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8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11  
 12 JENILE THAMES, individually and on behalf of  
 13 all others similarly situated,

14 Plaintiff,

15 v.

16 MARS INC.,

17 Defendant.  
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Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Jenile Thames (“Plaintiff”) brings this action on behalf of himself, and all others  
2 similarly situated against Mars, Inc. (“Defendant”). Plaintiff makes the following allegations  
3 pursuant to the investigation of his counsel and based upon information and belief, except as to the  
4 allegations specifically pertaining to himself, which are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this Class action lawsuit on behalf of himself and similarly situated  
7 consumers (“Class Members”) who purchased for personal, family, or household consumption,  
8 Defendant’s candies sold under the brand name “Skittles” (the “Products”),<sup>1</sup> which are unfit for  
9 human consumption because they contain titanium dioxide (“TiO<sub>2</sub>”), a known toxin. Defendant has  
10 long known of the health problems posed by TiO<sub>2</sub>. In fact, in February 2016, Defendant publicly  
11 committed to phasing out TiO<sub>2</sub>. But Defendant has flouted its own promise to consumers. More  
12 than six years later, Defendant continues to sell the Products with TiO<sub>2</sub>, unbeknownst to reasonable  
13 consumers who purchase the Products.

14 2. Interestingly, in its February 2016 press release, Defendant blew smoke, suggesting  
15 that its planned phase out of TiO<sub>2</sub> was called for simply because “consumers today are calling on  
16 food manufacturers to use more natural ingredients in their products.” Incredibly, Defendant even  
17 claimed that “[a]rtificial colors pose no known risks to human health or safety.” In doing so,  
18 Defendant concealed from consumers material information it knew. Namely, that numerous of its  
19 competitors and other food manufacturers had long removed the toxin from their product lines  
20 because of scientific research showing that the toxin is unsafe for consumption.

21 3. Several nations have banned the harmful toxin. For example, in 2019, the toxin was  
22 banned in France, where Defendant maintains offices and announced that it could and would comply  
23 with France’s law.

24 4. In May 2021, the European Food Safety Authority (“EFSA”) released its report on  
25 the health concerns associated with TiO<sub>2</sub>, determining that TiO<sub>2</sub> could not be considered safe for  
26 consumption. Professor Maged Younes, Chair of EFSA’s expert Panel on Food Additives and

27 \_\_\_\_\_  
28 <sup>1</sup> This includes Skittles Original, Skittles Wild Berry, Sour Skittles, Tropical Skittles, and Smoothies Skittles, among others.

1 Flavourings (“FAF”) underscored these findings, stating that: “Taking into account all available  
 2 scientific studies and data, the Panel concluded that titanium dioxide can no longer be considered  
 3 safe as a food additive. A critical element in reaching this conclusion is that we could not exclude  
 4 genotoxicity concerns after consumption of titanium dioxide particles.”<sup>2</sup>

5 5. Building on EFSA’s research, the European Commission (“EC”) announced that it  
 6 too would adopt a ban on the use of TiO<sub>2</sub> as a food additive. Under that plan, the ban would apply  
 7 following a six-month transition period, and beginning summer 2022, the additive should no longer  
 8 be added to food products. That plan was adopted unanimously by Member States.

9 6. Defendant—with offices in Netherland, Denmark, Ireland, Italy, Portugal, Germany,  
 10 Norway, Czech Republic, Romania, Belgium Switzerland, Austria, Slovakia, Hungary, France,  
 11 Greece, and Spain<sup>3</sup>—and with sales in each of those Member States was reminded of the scientific  
 12 findings concerning TiO<sub>2</sub> and was required to comply with the EC’s ban.

13 7. Nonetheless, in the United States, Defendant maintains sales with TiO<sub>2</sub> as an additive,  
 14 failing to inform consumers of the implications of consuming the toxin. Instead, Defendant relies  
 15 on the ingredient list which is provided in miniscule print on the back of the Products, the reading of  
 16 which is made even more challenging by the lack of contrast in color between the font and packaging,  
 17 as set out below in a manner in which consumers would normally view the product in the store.



