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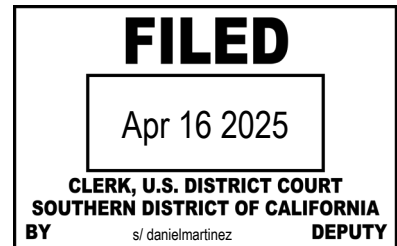
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMY WYSOCKI, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

CHOBANI, LLC,

Defendant.

Case No. '25CV907 JES VET

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Amy Wysocki (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Chobani LLC (“Chobani” or “Defendant”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. Plaintiff brings this class action lawsuit on behalf of herself and other similarly situated consumers (“Class Members”) who purchased Chobani’s yogurt products, including but not limited to Chobani’s Nonfat Plain Greek Yogurt and Chobani’s Whole Milk Plain Greek Yogurt (the “Products”).¹ Defendant’s yogurt product affirmatively claims to contain “Only Natural Ingredients” while disclaiming the presence of any artificial flavoring and sweeteners and preservative.



2. Unfortunately for consumers, however, recent third-party testing revealed that the Products contain multiple plastic chemicals, including di-2-

¹ Discovery may reveal that additional Products are within the scope of this Complaint. Accordingly, Plaintiff reserves the right to include additional items identified through the course of discovery.

1 ethylhexyl phthalate (“DEHP”), diethyl phthalate (“DEP”), dibutyl phthalate
2 (“DBP”), and phthalate substitute called di-2-ethylhexyl terephthalate (“DEHT”).

3 3. These findings contradict Defendant’s prominent front-label and lid
4 representations that its Product contains “only natural ingredients.”

5 4. These phthalates are endocrine-disrupting chemicals “mainly used as
6 plasticizers added to polyvinyl chloride (PVC) plastics for softening effects” which
7 “are detrimental to human health.”² These chemicals have also been reported as
8 probable human carcinogens by the EPA.³

9 5. Accordingly, Plaintiff brings claims against Defendant on behalf of
10 herself and all others similarly situated for (1) violations of California’s Consumers
11 Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; (2) violations of
12 California’s Unfair Competition Act (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et*
13 *seq.*; (3) violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof.
14 Code §§ 17500, *et seq.*; (4) Breach of Express Warranty; and (5) Unjust Enrichment
15 / Restitution.

18 ² Yufei Wang, et al., *Phthalates and Their Impacts on Human Health*, 9(5)
19 Healthcare (Basel) 603 (May 18, 2021), *available at*
20 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8157593/pdf/healthcare-09-00603.pdf>
21 (hereinafter “*Phthalates and Their Impacts on Human Health*”) (“Plastic has brought
22 ... many negative impacts on ... human health, which has become a global problem.
23 People are constantly exposed to plastics via contaminated food, [among other
24 sources] Long-term plastic exposure would inevitably lead to the leaching of
25 many harmful substances. The most concerns include phthalates[.] These
26 substances have been identified as endocrine-disrupting chemicals (EDCs) which
interfere with normal hormonal actions. Phthalates are a series of chemical
substances, which are mainly used as plasticizers added to polyvinyl chloride (PVC)
plastics for softening effects. Phthalates can potentially disrupt the endocrine
system. Health concerns regarding the detrimental impacts of phthalates on the
development and reproductive system have been raised in the recent decades.”).

27 ³ See United States Environmental Protection Agency, *Di (2-ethylhexyl)phthalate*
28 (*DEHP*), *available at* https://iris.epa.gov/ChemicalLanding/&substance_nmbr=14
(last accessed Mar. 20, 2025).

PARTIES

6. Plaintiff Amy Wysocki is a natural person and a citizen of California who resides in San Marcos, California. Ms. Wysocki purchased the Chobani's Greek Yogurt Nonfat Plain Product from a brick-and-mortar retail store in or around San Marcos, California, in 2023. In making her purchase, Ms. Wysocki relied on prominent representations on the Product's labeling and packaging that the Product contains "Only Natural Ingredients." Plaintiff had no reason to believe that the Product contained, or risked containing, in a single serving, unsafe levels of phthalates. As such, Ms. Wysocki reasonably understood Defendant's representations and warranties to mean the Product is free of non-natural toxic chemicals, like phthalates and therefore expected that the Product can be purchased and consumed as marketed and sold. Defendant's untrue representations were part of the basis of the bargain in that she would not have purchased the Product, or would not have purchased it on the same terms, if the true facts had been known. Thus, as a direct result of Defendant's material misrepresentations and omissions, Plaintiff suffered, and continues to suffer, economic injuries.

7. Plaintiff remains interested in purchasing the Product from Defendant in the future. However, she is unable to determine if the Product actually contains only natural ingredients and is actually safe for consumption or if it contains—or risks containing—synthetic phthalate compounds. As long as the Product is marketed as being comprised of "only natural ingredients" when it contains—or risks containing—synthetic, phthalate compounds, Plaintiff will be unable to make informed decisions about whether to purchase Defendant's Product in the future and will be unable to evaluate the different prices between Defendant's Product and competitors' products. Plaintiff will likewise be unable to rely on Defendant's marketing and representations going forward. Moreover, she is likely to be repeatedly misled by Defendant's conduct, unless and until Defendant is compelled to ensure that its marketing is accurate, non-misleading, and that its Product actually

1 conforms to Defendant's representation that the Product contains and is comprised of
2 only natural ingredients.

