”, and free from artificial preservatives.

2. Parents and other caregivers, including Plaintiffs and members of the Class and Subclasses, reasonably believe that the baby food they purchase will be healthy, nutritious, and free from harmful substances and contaminants. However, on February 4, 2021, The United States House of Representatives

1 Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform  
 2 (“Subcommittee”) published a report (“Subcommittee Report”), revealing its findings that numerous baby  
 3 foods, including those manufactured by Defendant Plum, are “tainted with significant levels of toxic heavy  
 4 metals, including arsenic, lead, cadmium, and mercury.”<sup>1</sup>

5       3.     Given the health risks associated with the consumption of high levels of toxic heavy metals,  
 6 the presence of these substances is material to consumers.

7       4.     Defendant Plum knew that the presence of toxic heavy metals in its baby food products  
 8 was material to consumers, which is evidenced by its representations that its baby food products are tested  
 9 for such substances. Yet Defendant Plum chose to omit and conceal that its baby food products contained,  
 10 or were at risk of containing, levels of heavy toxic metals, and therefore deceptively misled Plaintiffs and  
 11 members of the Classes that purchased these products in reliance on Plum’s representations.

12      5.     Plaintiffs seek relief in this action individually, and on behalf of all other similarly situated  
 13 individuals who purchased Defendant’s falsely and deceptively labeled baby food products during the  
 14 statute of limitations period, for breach of express and implied warranty, fraud by omission, intentional  
 15 and negligent misrepresentation, quasi contract, unjust enrichment, and restitution, and for violations of  
 16 Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

### **THE PARTIES**

18      6.     Plaintiff Heather Age (“Plaintiff Age”) is a citizen of the State of Kentucky and is a member  
 19 of the Nationwide Class and the Kentucky Subclass. Plaintiff Age purchased various Plum Organics  
 20 Products, including its Stage 2 Pouches in the flavors Sweet Potato, Apple & Corn; Pear, Purple Carrot &  
 21 Blueberry; Pear, Spinach & Pea; and Apple & Broccoli.

22      7.     Plaintiff Jessica David (“Plaintiff David”) is a citizen of the State of Florida and is a  
 23 member of the Nationwide Class and the Florida Subclass. Plaintiff David purchased various flavors of  
 24 Plum Organics baby food Pouches.

25      8.     Plaintiffs believed they were feeding their children healthy, nutritious foods during the time  
 26 they purchased and fed their children Defendant Plum’s baby food products. Due to the false and

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27      <sup>1</sup> See *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, Staff  
 28 Report, Staff of H. Subcomm. On Econ. And Consumer Policy, Comm. On Oversight and Reform, 117th Cong., <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (Feb. 4, 2021) (“Subcommittee Report”).

misleading claims and omissions by Defendant Plum as described herein, Plaintiffs were unaware that the baby food products sold by Plum contained any level of toxic heavy metals, and Plaintiffs would not have purchased the products if that information had been fully disclosed.

9. Defendant Plum is a Delaware public benefit corporation, with its principal place of business and headquarters located at 1485 Park Avenue, Suite 200, Emeryville, California, 94608. Plum was acquired by Campbell Soup Company in 2013. Defendant Plum does business throughout the United States, and manufactures, markets, advertises, labels, represents, warrants, distributes, and sells baby food products online and at brick-and-mortar retail stores.

## **JURISDICTION AND VENUE**

10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the Class of plaintiffs (defined below) are citizens of states different from Plum. Further, greater than two-thirds of the Class members reside in states other than the state in which Plum is a citizen.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) in that Defendant is a corporation that maintains its principal place of business in this jurisdiction. Further, Defendant (a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution and sale of its products in this district; (b) does substantial business in this district; and (c) is subject to personal jurisdiction in this district.

## **FACTUAL ALLEGATIONS**

**A. Defendant Falsely Marketed and Advertised its Baby Food Products**

12. Defendant Plum manufactures, markets, advertises, labels, represents, warrants, distributes, and sells baby food products throughout the United States under the Plum Organics label. Plum makes various representations about its Products, including that they are “organic” and contain “no added preservatives or artificial flavors.”

13. Plum claims on its website that it is confident in the safety and quality of its products, and its top priority is to serve children healthy, nutritious foods made from the best ingredients.<sup>2</sup> Plum

<sup>2</sup> Plum Organics, FAQs, <https://www.plumorganics.com/faqs/>

1 promises that it is committed to minimizing environmental contaminants including heavy metals within  
 2 its products, and assures its products are safe to eat.<sup>3</sup>

3       14.     The products at issue are various types of Plum's baby food products that contain heavy  
 4 metals, including but not limited to the Products purchased by Plaintiffs ("Products")<sup>4</sup>, and may include  
 5 other Plum Organics baby food Products, such as:

- 6           •     Plum Organics Stage 1 (4+ months) Just Peaches Organic Baby Food Pouch
- 7           •     Plum Organics Stage 1 (4+ months) Just Sweet Potato Organic Baby Food Pouch
- 8           •     Plum Organics Stage 1 (4+ months) Just Mangos Organic Baby Food Pouch
- 9           •     Plum Organics Stage 1 (4+ months) Just Prunes Organic Baby Food Pouch
- 10          •     Plum Organics Stage 2 (6+ months) Banana & Pumpkin Organic Baby Food Pouch
- 11          •     Plum Organics Stage 2 (6+ months) Banana, Zucchini & Amaranth Organic Baby Food  
                  Pouch
- 12          •     Plum Organics Stage 2 (6+ months) Apple Butternut Squash & Granola Organic Baby  
                  Food Pouch
- 13          •     Plum Organics Stage 2 (6+ months) Pear Blueberry Avocado & Granola Organic Baby  
                  Food Pouch
- 14          •     Plum Organics Stage 2 (6+ months) Strawberry Banana & Granola Organic Baby Food  
                  Pouch
- 15          •     Plum Organics Stage 2 (6+ months) Mango Carrot & Coconut Cream Organic Baby Food  
                  Pouch
- 16          •     Plum Organics Stage 2 (6+ months) Apple, Blackberry & Coconut Cream Organic Baby  
                  Food Pouch
- 17          •     Plum Organics Stage 2 (6+ months) Apple, Cauliflower & Leek Organic Baby Food Pouch
- 18          •     Plum Organics Stage 2 (6+ months) Pumpkin, banana, Papaya & Cardomom Organic Baby  
                  Food Pouch
- 19          •     Plum Organics Stage 2 (6+ months) Apple, Plum, Berry & Barley Organic Baby Food  
                  Pouch
- 20          •     Plum Organics Stage 2 (6+ months) Apple, Raspberry, Spinach & Greek Yogurt Organic  
                  Baby Food Pouch
- 21          •     Plum Organics Stage 2 (6+ months) Apple, Spinach & Avocado Organic Baby Food Pouch
- 22          •     Plum Organics Stage 2 (6+ months) Apple, Raisin & Quinoa Organic Baby Food Pouch
- 23          •     Plum Organics Stage 2 (6+ months) Apple & Broccoli Organic Baby Food Pouch
- 24          •     Plum Organics Stage 2 (6+ months) Apple & Carrot Organic Baby Food Pouch
- 25          •     Plum Organics Stage 2 (6+ months) Butternut Squash, Carrot, Chickpea & Corn Organic  
                  Baby Food Pouch
- 26          •     Plum Organics Stage 2 (6+ months) Carrot, Bean, Spinach & Tomato Organic Baby Food  
                  Pouch
- 27          •     Plum Organics Stage 2 (6+ months) Guava, Pear & Pumpkin Baby Food Pouch
- 28          •     Plum Organics Stage 2 (6+ months) Kale, Corn, Carrot & Tomato Organic Baby Food  
                  Pouch
- 29          •     Plum Organics Stage 2 (6+ months) Mango, Sweet Potato, Apple & Millet Organic Baby  
                  Food Pouch
- 30          •     Plum Organics Stage 2 (6+ months) Mango, Yellow Zucchini, Corn & Turmeric Organic  
                  Baby Food Pouch
- 31          •     Plum Organics Stage 2 (6+ months) Pea, Kiwi, Pear & Avocado Organic Baby Food Pouch
- 32          •     Plum Organics Stage 2 (6+ months) Peach, Banana & Apricot Organic Baby Food Pouch
- 33          •     Plum Organics Stage 2 (6+ months) Peach, Pumpkin, Carrot & Cinnamon Organic Baby  
                  Food Pouch
- 34          •     Plum Organics Stage 2 (6+ months) Pear & Mango Organic Baby Food Pouch

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<sup>3</sup> *Id.*

<sup>4</sup> Plaintiffs reserve the right to amend this definition upon completion of discovery.

- 1     • Plum Organics Stage 2 (6+ months) Pear, Green Bean & Greek Yogurt Organic Food  
Pouch
- 2     • Plum Organics Stage 2 (6+ months) Pear, Purple Carrot & Blueberry Organic Baby Food  
Pouch
- 3     • Plum Organics Stage 2 (6+ months) Pear, Spinach & Pea Organic Baby Food Pouch
- 4     • Plum Organics Stage 2 (6+ months) Pumpkin, Spinach, Chickpea & Broccoli Organic  
Baby Food Pouch
- 5     • Plum Organics Stage 2 (6+ months) Sweet Potato, Apple & Corn Organic Baby Food  
Pouch
- 6     • Plum Organics Stage 3 (6+ months) Carrot, Spinach, Turkey, Corn, Apple & Potato  
Organic Baby Food Pouch
- 7     • Plum Organics Stage 3 (6+ months) Carrot, Sweet Potato, Corn, Pea & Chicken Organic  
Baby Food Pouch
- 8     • Plum Organics Stage 3 (6+ months) Carrot, Chickpea, Pea, Beef & Tomato Organic Baby  
Food Pouch
- 9     • Plum Organics Apple with Spinach Cereal Super Puffs
- 10    • Plum Organics Strawberry with Beet Cereal Super Puffs
- 11    • Plum Organics Mango with Sweet Potato Cereal Super Puffs
- 12    • Plum Organics Blueberry with Purple Sweet Potato Cereal Super Puffs
- 13    • Plum Organics Apple with Leafy Greens Little Teethers Wafers
- 14    • Plum Organics Banana with Pumpkin Little Teethers Wafers
- 15    • Plum Organics Blueberry Little Teethers Wafers
- 16    • Plum Organics Tots Mighty 4 Blends Mango & Pineapple, White Bean, Butternut Squash,  
& Oat Organic Baby Food Pouch
- 17    • Plum Organics Tots Mighty 4 Blends Sweet Potato, Banana & Passionfruit, Greek Yogurt  
& Oat Organic Baby Food Pouch
- 18    • Plum Organics Tots Mighty 4 Blends Strawberry Banana, Greek Yogurt, Kale, Oat &  
Amaranth Organic Baby Food Pouch
- 19    • Plum Organics Tots Mighty 4 Blends Banana, Blueberry, Sweet Potato, Carrot, Greek  
Yogurt & Millet Organic Baby Food Pouch
- 20    • Plum Organics Tots Mighty 4 Blends Apple, Blackberry, Purple Carrot, Greek Yogurt &  
Oat Organic Baby Food Pouch
- 21    • Plum Organics Tots Mighty 4 Blends Banana, Kiwi, Spinach, Greek Yogurt & Barley  
Organic Baby Food Pouch
- 22    • Plum Organics Tots Mighty 4 Blends Banana, Peach, Pumpkin, Carrot, Greek Yogurt &  
Oat Organic Baby Food Pouch
- 23    • Plum Organics Tots Mighty 4 Blends Guava, Pomegranate, Black Bean, Carrot, & Oat  
Organic Baby Food Pouch
- 24    • Plum Organics Tots Mighty 4 Blends Pear, Cherry, Blackberry, Strawberry, Black Bean,  
Spinach & Oat Organic Baby Food Pouch
- 25    • Plum Organics Tots Mighty Veggie Sweet Potato, Apple, Banana, Carrot Organic Baby  
Food Pouch
- 26    • Plum Organics Tots Mighty Veggie Zucchini, Apple, Watermelon & Barley Organic Baby  
Food Pouch
- 27    • Plum Organics Tots Mighty Veggie Spinach, Grape, Apple & Amaranth Organic Baby  
Food Pouch
- 28    • Plum Organics Tots Mighty Veggie Carrot, Pear, Pomegranate & Oats Organic Baby Food  
Pouch
- 29    • Plum Organics Tots Mighty Protein & Fiber Mango, Banana, White Bean, Sunflower Seed  
Butter & Chia Organic Baby Food Pouch
- 30    • Plum Organics Tots Mighty Protein & Fiber Banana, White Bean, Strawberry & Chia  
Organic Baby Food Pouch
- 31    • Plum Organics Tots Mighty Protein & Fiber Pear, White Bean, Blueberry, Date & Chia  
Organic Baby Food Pouch
- 32    • Plum Organics Tots Mighty Snack Bars–Pumpkin Banana
- 33    • Plum Organics Tots Mighty Snack Bars–Strawberry
- 34    • Plum Organics Tots Mighty Snack Bars–Blueberry