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<sup>2</sup> EFSA, “Titanium dioxide: E171 no longer considered safe when used as a food additive,” (May 6, 2021), <https://www.efsa.europa.eu/en/news/titanium-dioxide-e171-no-longer-considered-safe-when-used-food-additive>.

<sup>3</sup> MARS, “Our Locations,” [https://cze.mars.com/en/locations?language\\_content\\_entity=en](https://cze.mars.com/en/locations?language_content_entity=en).

1           8.       Consequently, consumers who purchase Defendant’s Products are at heightened risk  
2 of a host of health effects for which they were unaware stemming from genotoxicity—the ability of  
3 a chemical substance to change DNA.

4           9.       Based on Defendant’s omissions, a reasonable consumer would expect that the  
5 Product can be safely purchased and consumed as marketed and sold. However, the Products are not  
6 safe and pose a significant health risk to unsuspecting consumers. Yet, neither before nor at the time  
7 of purchase does Defendant notify consumers like Plaintiff that the Products are unsafe to consumers,  
8 contain heightened levels of titanium dioxide, and should otherwise be approached with caution.

9           10.       Accordingly, Plaintiff brings his claims against Defendant individually and on behalf  
10 of a class of all others similarly situated for (1) violation of California’s Unfair Competition Law,  
11 Cal. Bus. & Prof. Code § 17200, et seq.; (2) violation of the Consumers Legal Remedies Act, Cal.  
12 Civ. Code § 1750, et seq.; (3) breach of the Implied Warranty under Song-Beverly Consumer  
13 Warranty Act, Cal. Civ. Code § 1792, et seq.; and California Commercial Code § 2314; (4) violation  
14 of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17200, et seq.; (5) Fraud; (6)  
15 Fraudulent Inducement; (7) Fraudulent Omission or Concealment; and (8) Quasi-Contract / Unjust  
16 Enrichment.

17                                       **PARTIES**

18           11.       Plaintiff Jenile Thames is a natural person and citizen of California who resides in  
19 San Leandro, California. In or around April 11, 2022, Mr. Thames purchased Original Skittles from  
20 a brick-and-mortar QuikStop in San Leandro, California. Prior to his purchase, Mr. Thames  
21 reviewed the labeling, packaging, and marketing materials of the products and saw the false and  
22 misleading claims that, among other things, the Products are safe for human consumption. Mr.  
23 Thames understood these claims to be representations and warranties by Mars, Inc., that the Products  
24 are free from all traces of harmful ingredients. Mr. Thames reasonably relied on these  
25 representations and warranties in deciding to purchase the Products, and these representations were  
26 part of the basis of the bargain in that he would not have purchased the Products or would not have  
27 purchased them on the same terms, if the true facts about its contents had been known. As a direct  
28

1 result of Mars Inc.'s material misrepresentations and omissions, Mr. Thames suffered, and continues  
2 to suffer, economic injuries.

3 12. Mr. Thames remains interested in purchasing candies from Defendant that are safe  
4 for consumption. However, Plaintiff is unable to determine if the Products are actually safe for  
5 consumption. Plaintiff understands that the composition of the Products may change over time. But  
6 as long as Defendant may market the Products as safe for consumption when the Products are not  
7 safe consumption, then when presented with false or misleading information when shopping, he will  
8 be unable to make informed decisions about whether to purchase Defendant's Products and will be  
9 unable to evaluate the different prices between Defendant's Products and competitor's Products.  
10 Plaintiff is further likely to be repeatedly misled by Defendant's conduct, unless and until Defendant  
11 is compelled to ensure that Products marketed and labeled as safe for consumption, are, in fact, safe  
12 for consumption.

13 13. Defendant Mars Inc. is a foreign corporation with its domestic headquarters located  
14 at 9885 Elm Street, McLean, Virginia 22101. Relevant to Plaintiff's claim herein, Mars is a leading  
15 manufacturer, packager, and distributor of, among other products, candy, and confectionery. Mars  
16 Inc. has done business throughout California and the United States at all times during the Class  
17 Period. At all relevant times, Mars Inc., has advertised, marketed, manufactured, distributed, and/or  
18 sold candy and confectionery, including the Products at issue, to consumers in and throughout  
19 California and the United States. At all relevant times, Mars Inc., formulated, directed, controlled,  
20 had the authority to control, and/or participated in the acts and practices set fourth in this Complaint.