3 8. Defendant Chobani, LLC is a New York corporation with its principal
4 place of business in New York, New York. Defendant markets and sells yogurt and
5 dairy products, including the Product, throughout California and the United States.

6 **JURISDICTION AND VENUE**

7 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
8 1332(d)(2)(A), as modified by the Class Action Fairness Act ("CAFA"), because
9 there are more than 100 Class Members, at least one member of the Class is a citizen
10 of a different state than Defendant, and the aggregate amount in controversy exceeds
11 \$5,000,000.00, exclusive of interest, fees, and costs.

12 10. This Court has personal jurisdiction over Defendant because Defendant
13 conducts substantial business within California, including in this District, and
14 purposefully availed itself of the benefits of doing business in this District by
15 conducting substantial business in California such that Defendant has significant,
16 continuous, and pervasive contacts with the State of California. In addition, a
17 substantial portion of the events giving rise to Plaintiff's claims occurred in this
18 District by purchasing the Product in this District.

19 11. Venue is proper in this District under 28 U.S.C. § 1391 because a
20 substantial portion of the events, omission, and acts giving rise to the claims herein
21 occurred in this District, including Defendant's sale and Plaintiff's purchase of the
22 Product in this District.

FACTUAL ALLEGATIONS

A. THE HARMS OF PLASTIC CHEMICALS

12. In December of 2024, an organization called PlasticList tested everyday food items for the presence of plastic chemicals.⁴ This testing involved contracting with a third-party ISO/IEC 17025-accredited laboratory experienced in food testing and securing the assistance of analytical chemists and epidemiologists who helped the group ensure accuracy.⁵ The group tested for a range of endocrine disrupting chemicals, including phthalates.⁶

13. Phthalates were developed as plasticizers, intentionally added to plastics to make them more flexible and durable.⁷ Phthalates are widely used in food production and packaging, cosmetics, and electronics.⁸

14. Phthalates “readily leach”⁹ into surrounding surfaces, including food. In humans, phthalates are endocrine disrupting chemicals that introduce a variety of health effects. These effects were not known for many years due to a focus on high-dosage exposure models, but for plastic chemicals, low-dose effects may be even more harmful: “[the] paradigm of ‘the dose makes the poison’ does not hold for ... phthalates, and other endocrine disrupting chemicals. The unique properties of ...

⁴ PlasticList Report (published Dec. 27, 2024; updated Dec. 31, 2024), *available at* <https://www.plasticlist.org/report> (last accessed Mar. 20, 2025) (“2024 PlasticList Report”).

⁵ *Id.*

⁶ *Id.*

⁷ Kevin Loria, “What’s the Difference Among Microplastic, Phthalates, BPA, and PFAS?” *Consumer Reports* (published May 29, 2024), *available at* <https://www.consumerreports.org/toxic-chemicals-substances/microplastics-phthalates-bpa-pfas-a1059022044/> (last accessed Mar. 20, 2025).

⁸ *Id.*

⁹ Genoa Warner, Jodi Flaws, “Bisphenol A and Phthalates: How environmental Chemicals are Reshaping Toxicology,” *available at* <https://pmc.ncbi.nlm.nih.gov/articles/PMC6260148/>

1 phthalates, including low-dose effects, nonmonotonic dose response curves
 2 (NMDRCs), and quick metabolism, disobey traditional principles of toxicology.”¹⁰

3 15. Plastic chemicals have health impacts including disruptions of the
 4 endocrine, respiratory, and nervous systems.¹¹

5 16. Physicians, researchers, and public health experts have called for the
 6 elimination of phthalates from consumer products, including food packaging and
 7 materials that come in contact with food, due to their adverse effects on neurological
 8 development.¹²

9 **B. THE PRODUCT WAS FOUND TO CONTAIN TOXIC**
 10 **PHTHALATES**

11 17. PlasticList tested two of Defendant’s products: Chobani Nonfat Plain
 12 Greek Yogurt (the version Plaintiff purchased) and Chobani Whole Milk Plain Greek
 13 Yogurt. Each of the Products were found to contain plastic chemicals.¹³

14 18. Specifically, both contained di-2-ethylhexyl phthalate (“DEHP”),
 15 diethyl phthalate (“DEP”), and di-2-ethylhexyl terephthalate (“DEHT”).¹⁴

16 19. Di-2-ethylhexyl phthalate, or DEHP, is a manufactured chemical that is
 17 commonly added to plastics to make them flexible.¹⁵ “DEHP is best known as an

18 ¹⁰ *Id.*

19 ¹¹ Yufei Wang, et al., *Phthalates and Their Impacts on Human Health*, 9(5)
 20 Healthcare (Basel) 603 (May 18, 2021), available at
 21 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8157593/pdf/healthcare-09-00603.pdf>
 22 (“*Phthalates and Their Impacts on Human Health*”).