- 1     • Plum Organics Tots Mighty Morning–Banana, Blueberry, Oat, Quinoa Organic Baby Food  
Pouch
- 2     • Plum Organics Tots Mighty Morning Bar–Apple Cinnamon
- 3     • Plum Organics Tots Mighty Morning Bar–Blueberry Lemon
- 4     • Plum Organics Tots Mighty Nut Butter Bar–Almond Butter
- 5     • Plum Organics Tots Mighty Nut Butter Bar–Peanut Butter
- 6     • Plum Organics Tots Teensy Snacks–Peach Tot Fruit Snacks
- 7     • Plum Organics Tots Teensy Snacks–Berry Tot Fruit Snacks
- 8     • Plum Organics Tots Jammy Sammy–Peanut Butter & Strawberry Bar
- 9     • Plum Organics Tots Jammy Sammy–Peanut Butter & Grape Bar
- 10    • Plum Organics Tots Jammy Sammy–Blueberry & Oatmeal Bar
- 11    • Plum Organics Tots Jammy Sammy–Apple Cinnamon & Oatmeal Bar
- 12    • Plum Organics Kids Mashups–Applesauce Blueberry Carrot Pouch
- 13    • Plum Organics Kids Mashups–Applesauce Carrot & Mango Pouch
- 14    • Plum Organics Kids Mashups–Applesauce Strawberry & Beet Pouch
- 15    • Plum Organics Kids Mashups–Applesauce Strawberry & Banana Pouch
- 16    • Plum Organics Infant Gentle Organic Infant Formula with Iron, Milk-Based Powder, 0–12  
Months

15.   Plum uses words such as “organic” and categorizes its products by milestones such as  
“baby,” “tots,” and “kids,” and stages such as “Stage 1 (4+ months)”, “Stage 2 (6+ months)”, “Stage 3  
(6+ months)” to emphasize the foods suitability for consumption by infants and young children.

16.   Plum’s labels and packaging do not disclose that the Products contain, or may contain,  
levels of toxic heavy metals.

#### 15.   **B. Defendant’s Marketing and Advertising Misled and Deceived Consumers**

16.   Parent consumers are drawn to representations such as the ones claimed on Plum’s website  
because parents pay attention to what ingredients are in the baby food they purchase for their child. Parents  
are cautious and vigilant because they do not want to expose their children to potentially harmful  
substances or chemicals, such as heavy metals like arsenic, lead, mercury, and cadmium.

20.   Plum’s marketing of its Products wrongfully conveys to consumers that the Products have  
certain superior quality and characteristics that they do not actually possess. For example, Plum’s  
misrepresentations caused Plaintiffs and other consumers to believe that its Products do not contain high  
levels of toxic heavy metals through its marketing and omissions, which is material information to a  
reasonable consumer.

25.   In light of Plum’s marketing, including its commitment to providing organic products that  
are free added preservatives and artificial flavors, Plum knew or should have known that the Products  
contained toxic heavy metals or potentially dangerous contaminants that pose health risks to humans, and  
particularly to infants and young children. Plum knew consumers purchased the Products based on the

1 reasonable expectation that Plum manufactured the Products in a way that was proscribed by its marketing  
 2 and advertising.

3       20. Plum intended that Plaintiffs and Class members and other consumers rely on these  
 4 representations, as evidenced by the intentional and conspicuous placement of the misleading  
 5 representations on the Products' packaging by Plum, as well as its advertising, marketing, and labeling of  
 6 the Products as organic, free from added preservatives and artificial flavors, and safe for consumption by  
 7 infants and young children.

8       21. Based on Plum's decision to advertise, label, and market its Products as organic, free from  
 9 added preservatives and artificial flavors, and safe for consumption by infants and young children, Plum  
 10 had a duty to ensure that these statements were true and not misleading. As such, Plum knew or should  
 11 have known that the Products included nondisclosed levels of toxic heavy metals.

12       22. However, Plum's marketing is deceptive, misleading, unfair and false to Plaintiff and other  
 13 consumers of its Products. Plum failed to disclose that the products contain or may contain any level of  
 14 heavy metals or other undesirable toxins or contaminants. Plum intentionally omitted this in order to  
 15 induce and mislead reasonable consumers like Plaintiffs and members of the Classes to purchase the  
 16 Products.

17       23. As a result of Plum's omissions, a reasonable consumer would have no reason to suspect  
 18 the presence of heavy metals in the Products without conducting his or her own tests or relying on tests  
 19 conducted by a third party.

20       24. Plum therefore acted negligently, recklessly, unfairly, and/or intentionally with its  
 21 deceptive, misleading, unfair, and false marketing and omissions as described herein.

## 22       C. **Heavy Metals**

23       25. Heavy metals such as arsenic, lead, mercury, and cadmium are known as "developmental  
 24 neurotoxins" that can harm a baby's developing brain and nervous system. Exposure to these neurotoxins  
 25 can result in a loss of intellectual capacity and behavioral problems like attention-deficit hyperactivity  
 26 disorder ("ADHD").<sup>5</sup> Though heavy metals are naturally found in the environment, most heavy metals in  
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28       <sup>5</sup> Jane Houlahan and Charlotte Brody, *What's in my baby's food?*, Healthy Babies Bright Futures, at 9  
 (Oct. 2019), [https://www.healthybabystuff.org/sites/healthybabystuff.org/files/2020-04/BabyFoodReport\\_ENGLISH\\_R6.pdf](https://www.healthybabystuff.org/sites/healthybabystuff.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf) ("Healthy Babies Bright Futures Report").

1 foods come from contaminated soil or water. The contamination comes from either farming or  
 2 manufacturing practices, such as the use of pesticides, mining, and smelting or pollution.