21 14. Plaintiffs reserve the right to amend this Complaint and add different products and  
22 additional defendants, including without limitation and officer, director, employee, supplier, or  
23 distributor of Defendant who has knowingly and willfully aided, abetted, and/or conspired in the  
24 false and deceptive conduct alleged herein.

25 **JURISDICTION AND VENUE**

26 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as  
27 amended by the Class Action Fairness Act of 2005 ("CAFA"), because this case is a class action  
28 where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00,

1 exclusive of interest and costs, there are over 100 members of the putative class, and Plaintiffs, as  
2 well as most members of the proposed class, are citizens of different states than Defendant. This  
3 Court has personal jurisdiction over Defendant because it is licensed to do business in California,  
4 has designated an agent for services of process in California, and otherwise conducts substantial  
5 business in California.

6 16. This Court has personal jurisdiction over Defendant because Defendant conducts  
7 substantial business within California such that Defendant has significant, continuous, and pervasive  
8 contacts with the State of California.

9 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does  
10 substantial business in this District and a substantial part of the events giving rise to Plaintiff's claims  
11 took place within this District and Plaintiff saw and heard Defendant's advertisements in this District.

## 12 FACTUAL ALLEGATIONS

### 13 A. Mars' Candy Skittles

14 18. Skittles candy are manufactured, marketed, and sold by Mars Wrigley. The candy is  
15 well-known by its colorful array, which Mars has dubbed "the rainbow" for marketing purposes to  
16 great success. For example, Skittles was "America's favorite non-chocolate chewy candy in 2017,  
17 with sales in excess of \$185 million U.S. dollars."<sup>4</sup>

18 19. The color of Defendant's rainbow, however, is due to its use of TiO<sub>2</sub>.

19 20. Significantly, Defendant need not rely on the use of TiO<sub>2</sub> to achieve this result.

20 21. Numerous of Defendant's competitors do not use TiO<sub>2</sub> in their Products and yet are  
21 able to maintain the colorful impression Defendant hopes to achieve with its Products.

22 22. For example, Swedish Fish Soft & Chewy Candy does not rely on TiO<sub>2</sub> and yet  
23 achieves a bright red color.

24 23. Likewise, Black Forest Gummy Bears does not rely on TiO<sub>2</sub> and still strikes an  
25 assortment of colors, including orange, red, yellow, and green.

26  
27 <sup>4</sup> Nils-Gerrit Wunsch, *Sales of Leading Non-Chocolate Chewy Candy Brands of the United States*  
28 *in 2017*, STATISTA (Nov. 25, 2020) available at <https://www.statista.com/statistics/190409/top-non-chocolate-chewy-candy-brands-in-the-united-states/> (last visited June 10, 2022).

1           24. Similarly, Sour Patch Kids does not make use of TiO<sub>2</sub> and accomplishes vivid colors  
2 like lime green, yellow, orange, and redberry.

3           25. Nerds also achieves bright colors including blue, green, red, and orange without the  
4 use of TiO<sub>2</sub>.

5           26. Indeed, even Defendant has colorful confectionary goods such as its M&Ms product  
6 line that do not rely on TiO<sub>2</sub>.

7           **B. Titanium Dioxide is Harmful to Human Health**

8           27. In February 2016, Defendant alerted the public of its intention to remove TiO<sub>2</sub> from  
9 its confectionary products.

10           28. Following that announcement, Jaydee Hanson, Senior Policy Analyst at Center for  
11 Food Safety, stated that “We are pleased to see that MARS has taken a positive step toward  
12 eliminating toxic, unnecessary nanomaterials from its line of food products. We urge the company  
13 to speed up the removal of these additives, especially given the grave health concerns associated with  
14 titanium dioxide and other nanoparticles.”