23 ¹² Stephany Engel, Heather Patisaul, Charlette Brody, Russ Rauser, Amy Zota,
 24 Deborah Bennet, Maureen Swanson, and Robin Whyatt, “Neurotoxicity of Ortho-
 25 Phthalates: Recommendations for Critical Policy Reforms to Protect Brain
 26 Development in Children” available at
 27 <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2020.306014>

28 ¹³ 2024 PlasticList Report, *supra*.

¹⁴ *Id.*

¹⁵ Agency for Toxic Substances and Disease Registry (“ATSDR”), *Di(2-Ethylhexyl)Phthalate (DEHP)* (last reviewed Feb. 10, 2021),
<https://wwwn.cdc.gov/TSP/substances/ToxSubstance.aspx?toxid=65> (last accessed
 March 5, 2025).

1 endocrine disruptor (ED). An endocrine disrupter is an exogenous substance or
 2 mixture that alters the function(s) of the endocrine system and consequently causes
 3 adverse health effects DEHP is highly toxic.”¹⁶ Studies indicate that exposure to
 4 DEHP can have a panoply of negative hepatic, renal, immunological, reproductive,
 5 and developmental effects on human health,¹⁷ including “insulin resistance and
 6 higher systolic blood pressure and the reproduction system problems, including
 7 earlier menopause, low birth weight, pregnancy loss, and preterm birth.”¹⁸ “DEHP is
 8 on the Proposition 65 list because it can cause cancer and birth defects or other
 9 reproductive harm.”¹⁹

10 20. Dibutyl phthalate, or DBP, is an oily liquid that is used as a plasticizer
 11 and solvent. Exposure to DBP can cause various adverse health effects, including
 12 reproductive and developmental harm.²⁰ DBP is on California’s Proposition 65 list
 13 due to its ability to cause birth defects or other reproductive harm.²¹ “California law
 14 prohibits the manufacture, sale, or distribution of children’s toys and child care
 15
 16

17 ¹⁶ Sai Sandeep Singh Rowdhwal, et al., *Toxic Effects of Di-2-ethylhexyl Phthalate:*
 18 *An Overview*, 2018:1750368 Biomed Res Int. 1, 2 (2018),
 19 <https://pmc.ncbi.nlm.nih.gov/articles/PMC5842715/pdf/BMRI2018-1750368.pdf>
 (last accessed March 5, 2025).

20 ¹⁷ See, e.g., ATSDR, *Toxicological Profile for Di(2-Ethylhexyl)Phthalate (DEHP)*
 21 (2022), at 17-18, <https://www.atsdr.cdc.gov/ToxProfiles/tp9-c2.pdf> (last accessed
 March 5, 2025).

22 ¹⁸ Yufei Wang, et al., *Phthalates and Their Impacts on Human Health*, 9(5)
 23 Healthcare (Basel) 603 (May 18, 2021), available at
 24 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8157593/pdf/healthcare-09-00603.pdf>
 (last accessed March 5, 2025) (“*Phthalates and Their Impacts on Human Health*”) at
 3-4.

25 ¹⁹ *Id.*

26 ²⁰ See Proposition 65 Warnings, California Office of Environmental Health Hazard
 27 Assessment, *Di-n-butyl Phthalate (DBP)*, [https://www.p65warnings.ca.gov/fact-](https://www.p65warnings.ca.gov/fact-sheets/di-n-butyl-phthalate-dbp)
 sheets/di-n-butyl-phthalate-dbp

28 ²¹ *Id.*

1 articles containing DBP at levels greater than 0.1%,” and federal law has a similar
2 prohibition.²²

3 21. Diethyl phthalate, or DEP, is a synthetic substance is commonly used to
4 make plastics more flexible.²³ “Once [DEP] enters your body, it breaks down into
5 other chemicals, some of which are harmful.”²⁴ This harm can androgen-
6 independent male reproductive toxicity (*i.e.*, sperm effects) as well as developmental
7 toxicity and hepatic effects, with some evidence of female reproductive toxicity.²⁵

8 22. Di-2-ethylhexyl terephthalate, or DEHT, is a phthalate substitute used
9 as a general purpose plasticizer. DEHT is a structural isomer of DEHP.²⁶ While
10 DEHT has been found to have a weaker effect on human hormones than its phthalate
11 counterpart,²⁷ research is limited.

12 C. DEFENDANT’S MISREPRESENTATIONS AND 13 OMISSIONS MISLEAD CONSUMERS

14 23. The Products labeling and packaging states that the Products use “Only
15 Natural Ingredients.” Indeed, based on Defendant’s representations, Ms. Wysocki
16 and other consumers reasonably understood Defendant’s affirmative representations
17 and warranties to mean the Product is free of toxic plastic chemicals, and therefore

18 ²² *Id.*

19 ²³ ATSDR, Public Health Statement for Diethyl Phthalate (last reviewed Oct. 21,
20 2011), <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=601&toxid=112>.

21 ²⁴ *Id.*

22 ²⁵ James Weaver et al., “Hazards of diethyl phthalate (DEP) exposure: A systematic
23 review of animal toxicology studies,” National Library of Medicine, *available at*
<https://pubmed.ncbi.nlm.nih.gov/32958228/>.
<https://pmc.ncbi.nlm.nih.gov/articles/PMC7995140/#:~:text=Conclusions%3A,evidence%20of%20female%20reproductive%20toxicity>.