3       26.     The U.S. Food and Drug Administration (“FDA”) has declared that inorganic arsenic, lead,  
 4 cadmium, and mercury are dangerous, particularly to infants and children, and “lead to illness,  
 5 impairment, and in high doses, death.”<sup>6</sup>

6       27.     Healthy Babies Bright Futures—an alliance of nonprofit organizations, scientists and  
 7 donors that design and implement programs to reduce babies’ exposure to toxic chemicals—tested a  
 8 variety of baby foods to determine the levels of heavy metals contained in their products and published  
 9 the report in or around October 2019 (“Healthy Babies Bright Futures Report”).<sup>7</sup>

10      28.     The Healthy Babies Bright Futures Report revealed that Plum’s Little Teethers Multigrain  
 11 Wafers (Banana and Pumpkin) contained 49.9 parts per billion (“ppb”) of arsenic, 1.4 ppb of lead, 6.3 ppb  
 12 of cadmium, and .726 ppb of mercury.<sup>8</sup>

13      29.     In addition to the Healthy Babies Bright Futures Report, as mentioned above, the  
 14 Subcommittee published a report revealing findings that numerous baby foods are “tainted with significant  
 15 levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury.”<sup>9</sup> According to the  
 16 Subcommittee Report, Plum Organics refused to cooperate with the Subcommittee’s investigation, and  
 17 did not produce testing results or any specific internal testing standards for substances such as heavy  
 18 metals. The Subcommittee is greatly concerned that these companies may be obscuring the presence of  
 19 even higher levels of toxic heavy metals in their baby food products than their competitors’ products.  
 20 Plum seemed to only have provided a spreadsheet self-declaring that all of its products “meet criteria.”<sup>10</sup>

21      30.     As noted by the Subcommittee, babies’ developing brains are “exceptionally sensitive to  
 22 injury caused by toxic chemicals, and several developmental processes have been shown to be highly  
 23 vulnerable to chemical toxicity.”<sup>11</sup>

24      31.     Furthermore, the Subcommittee Report noted that exposing children to toxic heavy metals  
 25 causes permanent decreases in IQ, an increased risk of future criminal and antisocial behavior, and

26      <sup>6</sup> Subcommittee Report at 9.

27      <sup>7</sup> See generally Healthy Babies Bright Futures Report.

28      <sup>8</sup> *Id.* at 27.

<sup>9</sup> Subcommittee Report at 9.

<sup>10</sup> *Id.* at 3; 43–44.

<sup>11</sup> *Id.* at 9.

1 “untreatable and frequently permanent” brain damage. The Subcommittee Report demonstrated the  
 2 consequences that can result due to exposure to toxic heavy metals, noting that one study showed that for  
 3 each IQ point lost, a child’s lifetime estimated earning capacity will decrease by over \$18,000.<sup>12</sup>

4       **a.     Arsenic**

5       32.    Arsenic is a heavy metal contaminant that is found in food and drinking water from its  
 6 long-time use as a pesticide and additive in animal feed. Arsenic has been known to cause bladder, lung,  
 7 and skin cancer, and can also harm the developing brain and nervous system.<sup>13</sup> At least 13 studies link  
 8 arsenic to IQ loss for children exposed to it in utero or during the first few years of life.<sup>14</sup>

9       33.    Another study on the effects of arsenic revealed an average loss of 5-6 IQ points among  
 10 those who drank well water contaminated with arsenic at or above 5 ppb.<sup>15</sup> Studies find lasting impacts  
 11 when young children are exposed to arsenic early in life.<sup>16</sup> There is also no evidence that the effects of  
 12 arsenic exposure are reversible.<sup>17</sup>

13       34.    The harmful effects of exposure to arsenic have caused the FDA to set standards limiting  
 14 the allowable amount of inorganic arsenic in various products, such as 10 ppb for bottled water.<sup>18</sup>

15       **b.     Cadmium**

16       35.    Cadmium is a heavy metal that has been linked to neurotoxicity, cancer, kidney damage,  
 17 bone damage, and heart damage.<sup>19</sup>

18       36.    Cadmium is a number seven on the Agency For Toxic Substances and Disease Registry’s  
 19 (“ATSDR”) list of substances that is present in the environment that pose the most significant potential  
 20 threat to human health, and is associated with decreases in IQ and the development of ADHD.<sup>20</sup>

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22       <sup>12</sup> *Id.*

23       <sup>13</sup> Healthy Babies Bright Futures Report at 13.

24       <sup>14</sup> *Id.*

25       <sup>15</sup> *Id.*

26       <sup>16</sup> *Id.* (“Studies find lasting impacts when children are exposed to arsenic early in life, including persistent  
 27 IQ deficits in children two years after their polluted drinking water was replaced, cognitive deficits among  
 school-age children exposed early in life, and neurological problems in adults who were exposed to  
 arsenic-poisoned milk as infants.”)

28       <sup>17</sup> *Id.*

<sup>18</sup> 21 C.F.R. § 165.110; Subcommittee report at 4.

<sup>19</sup> Subcommittee report at 4.

<sup>20</sup> *Id.* at 12.

1       37. The harmful effects of exposure to cadmium has caused the FDA to set the maximum  
 2 allowable level of cadmium in bottled water at 5 ppb.<sup>21</sup>

3       **c. Lead**

4       38. Lead is a heavy metal that widely contaminates food from its long-time use as a pesticide,  
 5 its use in food processing equipment, and its presence at elevated levels in soil.<sup>22</sup> Lead is a number two  
 6 on ATSDR's list of substances present in the environment that pose the most significant potential threat  
 7 to human health, and is associated with behavioral problems, decreased cognitive performance, delayed  
 8 puberty, and reduced postnatal growth.<sup>23</sup>

9       39. According to the FDA, lead is especially dangerous to infants and young children.<sup>24</sup> Lead  
 10 exposure has been shown to severely affect academic achievement in children, and the effects of early  
 11 childhood exposure appear to be permanent.<sup>25</sup>

12       40. The harmful effects of lead have caused the FDA to set the maximum allowable levels in  
 13 bottle water at 5 ppb of lead.<sup>26</sup>

14       **d. Mercury**

15       41. Mercury is a pollutant released from coal-fired power plants, mining operations and other  
 16 sources.<sup>27</sup> Mercury is number three on ATSDR's list of substances present in the environment that pose  
 17 the most significant potential threat to human health.<sup>28</sup>

18       42. Pre-natal mercury exposure has been "consistently associated with adverse subsequent  
 19 neuro-development," and post-natal mercury exposure has been associated with autistic behaviors among  
 20 preschool-age children.<sup>29</sup>

21       43. The FDA has capped the allowable level of mercury in drinking water at 2 ppb.<sup>30</sup> Notably,  
 22 according to the Subcommittee Report, Plum provided notes that it has "no specific threshold established  
 23 because no high-risk ingredients are used" for testing its products for mercury. The Subcommittee stated

24       <sup>21</sup> *Id.* at 4.