15           29. Mr. Hanson further stated that “Studies have shown that the human health risks  
16 associated with ingesting nanoparticles of many common food additives far outweigh any utility for  
17 producers. There are plenty of non-toxic alternatives available and we urge MARS and others to  
18 commit to not using any engineered nanomaterials in human and animal food products.”

19           30. Defendant’s public statements built on efforts by other large food companies to  
20 remove TiO<sub>2</sub> from their products. In March 2015, for example, Dunkin Donuts announced that it  
21 would no longer use TiO<sub>2</sub>.

22           31. The reason for eliminating titanium dioxide is simple: TiO<sub>2</sub>—which is used in paints,  
23 coatings, adhesives, plastics, printing inks, and roofing materials—has demonstrated an ability to  
24 pass through biological membranes, circulate through the body, and enter cells. Research shows that  
25 the effects are serious, including DNA and chromosomal damage, organ damage, inflammation,  
26 brain damage, genital malformations, lesions in the liver and kidneys, and cell neurosis.

27           32. Titanium dioxide also builds up in the body’s intestinal tract. Ordinarily, the intestinal  
28 track serves to absorb nutrients for the body. However, titanium dioxide cannot be absorbed. When

1 this occurs, the body's M-Cells absorb these particles and bring them to the innate immune system.  
2 Overtime, the titanium dioxide particles are incorporated by the innate immune system cells where  
3 they will remain without being degraded or dissolved.

4 33. In 2019, the French government responded to these troubling findings by banning all  
5 foods containing titanium dioxide. This ban took effect in January 2020.

6 34. At that time, Defendant's subsidiary, Mars Wrigley Confectionary France, confirmed  
7 that it could and would comply with the law.

8 35. Later that year, in October 2020, the European Parliament removed titanium dioxide  
9 from the list of food additives authorized by the European Union for human consumption. European  
10 researchers studying titanium dioxide noted that the long half-lives of titanium dioxide nanoparticles  
11 created the potential for the particles to accumulate inside human organs and tissue. European  
12 researchers also determined that titanium dioxide nanoparticles could cause DNA strands to break,  
13 leading to chromosomal damage.

14 **C. Defendant's Omissions Concerning TiO<sub>2</sub> is Actionable**

15 36. Despite its February 2016 commitment to U.S. consumers and its apparent  
16 compliance with the laws of the European Commission, Defendant has endangered U.S. consumers,  
17 exposing them to TiO<sub>2</sub>, which Defendant knows carries significant health concerns. It also failed to  
18 tell consumers that contrary to its earlier representations, it did not remove TiO<sub>2</sub>.

19 37. As a result, Plaintiff and the Class were injured by the full purchase price of the  
20 Products because the Products are worthless, as they are marketed as safe for human consumption  
21 when they are not in fact safe for human consumption.

22 38. Plaintiff and Class Members bargained for products that are safe for consumption and  
23 were deprived of the basis of their bargain when Defendant sold them Products in packaging  
24 containing dangerous substances with serious health consequences.

25 39. No reasonable consumer would expect that the Products marketed as safe for human  
26 consumption would pose a risk to their health, safety, and well-being, or that it would contain TiO<sub>2</sub>,  
27 which is linked to harmful health effects in humans. Accordingly, Plaintiff and Class Members  
28 suffered economic injuries as a result of purchasing the Products.



1           40. As the Products expose consumers to a substance that pose a risk to consumers'  
2 health, the Products are not fit for consumption by humans. Plaintiff and the Class are further entitled  
3 to damages for the injury sustained in being exposed to TiO<sub>2</sub>, damages related to Defendant's  
4 conduct, and injunctive relief.

5           41. Moreover, because these facts relate to a critical safety-related deficiency in the  
6 Products, Defendant was under a continuous duty to disclose to Plaintiff and Class Members the true  
7 standard, quality, and grade of the Products and to disclose that the Products contained substances  
8 known to have adverse health effects. Nonetheless, Defendant concealed and misrepresented this  
9 information, as discussed herein.