24 ²⁶ Manori J. Silva, et al., “Exposure to di-2-ethylhexyl terephthalate in the U.S.
25 general population from the 2015–2016 National Health and Nutrition Examination
26 Survey,” 123 *Environ. Int.* 141 (Feb. 2019),
<https://www.sciencedirect.com/science/article/pii/S0160412018322578>.

27 ²⁷ Kambia et al., “Comparative Effects of Di- (2-ethylhexyl)phthalate and Di-(2-
28 ethylhexyl)terephthalate Metabolites on Thyroid Receptors: In Vitro and In Silico
Studies,” *Metabolites* (Feb. 2021), *available at* doi: 10.3390/metabo11020094.

1 expected that the Products are healthy and can be purchased and consumed as
2 marketed and sold.



14 24. These representations and warranties are material to consumers who
15 reasonably understand—like Plaintiff—that a product voluntarily claiming to be
16 comprised of “only natural ingredients” indeed be comprised of only natural
17 ingredients. In fact, “[w]hen poll respondents don’t see ‘natural’ on food packaging,
18 52% of them assume the product must have chemicals in it. Another 43% deduce
19 that the product is highly processed. Some 42% assumed that the food is unhealthy
20 or full of preservatives.”²⁸ Inversely, “consumers [are] vastly more likely to
21 purchase a product with the natural label[.]”²⁹ In fact, “1 in 3 global consumers
22 consider natural ingredients to be one of the most important aspects of healthy food
23

24 ²⁸ Christine Zulkosky, “What Do Americans Think ‘Natural Foods’ Are,” August 28,
25 2023, *available at* <https://foodinstitute.com/focus/what-do-americans-think-natural-foods-are/>

26 ²⁹ Jack Bobo, “Viewpoint: 70% of consumers say ‘natural’ food is healthiest, but
27 there’s no science behind the marketing hype,” June 4, 2020, *available at*,
28 <https://geneticliteracyproject.org/2020/06/04/viewpoint-70-of-consumers-say-natural-food-is-healthier-but-theres-no-science-behind-the-marketing-hype/>.

1 and beverages, second only to freshness. According to Tate & Lyle Research, 94%
2 of global consumers read product labels and prefer drinks without artificial
3 ingredients.”³⁰ To that end, 2 in 3 consumers, like Plaintiff “say that clean label
4 claims influence their purchasing decisions.”³¹

5 25. Consumers, like Plaintiff, thus expect that a product which affirmatively
6 represents that it contains “only natural ingredients” prominently on front and top
7 label, while affirmatively disclaiming the presence of any artificial flavors and
8 sweeteners, and preservatives, to be wholly free of any toxic plasticizers.

9 26. Each version of Defendant’s Yogurt products are substantially similar.
10 Chobani’s other products heavily feature cultured nonfat milk, cane sugar, water, and
11 natural flavors and are thus made with the same, or nearly the same, ingredients.

12 27. Additionally, the packaging for each uses nearly identical trade dress,
13 varying only in the color specifying the flavor with occasional additions of fruit
14 images. And, most, if not all, containers are made from the same #5 Plastic that is
15 likely the source of some, if not all, of the phthalates leaching into the Product.

16 28. Critically, the packaging for all of Defendant’s Products specify that are
17 composed of “Only Natural Ingredients.” As such, each variation of Defendant’s
18 Greek Yogurt product is substantially similar to that which Plaintiff purchased.

19 **D. DEFENDANT’S MISREPRESENTATIONS AND**
20 **OMISSIONS ARE ACTIONABLE**

21 29. Defendant affirmatively represents that its Products contain “only
22 natural ingredients.” Concurrently, Defendant omits a material fact to consumers—
23 that the Products contain, or risk containing, toxic phthalate chemicals.

24 ³⁰ Sara Helminen, “Clean Label Trend Is Evolving – Consumers Still Willing To Pay
25 A Price Premium,” Valio (May 29, 2023) *available at*
26 <https://www.valio.com/articles/clean-label-trend-is-evolving-and-consumers-willing-to-pay-a-price-premium/#:~:text=1%20in%203%20global%20consumers,prefer%20drinks%20with,out%20artificial%20ingredients.>
27

28 ³¹ *Id.*

1 30. As the primary manufacturer, advertiser, and wholesaler of the Product,
2 Defendant knew, or should have known, that the Product’s labeling fails to conform
3 to its representations and warranties. Because the phthalates found in the Product are
4 plasticizers, it is likely that they were introduced into the Product through the plastic
5 container. Defendant, as the manufacturer, is likely aware of the type of plastic used
6 to create the container and is likely in possession of, or capable of obtaining, purity
7 reports and testing from its plastic manufacturers. Defendant either did so, or
8 negligently or willingly failed to do so.