25       <sup>22</sup> Healthy Babies Bright Futures Report at 13.

26       <sup>23</sup> Subcommittee Report at 11.

27       <sup>24</sup> *Id.*

28       <sup>25</sup> *Id.*

29       <sup>26</sup> *Id.* at 4.

30       <sup>27</sup> Healthy Babies Bright Futures Report at 14.

31       <sup>28</sup> Subcommittee Report at 12.

32       <sup>29</sup> *Id.* at 12–13.

33       <sup>30</sup> *Id.* at 4.

1 that this “misleading framing—of meeting criteria that do not exist—raises questions about what [Plum’s]  
 2 other thresholds actually are, and whether they exist.”<sup>31</sup>

3 **D. Plaintiffs and Class Members’ Reliance was Reasonable**

4 44. Plaintiffs and Class Members reasonably relied on Defendant’s claims, warranties,  
 5 representations, advertisements, and other marketing sources concerning the quality of the Products.

6 45. Plaintiffs and Class Members read and relied upon the labels and packaging of the Products  
 7 when making purchasing decisions. Had Plaintiffs and Class Members known Plum’s Products actually  
 8 contained high levels of heavy metals, Plaintiffs and Class Members would not have purchased the  
 9 Products.

10 46. A reasonable consumer would consider the labeling of a product when deciding whether  
 11 or not to purchase it. Here, Plaintiffs and Class Members relied on the statements and omissions on the  
 12 Products’ labeling that led them to believe the Products were organic, free from added preservatives and  
 13 artificial flavors, and safe for consumption by infants and young children.

14 **CLASS ACTION ALLEGATIONS**

15 47. Plaintiffs bring this action individually and on behalf of all other similarly situated Class  
 16 Members pursuant to Rule 23 of the Federal Rules of Civil Procedure and seeks certification of the  
 17 following Classes:

18 **Nationwide Class**

19 All persons within the United States who purchased Plum Organics Baby Food Products  
 20 for household or business use during the applicable statute of limitations and who have not  
 21 received a refund or credit for their purchase(s).

22 **Florida Subclass**

23 All persons within the State of Florida who purchased Plum Organics Baby Food Products  
 24 for household or business use during the applicable statute of limitations and who have not  
 25 received a refund or credit for their purchase(s).

26 **Kentucky Subclass**

27 All persons within the State of Kentucky who purchased Plum Organics Baby Food  
 28 Products for household or business use during the applicable statute of limitations and who  
 29 have not received a refund or credit for their purchase(s).

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<sup>31</sup> *Id.* at 45.

1       48. Excluded from the Classes are the following individuals and/or entities: Defendant and its  
 2 parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity in  
 3 which Defendant has a controlling interest; all individuals who make a timely election to be excluded  
 4 from this proceeding using the correct protocol for opting out; and all judges assigned to hear any aspect  
 5 of this litigation, as well as their immediate family members.

6       49. Plaintiff reserves the right to modify or amend the definition of the proposed Class and/or  
 7 add subclasses before the Court determines whether certification is appropriate.

8       50. **Numerosity:** The proposed Class and Subclass are so numerous that joinder of all members  
 9 would be impractical. The Products are sold throughout the United States, directly and by third-party  
 10 retailers. The number of individuals who purchased the Products during the relevant time period is at least  
 11 in the thousands. Accordingly, Class members are so numerous that their individual joinder herein is  
 12 impractical. While the precise number of Class members and their identities are unknown to Plaintiff at  
 13 this time, these Class members are identifiable and ascertainable.

14       51. **Common Questions Predominate:** There are questions of law and fact common to the  
 15 proposed Class and Subclasses that will drive the resolution of this action and will predominate over  
 16 questions affecting only individual Class members. These questions include, but are not limited to, the  
 17 following:

18           a. Whether Defendant misrepresented material facts and/or failed to disclose material  
 19 facts in connection with the packaging, marketing, distribution, and sale of the Products;

20           b. Whether Defendant's use of false or deceptive packaging and advertising  
 21 constituted false or deceptive advertising;

22           c. Whether Defendant engaged in unfair, unlawful and/or fraudulent business  
 23 practices;

24           d. Whether Defendant's representations concerning the Products were likely to  
 25 deceive a reasonable consumer;

26           e. Whether Defendant's unlawful conduct, as alleged herein, was intentional and  
 27 knowing;

1                   f.     Whether Defendant represents to consumers that the Products have characteristics,  
 2                   benefits, or qualities that they do not have;

3                   g.     Whether Plaintiffs and the Classes are entitled to damages and/or restitution, and in  
 4                   what amount;

5                   h.     Whether Defendant is likely to continue using false, misleading or unlawful  
 6                   conduct such that an injunction is necessary; and

7                   i.     Whether Plaintiffs and the Classes are entitled to an award of reasonable attorneys'  
 8                   fees, interest, and costs of suit.

9       52.   Defendant has engaged in a common course of conduct giving rise to violations of the legal  
 10 rights sought to be enforced uniformly by Plaintiffs and members of the Classes. Similar or identical  
 11 statutory and common law violations, business practices, and injuries are involved. The injuries sustained  
 12 by members of the proposed Classes flow, in each instance, from a common nucleus of operative fact,  
 13 namely, Defendant's deceptive packaging and advertising of the Products. Each instance of harm suffered  
 14 by Plaintiffs and members of the Classes has directly resulted from a single course of illegal conduct. Each  
 15 Class member has been exposed to the same deceptive practice, as each of the Products: (a) bear the  
 16 materially same representations regarding the health and quality of the Products, in that they are organic,  
 17 free from added preservatives and artificial flavors, and safe for consumption by infants and young  
 18 children, and (b) the Products actually contain levels of toxic heavy metals. Therefore, individual  
 19 questions, if any, pale in comparison to the numerous common questions predominating in this action.

20       53.   **Typicality:** The representative Plaintiffs' claims are typical of those of the proposed  
 21 Classes, as all members of the proposed Classes are similarly affected by Defendant's uniform unlawful  
 22 conduct as alleged herein.