9 31. Indeed, most Chobani yogurt cups—including Plaintiff’s—are made
10 from #5 plastic, known chemically as polypropylene. And “[p]thalates are
11 commonly used as a catalyst in the polymerization³² of propylene to
12 polypropylene.”³³

13 32. Plaintiff and Class Members saw and relied on Defendant’s
14 representations and omissions and reasonably understood these representations and
15 warranties to mean that the Product was free of toxic plasticizers. Plaintiff and Class
16 Members would have paid substantially less for the product or would not have
17 purchased the Product at all had they known that the Product contained harmful
18 chemicals. Therefore, Plaintiff and the Classes were injured by the price premium
19 they paid for the Product which they otherwise would not have paid absent
20 Defendant’s misrepresentation and omission.

21 33. Defendant also had a duty to disclose because of its exclusive and/or
22 superior knowledge concerning the true nature of the Product. Defendant also had a
23 duty to disclose because the presence of phthalates was contrary to a representation
24 actually made: “Only made with natural ingredients.”

25 ³² Polymerization is the process of causing propylene molecules to bond.

26 ³³ Karen Laird, *Phthalate-Free Polypropylene Catalysts Is Safer, Boosts*
27 *Productivity*, Sustainable Plastics (June 18, 2020) available
28 <https://www.sustainableplastics.com/news/phthalate-free-polypropylene-catalyst-safer-boosts-productivity>.

1 34. Although Defendant is in the best position to know the true nature of its
2 Product during the relevant timeframe, to the extent possible, Plaintiff satisfies the
3 requirements of Rule 9(b) by alleging the following facts with particularity:

4 35. **WHO:** Defendant Chobani, LLC.

5 36. **WHAT:** Defendant's conduct here was, and continues to be, fraudulent
6 because it omitted and concealed that the Products contain Phthalates. These
7 omissions were material to Plaintiff and the Classes because they would not have
8 paid the same amount for the Product or would not have purchased the Products at
9 all had they known the Products contained phthalates. Defendant knew or should
10 have known that this information is material to reasonable consumers, including
11 Plaintiff and Class Members, in making their purchasing decisions, given its
12 expertise and offering of products, as described above, yet it continued to
13 pervasively market the Products in this manner in the United States.

14 37. **WHEN:** Defendant made material misrepresentations and omissions to
15 Plaintiff and Class Members during the putative class period, including prior to and
16 at the time of purchase, despite its knowledge that the Products were not free of
17 harmful chemicals. Plaintiff and Class Members viewed the packaging of the
18 Product when purchasing and viewed the representations and warranties made by
19 Defendant and understood them to mean that the Product did not contain harmful
20 chemicals.

21 38. **WHERE:** Defendant's made material misrepresentations and omissions
22 on the Products' labels and packaging.

23 39. **HOW:** Defendant made material misrepresentations and omissions of
24 fact regarding the Product by representing and warranting that the Product was safe
25 and healthy to eat. Defendant, on its labeling, omitted material disclosures to
26 consumers about the true contents of the Products.

27 40. **INJURY:** Plaintiff and Class Members purchased, paid a premium (up
28 to the full price), or otherwise paid more for the Products than they would have, or

1 alternatively they would not have purchased the Products at all, absent Defendant's
2 misrepresentations and omissions.

3 **CLASS ALLEGATIONS**

4 41. Plaintiff brings this matter on behalf of herself and all similarly situated
5 in the following classes (collectively, the "Classes")

6 All natural persons in the United States who purchased the
7 Product, and all substantially similar products, during the
8 applicable statutory period. (the "**Nationwide Class**")

9 42. Plaintiff also brings this matter on behalf of herself and all similarly
10 situated in the following Subclass

11 All natural persons in the State of California who purchased the
12 Product, and all substantially similar products, during the
13 applicable statutory period. (the "**California Subclass**")

14 43. Excluded from the Classes are: (1) any Judge or Magistrate presiding
15 over this action and any members of their families; (2) Defendant, Defendant's
16 subsidiaries, parents, successors, predecessors, and any entity in which Defendant or
17 its parents have a controlling interest and their current or former employees, officers,
18 and directors; and (3) Plaintiff's counsel and Defendant's counsel.

19 44. Plaintiff reserves the right to expand, limit, modify, or amend the class
20 definitions, including the addition of one or more Subclasses, in connection with her
21 motion for class certification, or at any other time, based on *inter alia*, changing
22 circumstances and new facts obtained.

23 45. **Numerosity:** Class Members are so numerous that joinder of all
24 members is impracticable. Plaintiff believes that there are tens of thousands of
25 people who purchased the Product and substantially similar versions of the Product
26 and who have been injured by Defendant's false and misleading representations.
27 While the exact number of members of each Class is unknown to Plaintiff at this
28 time, such information can be ascertained through appropriate discovery from
records maintained by Defendant and its agents.