23       54.   **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the proposed  
 24 Classes as their interests do not conflict with, and are in no way antagonistic to, the interests of the putative  
 25 Class members they seek to represent. Plaintiffs have also retained counsel competent and experienced  
 26 in class action litigation and they intend to prosecute this action vigorously. The interests of the members  
 27 of the Classes will be fairly and adequately protected by Plaintiffs and their counsel.

55. **Superiority:** The nature of this action and the nature of the laws available to Plaintiffs and the Classes make the use of the class action format a particularly efficient and appropriate procedure to afford relief to them and the Classes for the wrongs alleged. The damages or other financial detriment suffered by individual Class members is minuscule compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for Plaintiffs and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class members would not likely recover, or would not likely have the chance to recover, damages and/or restitution from Defendant, which would continue to retain the proceeds of its wrongful conduct. Additionally, injunctive relief for the benefit of Class members and the public would not be possible absent class treatment and Defendant's wrongful conduct would persist unabated. Further, individualized litigation would increase the delay and expense to all parties and would multiply the burden on the judicial system presented by the complex legal and factual issues of this case. Finally, Defendant has acted, or failed to act, on grounds generally applicable to Plaintiffs and the proposed Classes, supporting the imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes. Individualized litigation presents a potential for inconsistent or contradictory judgments. A class action is superior to any alternative means of prosecution.

## **CAUSES OF ACTION**

## **FIRST CAUSE OF ACTION**

## **Breach of Express Warranty (*on behalf of the Classes*)**

56. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as though fully set forth herein.

57. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Plum for breach of express warranty.

58. Plum marketed and sold the Products into the stream of commerce with the intent that the Products would be purchased by Plaintiffs and members of the Classes.

59. Plum expressly warranted, advertised, and represented to Plaintiffs and members of the Classes that the Products were and are organic, free from added preservatives and artificial flavors, and safe for consumption by infants and young children.

1       60. Plum made these express warranties regarding the Products' quality, ingredients, and  
 2 suitability for consumption in writing through its website, advertisements, and marketing materials and  
 3 on the Products' packaging and labels. These express warranties became part of the basis of the bargain  
 4 that Plaintiffs and members of the Classes entered into upon purchasing the Products.

5       61. Plum's advertisements, warranties, and representations were made in connection with the  
 6 sale of the Products to Plaintiffs and members of the Classes. Plaintiffs and members of the Classes relied  
 7 on Plum's advertisements, warranties, and representations regarding the Products in deciding whether or  
 8 not to purchase Plum's Products.

9       62. Plum's Products do not conform to Plum's advertisements, warranties and representations  
 10 in that they are not safe or appropriate for consumption by infants and young children, and contain, or  
 11 may contain, levels of various heavy toxic metals.

12       63. Plum was on notice of this breach, as Plum was aware of the included heavy metals in the  
 13 Products due to its own testing, and based on the investigation in the Healthy Babies Bright Futures report  
 14 that revealed the Products as containing various levels of toxic heavy metals.

15       64. Privity exists because Plum expressly warranted to Plaintiffs and members of the Classes  
 16 through the warranting, packaging, advertising, marketing, and labeling that the Products were organic,  
 17 free from added preservatives and artificial flavors, and safe for consumption by infants and young  
 18 children, and by failing to make any mention of heavy metals and/or unnatural or other ingredients.

19       65. As a direct and proximate result of Plum's conduct, Plaintiffs and members of the Classes  
 20 have suffered actual damages in that they purchased Products that were worth less than the price they paid  
 21 and they would not have purchased had they known of the risk and/or presence of heavy metals and/or  
 22 other contaminants that do not conform to the products' marketing and advertisements.

23       66. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory  
 24 relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Plum's failure to  
 25 deliver goods conforming to their express warranties and resulting breach.

26       ///

27       ///

1                   **SECOND CAUSE OF ACTION**  
 2                   **Breach of Implied Warranty of Merchantability**  
 2                   *(on behalf of the Classes)*

3                 67. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as though fully  
 4 set forth herein.

5                 68. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
 6 Classes against Plum for breach of implied warranty of merchantability.

7                 69. Plum is a merchant engaging in the manufacturing and sale of goods that were purchased  
 8 by Plaintiffs and members of the Classes.

9                 70. At all times mentioned herein, Plum manufactured or supplied the Products, and prior to  
 10 the time the Products were purchased by Plaintiffs and members of the Classes, Plum impliedly warranted  
 11 to them that the Products were of merchantable quality, fit for their ordinary use, and conformed to the  
 12 promises and affirmations of fact made on the Products' containers and labels, including that the food  
 13 organic, free from added preservatives and artificial flavors, and safe for consumption by infants and  
 14 young children. Plaintiffs and members of the Classes relied on Plum's promises and affirmations of fact  
 15 when they purchased the Products.

16                 71. Contrary to these representations and warranties, the Products were not fit for their ordinary  
 17 use, consumption by infants or young children, and did not conform to Plum's affirmations of fact and  
 18 promises as they contained, or were at risk of containing, heavy metals and/or unnatural or other  
 19 ingredients or contaminants that do not conform to the packaging.

20                 72. Plum breached its implied warranties by selling Products that failed to conform to the  
 21 promises or affirmations of fact made on the container or label, as each product contained heavy metals  
 22 and/or unnatural or other ingredients or contaminants that do not conform to the packaging.

23                 73. Plum was on notice of this breach, as Plum was aware of the included heavy metals in the  
 24 Products due to its own testing, and based on the investigation in the Healthy Babies Bright Futures report  
 25 that revealed the Products as containing various levels of toxic heavy metals.

26                 74. Privity exists because Plum impliedly warranted to Plaintiffs and members of the Classes  
 27 through the warranting, packaging, advertising, marketing, and labeling that the Products were organic,

free from added preservatives and artificial flavors, and safe for consumption by infants and young children, and by failing to make any mention of heavy metals and/or unnatural or other ingredients.

75. As a direct and proximate result of Plum's conduct, Plaintiffs and members of the Classes have suffered actual damages in that they have purchased Products that are worth less than the price they paid and that they would not have purchased at all had they known the presence or risk of heavy metals and/or unnatural or other ingredients.

76. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

### **THIRD CAUSE OF ACTION**

## Fraud by Omission *(on behalf of the Classes)*

77. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as though fully set forth herein.

78. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Plum for fraud by omission.

79. Plum concealed from and failed to disclose to Plaintiffs and members of the Classes that the Products contained, or were at risk of containing, heavy metals and/or unnatural or other ingredients that do not conform to the Products' labels, packaging, advertising, and statements.

80. Plum was under a duty to disclose to Plaintiffs and members of the Classes the true quality, characteristics, ingredients and suitability of the Products because: (1) Plum was in a superior position to know the true state of facts about its products; (2) Plum was in a superior position to know the actual ingredients, characteristics, and suitability of the Products for consumption by infants and young children; and (3) Plum knew that Plaintiffs and members of the Classes could not reasonably have been expected to learn or discover that the Products were misrepresented in the packaging, labels, advertising, and websites prior to purchasing the Products.

81. The facts concealed or not disclosed by Plum to Plaintiffs and members of the Classes are material in that a reasonable consumer would have considered them important when deciding whether to purchase the Products.

82. Plaintiffs and members of the Classes justifiably relied on Plum's omissions to their detriment. The detriment is evident from the true quality, characteristics, and ingredients of the Products, which is inferior when compared to how the Products are advertised and represented by Plum.

83. As a direct and proximate result of Plum's conduct, Plaintiffs and members of the Classes have suffered actual damages in that they purchased the Products that were worth less than the price they paid and that they would not have purchased at all had they known of the risk and/or presence of heavy metals and/or unnatural or other ingredients that do not conform to the products' labels, packaging, advertising, and statements.

84. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

## **FOURTH CAUSE OF ACTION**

### **Negligent Misrepresentation (*on behalf of the Classes*)**

85. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as though fully set forth herein.

86. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Plum for negligent misrepresentation.

87. Plum marketed the Products in a manner indicating that the Products were and are organic, free from added preservatives and artificial flavors, and safe for consumption by infants and young children. However, the Products contained, or were at risk of containing, heavy metals and/or unnatural or other ingredients or contaminants that do not conform to the packaging. Therefore, Plum has made misrepresentations about the Products.

88. Plum's misrepresentations regarding the Products are material to a reasonable consumer because they relate to the safety of the product the consumer is receiving and paying for. A reasonable consumer would attach importance to such representations and would be induced to act thereon in deciding whether or not to purchase the Product.

89. At all relevant times when such misrepresentations were made, Plum knew or had been negligent in not knowing that the Products contained, or were at risk of containing, heavy metals and/or

unnatural or other ingredients or contaminants. Plum has no reasonable grounds for believing its misrepresentations were not false and misleading.

3       90.     Plum intended that Plaintiffs and other consumers rely on these representations, as  
4 evidenced by the intentional and conspicuous placement of the misleading representations on the  
5 Products' packaging by Plum, as well as its advertising, marketing, and labeling of the Products as organic,  
6 free from added preservatives and artificial flavors, and safe for consumption by infants and young  
7 children.

8       91. Plaintiffs and members of the Classes have reasonably and justifiably relied on Plum's  
9 negligent misrepresentations when purchasing the Products, and had the correct facts been known, would  
10 not have purchased the Products at all.

11       92. Therefore, as a direct and proximate result of Plum's negligent misrepresentations,  
12 Plaintiffs and members of the Classes have suffered actual damages in that they purchased the Products  
13 that were worth less than the price they paid and that they would not have purchased at all had they known  
14 of the risk and/or presence of heavy metals and/or unnatural or other ingredients that do not conform to  
15 the products' labels, packaging, advertising, and statements.

16       93. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory  
17 relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

**FIFTH CAUSE OF ACTION**  
**Intentional Misrepresentation**  
*(on behalf of the Classes)*

20       94. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as though fully  
21 set forth herein.

22       95. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
23 Classes against Plum for intentional misrepresentation.

24        96. Plum marketed the Products in a manner indicating that the Products were and are organic,  
25 free from added preservatives and artificial flavors, and safe for consumption by infants and young  
26 children. However, the Products contained, or were at risk of containing, heavy metals and/or unnatural  
27 or other ingredients or contaminants that do not conform to the packaging. Therefore, Plum has made  
28 misrepresentations about the Products.

97. Plum's misrepresentations regarding the Products are material to a reasonable consumer because they relate to the safety of the product the consumer is receiving and paying for. A reasonable consumer would attach importance to such representations and would be induced to act thereon in deciding whether or not to purchase the Product.

98. At all relevant times when such misrepresentations were made, Plum knew that the representations were misleading, or have acted recklessly in making the representations, without regard to the truth.

99. Plum intended that Plaintiffs and other consumers rely on these representations, as evidenced by the intentional and conspicuous placement of the misleading representations on the Products' packaging by Plum, as well as its advertising, marketing, and labeling of the Products as organic, free from added preservatives and artificial flavors, and safe for consumption by infants and young children.

100. Plaintiffs and members of the Classes have reasonably and justifiably relied on Plum's intentional misrepresentations when purchasing the Products, and had the correct facts been known, would not have purchased them at all.

101. Therefore, as a direct and proximate result of Plum's intentional misrepresentations, Plaintiffs and members of the Classes have suffered actual damages in that they purchased the Products that were worth less than the price they paid and that they would not have purchased at all had they known of the risk and/or presence of heavy metals and/or unnatural or other ingredients that do not conform to the products' labels, packaging, advertising, and statements.

102. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

## SIXTH CAUSE OF ACTION

### Quasi Contract/Unjust Enrichment/Restitution *(On behalf of the Classes)*

103. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as though fully set forth herein.

104. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
Classes against Plum for quasi contract, unjust enrichment, and restitution.

105. As alleged herein, Plum has intentionally and recklessly made misleading representations to Plaintiffs and members of the Classes to induce them to purchase the Products. Plaintiffs and members of the Classes have reasonably relied on the misleading representations and have not received all of the benefits promised by Plum. Plaintiffs and members of the Classes therefore have been induced by Plum's misleading and deceptive representations about the Products, and paid more money to Plum for the Products than they otherwise would and/or should have paid.

106. Plaintiffs and members of the Classes have conferred a benefit upon Plum as Plum has retained monies paid to them by Plaintiffs and members of the Classes.

107. The monies received were obtained under circumstances that were at the expense of Plaintiffs and members of the Classes – i.e., Plaintiffs and members of the Classes did not receive the full value of the benefit conferred upon Plum.

108. Therefore, it is inequitable and unjust for Plum to retain the profit, benefit, or compensation referred upon it without paying Plaintiffs and the members of the Classes back for the difference of the full value of the benefits compared to the value actually received.

109. As a direct and proximate result of Plum's unjust enrichment, Plaintiffs and members of the Classes are entitled to restitution, disgorgement, and/or the imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Plum from its deceptive, misleading, and unlawful conduct as alleged herein.