1 46. **Commonality and Predominance:** The questions of law and fact
2 common to the classes which predominate over any questions which may affect
3 individual class members include, but are not limited to:

- 4 (a) Whether Defendant's Product contains phthalates;
5 (b) Whether Defendant made an express warranty;
6 (c) Whether Defendant breached that express warranty;
7 (d) Whether the phthalate content is harmful;
8 (e) Whether a reasonable consumer would understand Defendant's
9 representations and warranties to mean that the Product is free of
10 phthalates;
11 (f) Whether the presence of phthalates is material to a reasonable
12 consumer;
13 (g) Whether Defendant had a duty to disclose the presence of
14 phthalates in its Product;
15 (e) Whether Defendant's conduct violated California's consumer
16 protection statutes;
17 (f) Whether Defendant's conduct amounted to violations of the
18 common law; and

19 47. **Typicality:** The claims of the named Plaintiff are typical of the claims
20 of the members of the Classes. The named Plaintiff, like other members of the
21 Classes, purchased the Product and Defendant's substantially similar Products.
22 Plaintiff relied on the representations and warranties made by Defendant on the
23 Product's packaging that the Product was safe for ordinary use.

24 48. **Adequate Representation:** Plaintiff has retained and is represented by
25 qualified and competent counsel who are highly experienced in complex consumer
26 class action litigation. Plaintiff and Plaintiff's counsel are committed to vigorously
27 prosecuting this class action. Neither Plaintiff, nor Plaintiff's counsel, have any
28 interest adverse to, or in conflict with, the interests of the absent members of the
Class. Plaintiff is able to fairly and adequately represent the interest of the Class.

1 Plaintiff has raised viable statutory claims of the type reasonably expected to be
2 raised by members of the Class and will vigorously pursue those claims. If
3 necessary, Plaintiff may seek leave of this Court to amend this complaint to include
4 additional Class Representatives to represent the Class or additional claims as may
5 be appropriate.

6 49. **Superiority:** A class action is superior to other available methods for
7 the fair and efficient adjudication of this controversy because individual litigation of
8 the claims of all members of the Classes is impracticable. Even if every member of
9 the Classes could afford to pursue individual litigation, the Court system could not.
10 It would be unduly burdensome to the courts in which individual litigation of
11 numerous cases would proceed. Individualized litigation would also present the
12 potential for varying, inconsistent, or contradictory judgments, and would magnify
13 the delay and expense to all parties and to the court system, resulting in multiple
14 trials of the same factual issues. By contrast, the maintenance of this action as a
15 class action, with respect to some or all of the issues presented herein, presents fewer
16 management difficulties, conserves the resources of the parties and of the court
17 system and protects the rights of each member of the Classes. Plaintiff anticipates no
18 difficulty in the management of this action as a class action. Class-wide relief is
19 essential to compel compliance with California's consumer protection laws.

20 **COUNT I**

21 **Violation of California's Consumers Legal Remedies Act ("CLRA")**
22 **California Civil Code §§ 1750, *et seq.***
23 **(On Behalf of Plaintiff and the California Subclass)**

24 50. Plaintiff incorporates the foregoing allegations as if fully set forth
25 herein.

26 51. Plaintiff brings this claim individually and on behalf of the California
27 Subclass.
28

1 52. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods ... have
2 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
3 they do not have....”

4 53. Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services
5 are of a particular standard, quality, or grade, or that goods are of a particular style or
6 model, if they are of another.”

7 54. Civil Code § 1770(a)(9) prohibits “advertising goods ... with intent not
8 to sell them as advertised.”

9 55. Defendant violated Civil Code §§1770(a)(5), (a)(7), and (a)(9) by
10 holding out the Product as being made from **only** natural ingredients, such that it is
11 safe enough to consume, when, in fact, the Product contained (or risked containing)
12 unsafe, unnatural, toxic phthalates.

13 56. Defendant made its representations to Plaintiff and the members of the
14 California Subclass while suppressing the true nature of the Product. Specifically,
15 Defendant displayed the Product and described it as wholly comprised of only
16 natural ingredients and therefore safe to ingest, including on the Product’s
17 packaging, without disclosing that the Product contains (or risks containing) toxic
18 phthalates chemicals. As such, Defendant affirmatively misrepresented, *inter alia*,
19 the ingredients, quality, and grade of the Product while continuing to advertise the
20 goods without the intent to sell them as advertised.

21 57. Plaintiff and the California Subclass suffered harm as a result of the
22 violations of the CLRA because they incurred, charged, and/or paid monies for the
23 Product that they otherwise would not have incurred or paid and were unknowingly
24 exposed to a significant and substantial health risk.

25 58. On January 21, 2025, prior to filing this complaint, Defendant’s
26 Counsel received Plaintiff’s demand letter via certified mail. The letter advised
27 Defendant that it was in violation of the CLRA with respect to the presence of
28 phthalates in the Product, and demanded that they cease and desist from such

1 violations and make full restitution by refunding the monies received therefrom. The
2 letter stated that it was sent on behalf of all other similarly situated purchasers.

3 59. Defendant failed to remedy the issues raised by the notice letter.

4 60. Pursuant to Civ. Code § 1780, Plaintiff and the California Subclass
5 seek: (a) actual damages in an amount to be determined at trial; (b) an order
6 enjoining Defendant from continuing its violative acts and practices; (c) restitution of
7 all money and property lost by Plaintiff and the Subclass as a result of Defendant's
8 unlawful conduct; (d) punitive damages; (e) any other relief that the Court deems
9 proper; and (f) attorneys' costs and fees.