## **SEVENTH CAUSE OF ACTION**

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## **Florida Deceptive and Unfair Trade Practices Act**

**Fla. Stat. §§ 501.201 *et seq.***

**(On behalf of Plaintiff Jessica David and the Florida Subclass)**

110. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-55, as if fully set forth herein.

111. Plaintiff David brings this claim individually and on behalf of the members of the proposed Florida Subclass against Plum for violations of Florida Deceptive and Unfair Trade Practices Act, O Fla. Stat. §§ 501.201, *et seq.*

1       112. Plaintiff David and members of the Florida Subclass are “consumers,” as defined by Fla.  
 2 Stat. § 501.203(7), the products sold by Defendant Plum are “goods” within the meaning of FDUTPA,  
 3 and the transactions at issue constitute “trade or commerce” as defined by FDUTPA.

4       113. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.204  
 5 provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive  
 6 acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

7       114. For the reasons discussed herein, Plum violated and continues to violate FDUTPA by  
 8 engaging in the herein described unconscionable, deceptive, unfair acts or practices proscribed by Fla.  
 9 Stat. § 501.201, *et seq.* Plum’s acts and practices, including its material omissions, described herein, were  
 10 likely to, and did in fact, deceive and mislead members of the public, including Plaintiff David and  
 11 members of the Florida Subclass and other consumers acting reasonably under the circumstances, to their  
 12 detriment.

13       115. At all times mentioned herein, Plum engaged in trade or commerce in Florida, as defined  
 14 by Fla. Stat. § 501.203(8), in that they advertised, offered or sale, sold or distributed goods or services in  
 15 Florida and/or engaged in trade or commerce directly or indirectly affecting the people of Florida.

16       116. Plum repeatedly advertised on the labels for its Products, on its websites, and through  
 17 national advertising campaigns, among other things, that its Products were organic, free from added  
 18 preservatives and artificial flavors, and safe for consumption by infants and young children. Plum failed  
 19 to disclose the material information that its Products contained unsafe levels of toxic heavy metals.

20       117. Plum’s representations and omissions were material because they were likely to deceive  
 21 reasonable consumers and to induce them to purchase Plum’s Products without knowing that the Products  
 22 contained unsafe levels of toxic heavy metals. As a direct and proximate result of Plum’s unfair and  
 23 deceptive acts or practices, Plaintiff David and members of the Florida Subclass suffered damages by  
 24 purchasing Plum’s Products because they would not have purchased Plum’s Products had they known the  
 25 truth, that the Products contain, or may contain, levels of toxic heavy metals.

26       118. Plum’s deceptive trade practices caused Plaintiff David and members of the Florida  
 27 Subclass to suffer injury in fact and actual damages in the form of the loss or diminishment of value of  
 28 the Products they purchased, which allowed Plum to profit at the expense of Plaintiff David and members

1 of the Florida Subclass. The injuries Plaintiff David and members of the Florida Subclass suffered were  
 2 to legally protected interests. The gravity of the harm of Defendant Plum's actions is significant and there  
 3 is no corresponding benefit to consumers of such conduct.

4 119. Plaintiff David and members of Florida Subclass seek relief for the injuries they have  
 5 suffered as a result of Plum's unfair and deceptive acts and practices, as provided by FDUTPA and  
 6 applicable law.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs, individually and on behalf of the Classes, respectfully prays for  
 9 following relief:

10 A. Certification of this case as a class action on behalf of the Class and Subclasses  
 11 defined above, appointment of Plaintiffs as Class representatives, and appointment of their counsel  
 12 as Class counsel;

13 B. A declaration that Defendant's actions, as described herein, constitute violations of  
 14 the claims described herein;

15 C. An award to Plaintiffs and the proposed Classes of restitution and/or other equitable  
 16 relief, including, without limitation, restitutionary disgorgement of all profits and unjust  
 17 enrichment that Defendant obtained from Plaintiffs and the proposed Classes as a result of its  
 18 unlawful, unfair and fraudulent business practices described herein;

19 D. An award of injunctive relief as permitted by law or equity, including: enjoining  
 20 Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to  
 21 identify, with Court supervision, victims of its conduct and pay them all money it is required to  
 22 pay;

23 E. An order directing Defendant to engage in a corrective advertising campaign;

24 F. An award to Plaintiffs and their counsel of their reasonable expenses and attorneys'  
 25 fees;

26 H. An award to Plaintiffs and the proposed Classes of pre- and post-judgment interest,  
 27 to the extent allowable; and

28 I. For such further relief that the Court may deem just and proper.

1                   **DEMAND FOR JURY TRIAL**

2                   Plaintiffs demand a trial by jury of all claims presented herein so triable.

3 Dated: March 24, 2021

**CARLSON LYNCH LLP**

4                   By: /s/Todd D. Carpenter \_\_\_\_\_  
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23                  *Attorneys for Plaintiffs*

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25  
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**CIVIL COVER SHEET**

The JS-CAND 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 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 sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JESSICA DAVID and HEATHER AGE, individually, and on behalf of all others similarly situated.

**(b) County of Residence of First Listed Plaintiff** Levy County, FL  
(EXCEPT IN U.S. PLAINTIFF CASES)

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

CARLSON LYNCH, LLP, 1350 Columbia St., Ste. 603, San Diego, CA 92101  
Telephone: (619) 762-1900

**DEFENDANTS**

PLUM, PBC.; and DOES 1 through 10, inclusive,

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)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity<br>(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 type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<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)

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

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

- |   |   |  |   |  |  |   |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation–Transfer | <input type="checkbox"/> 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):

28 U.S.C. § 1332(d)(2) and 28 U.S.C. § 1391(b)(1)

Brief description of cause:

Breach of Express Warranty, Breach of Implied Warranty of Merchantability, Fraud by Omission, Negligent Misrepresentation, Intentional Misrepresentation, Quasi Contract/Unjust Enrichment/Restitution, Fla. Stat. §§ 501.201 et seq

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.**DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE not assigned

DOCKET NUMBER

MDL No. 2997

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 03/24/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd D. Carpenter

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

**Authority For Civil Cover Sheet.** The JS-CAND 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 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 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 Federal Rule of Civil Procedure 8(a), 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.
  - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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 USC § 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. Use 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. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no 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 Federal Rule of Civil Procedure 23.  
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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, 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."

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