10 **COUNT II**

11 **Violation of California's Unfair Competition Law, 12 Cal. Bus. & Prof. Code §§ 17200, *et seq.* (On Behalf of Plaintiff and the California Subclass)**

13 61. Plaintiff incorporates the foregoing allegations as if fully set forth
14 herein.

15 62. Plaintiff brings this claim individually and on behalf of the California
16 Subclass against Defendant.

17 63. California Business and Professions Code § 17200 prohibits "any
18 unlawful, unfair, or fraudulent business act or practice." By committing the acts and
19 practices alleged herein, Defendant has violated California's Unfair Competition
20 Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210 by engaging in unlawful,
21 unfair, and fraudulent conduct.

22 64. **Unlawful Business Practices:** Defendant violated the UCL's
23 proscription against engaging in unlawful business practices by violating the CLRA,
24 Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9), as well as by violating California's
25 False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

26 65. As more fully described above, Defendant's misleading packaging and
27 labeling of its Product is likely to deceive reasonable consumers. In addition,
28 Defendant has committed unlawful business practices by, *inter alia*, making the

1 representations and omissions of material facts, as set forth more fully above,
2 thereby violating the common law.

3 66. Plaintiff and the Classes reserve the right to allege other violations of
4 law, which constitute other unlawful business acts or practices.

5 67. **Unfair Business Practices:** Defendant also violated the UCL's
6 prohibition against engaging in unfair business practices. Defendant's acts,
7 omissions, misrepresentations, practices, and non-disclosures as alleged herein also
8 constituted "unfair" business acts and practices within the meaning of Bus. & Prof.
9 Code §§ 17200, *et. seq.*, as the conduct is substantially injurious to consumers,
10 offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the
11 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

12 68. There were reasonably available alternatives to further Defendant's
13 legitimate business interest other than the conduct described above, such as warning
14 about the risk of phthalates and/or testing to ensure phthalates are not present.
15 Defendant could have required that its plastic supplier also test and ensure purity but
16 didn't. It could have used a different style of plastic, but it didn't. There are no
17 legitimate business purposes served by Defendant's conduct, which caused Plaintiff
18 and the California Subclass economic injury because they purchased a Product, the
19 basis of the bargain for which was untrue.

20 69. **Fraudulent Business Practices:** Defendant has further violated the
21 UCL's proscription against engaging in fraudulent business practices. Defendant's
22 claims, nondisclosures, and misleading statements with respect to the Product, as
23 more fully set forth above, were false, misleading, and/or likely to deceive the
24 consuming public within the meaning of Bus. & Prof. Code § 17200.

25 70. Plaintiff and the Classes suffered a substantial injury by virtue of
26 buying the Product that they would not have purchased absent Defendant's unlawful,
27 fraudulent, and unfair packaging, labeling, and omission about the inclusion of
28 harmful toxins in its Product.

71. There is no benefit to consumers or competition from deceptively marketing and omitting material facts about the true nature of the Product.

72. Plaintiff and the Classes had no way of reasonably knowing that the Product they purchased was not truthfully marketed, advertised, packaged, or labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

73. The gravity of the consequences of Defendant's conduct as described outweighs any justification, motive, or reason therefore, particularly considering the available legal alternatives that exist in the marketplace. Such conduct is immoral, unethical, unscrupulous, offends established public policy, or is substantially injurious to Plaintiff and the other members of the Classes.

74. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and the Subclass seek an order of this Court that includes, but is not limited to, requiring Defendant to (a) provide restitution to Plaintiff and other California Subclass Members; (b) disgorge all revenues obtained as a result of violations of the UCL; and (c) pay Plaintiff's attorneys' fees and costs.

COUNT III
**Violation of California’s False Advertising Law,
 Cal. Bus. & Prof. Code §§ 17500, *et seq.***
(On Behalf of Plaintiff and the California Subclass)

75. Plaintiff incorporate the foregoing allegations as if fully set forth herein.

76. Plaintiff brings this claim on behalf of herself and the California Subclass against Defendant.

77. Defendant's acts and practices, as described herein, have deceived and/or are likely to continue to deceive, members of the California Subclass and public. As described throughout this Complaint, Defendant misrepresented the Product as wholly natural, free from toxic chemicals, and therefore safe to ingest

1 when, in fact, the Product is (or risks being) not wholly natural, free from toxic
2 chemicals, or safe to ingest because of the inclusion of phthalates.

3 78. By its actions, Defendant disseminated advertisements on its product
4 that it contains only natural ingredients. The advertising was, by its very nature,
5 unfair, deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof.
6 Code §§ 17500, *et seq.* Such advertisements were intended to and likely did deceive
7 the consuming public.

8 79. The above-described false, misleading, and deceptive advertising
9 Defendant disseminated continues to have a likelihood to deceive in that Defendant
10 failed to disclose that the Product contains (or risks containing) substances that pose
11 a significant risk to the health of consumers and failed to correct its advertising.

12 80. Defendant continues to misrepresent to consumers that the Product is
13 safe to ingest and wholly natural when, in fact, the Product is not or risks being not.

14 81. In making and disseminating these statements, Defendant knew, or
15 should have known, its advertisements were untrue and misleading in violation of
16 California law. Plaintiff and members of the California Subclass based their
17 purchasing decisions on Defendant's omitted material facts. The revenue
18 attributable to the Product sold in those false and misleading advertisements likely
19 amounts to millions of dollars. Plaintiff and members of the California Subclass
20 were injured in fact and lost money and property as a result.

21 82. The misrepresentations and non-disclosures by Defendant of the
22 material facts described and detailed herein constitute false and misleading
23 advertising and, therefore, constitute a violation of Cal. Bus. & Prof. Code §§ 17500,
24 *et. seq.*

25 83. As a result of Defendant's wrongful conduct, Plaintiff and members of
26 the California Subclass lost money in an amount to be proven at trial. Plaintiff and
27 the Subclass are therefore entitled to restitution as appropriate for this cause of
28 action.

84. Plaintiff and the California Subclass seek all monetary and non-monetary relief allowed by law, including (a) restitution of all profits stemming from Defendant's unfair, unlawful, and fraudulent business practices; (b) declaratory relief; (c) reasonable attorneys' fees and costs under California Code Civ. Proc. § 1021.5; and (e) injunctive relief, and other appropriate equitable relief.

COUNT IV
Breach of Express Warranty
(On Behalf of Plaintiff and the Nationwide Class)

85. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

86. Plaintiff brings this claim individually on behalf of herself and the Nationwide Class.

87. Plaintiff brings this claim under the laws of the State of California.

88. Plaintiff and Nationwide Class Members formed a contract with Defendant at the time Plaintiff and Nationwide Class Members purchased the Product.

89. The terms of the contract include the promises and affirmations of fact made by Defendant on the Product packaging, as described above.

90. This labeling constitutes an express warranty and became part of the basis of the bargain and are part of the standardized contract between Plaintiff and Nationwide Class Members.

91. As set forth above, Defendant purports through its labeling and packaging, to create an express warranty that the Product is safe for its intended use.

92. Plaintiff and Nationwide Class Members performed all conditions precedent to Defendant's liability under this contract when they purchased the Product.

93. Defendant breached express warranties about the Product and its qualities because, despite Defendant's warranties that the Product is made wholly

1 from natural ingredients, the Product risks containing, or worse, does contain toxic
2 phthalates chemicals. Thus, the Product does not conform to Defendant's
3 affirmations and promises described above.

4 94. Plaintiff and each Nationwide Class Member would not have purchased
5 the Product had they known the true nature of the Product.

6 95. As a result of Defendant's breach of express warranty, Plaintiff and
7 each Nationwide Class Member suffered and continue to suffer financial damage and
8 injury, and are entitled to all damages, in addition to costs, interest and fees,
9 including attorneys' fees, as allowed by law.

10 **COUNT V**
11 **Unjust Enrichment / Restitution**
12 **(On Behalf of Plaintiff and the Nationwide Class)**

13 96. Plaintiff incorporates the foregoing allegations as if fully set forth
14 herein.

15 97. Plaintiff brings this claim under the laws of the State of California.

16 98. To the extent required by this law, this cause of action is alleged in the
17 alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

18 99. Plaintiff and members of the Nationwide Class conferred benefits on
19 Defendant by purchasing the Product.

20 100. Defendant was unjustly enriched in retaining the revenues derived from
21 Plaintiff and members of the Nationwide Class's purchases of the Product.
22 Retention of those monies under these circumstances is unjust and inequitable
23 because Defendant failed to disclose that the Product contained (or risked
24 containing) toxic substances, rendering its "only natural ingredients" representations
25 false and misleading. These omissions caused injuries to Plaintiff and members of
26 the Nationwide Class because they would not have purchased the Product if the true
27 facts were known.
28

101. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Nationwide Class is unjust and inequitable, Defendant has been unjustly enriched in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a) For an order certifying the Classes under Fed. R. Civ. P. 23 and naming Plaintiff as representative of the Classes, and Plaintiff's Counsel as Class Counsel;
- b) For an order declaring that Defendant's conduct violates the statutes referenced herein;
- c) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;
- d) For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e) For prejudgment interest on all amounts awarded;
- f) For an order of restitution and all other forms of equitable monetary relief;
- g) For injunctive relief as pleaded or as the Court may deem proper;
- h) For an order awarding Plaintiff and the Classes their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: April 16, 2025

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Julia K. Venditti
Julia K. Venditti

L. Timothy Fisher (State Bar No. 191626)
Julia K. Venditti (State Bar No. 332688)
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8 *Attorneys for Plaintiff and the Putative Class*
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CLRA VENUE DECLARATION

I, Julia K. Venditti, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am an associate at Bursor & Fisher, P.A., and counsel of record for Plaintiff Amy Wysocki in this matter. Amy Wysocki alleges that she resides in San Marcos, California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Southern District of California, as Plaintiff purchased the Products from a brick-and-mortar retail stores located within this District. Additionally, Defendant advertised, marketed, manufactured, distributed, and/or sold the Products at issue to Plaintiff from this District.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Walnut Creek, California this 16th day of April 2025.

/s/ Julia K. Venditti

Julia K. Venditti