10           42. Although Defendant is in the best position to know what content it placed on its  
11 packaging during the relevant timeframe, and the knowledge that Defendant had regarding the  
12 presence of TiO<sub>2</sub>, and its failure to warn consumers that the Products contained TiO<sub>2</sub>, to the extent  
13 necessary, Plaintiff satisfies the requirements of Rule 9(b) by alleging the following facts with  
14 particularity:

15           43. **WHO:** Defendant made material omissions of fact about the Products through its  
16 labeling which shows that the Products are safe for human consumption. These representations  
17 constitute omitted material information regarding harmful chemicals.

18           44. **WHAT:** Defendant's conduct here was, and continues to be, fraudulent because it  
19 omitted and concealed that the Products contain a substance—TiO<sub>2</sub>—that is widely known to have  
20 significant health repercussions. Thus, Defendant's conduct deceived Plaintiff and Class Members  
21 into believing that the Products are safe for human consumption when they are not. Defendant knew  
22 or should have known that this information is material to reasonable consumers, including Plaintiff  
23 and Class Members in making their purchasing decisions, yet they continued to pervasively market  
24 the Product in this manner in the U.S. market.

25           45. **WHEN:** Defendant made material omissions during the putative class periods,  
26 including prior to and at the time Plaintiff and Class Members purchased the Products, despite its  
27 knowledge that the Products' packaging contained TiO<sub>2</sub>, a harmful substance with known adverse  
28 health effects.

1           46.    **WHERE:** Defendant’s marketing message was uniform and pervasive, carried  
2 through material omissions on the labeling of the Product’s packaging, website, and through  
3 marketing materials.

4           47.    **HOW:** Defendant made material omissions of fact regarding the Products, including  
5 the presence of TiO2 in the Products.

6           48.    **WHY:** Defendant made the material omissions detailed herein for the express  
7 purpose of inducing Plaintiff, Class Members, and all reasonable consumers to purchase and/or pay  
8 for the Products, the effect of which was that Defendant profited by selling the Products to hundreds  
9 of thousands of consumers.

10          49.    **INJURY:** Plaintiff and Class Members purchased, paid a premium (up to the full-  
11 price), or otherwise paid more for the Products when they otherwise would not have absent  
12 Defendant’s omissions.

13    **CLASS ALLEGATIONS**

14          50.    ***Class Definition.***     Plaintiffs bring this action on behalf of a class of similarly  
15 situated individuals, defined as all persons in the United States who, within the applicable statute of  
16 limitations period, up to and including the date of final judgement in this action, purchased any of  
17 Defendant’s Products at issue (the “Class”)

18               (a)    ***California Subclass.*** Plaintiff Jenile Thames also seeks to represent a  
19 subclass of all Class members who within the applicable statutes of limitations period, up to and  
20 including the date of final judgement in this action, purchased any of the Products at issue in  
21 California (the “California Subclass”).

22          51.    Excluded from the Class and Subclasses are persons who made such purchase for  
23 purpose of resale, Defendant and any entities in which Defendant has a controlling interest,  
24 Defendant’s agents and employees, the judge to whom this action is assigned, and members of the  
25 judge’s staff, and the judge’s immediate family.

26          52.    Plaintiff reserves the right to amend the definition of the Class and Subclass if  
27 discovery or further investigation reveals that the Class or Subclass should be expanded or otherwise  
28 modified.

1           53.    **Numerosity.** Members of the Class and Subclass are so numerous that their  
2 individual joinder herein is impracticable. On information and belief, members of the Class and  
3 Subclass number in the millions. The precise number of Class members and their identities are  
4 unknown to Plaintiff at this time but may be determined through discovery. Class members may be  
5 notified of the pendency of this action by mail and/or publications through the distribution records  
6 of Defendant and third-party retailers and vendors.

7           54.    **Commonality and Predominance.** Common questions of law and fact exist as to all  
8 Class members and predominate over questions affecting only individual Class members. Common  
9 legal and factual questions include but are not limited to: whether Defendant warranted the Products  
10 as “Safe for Human Consumption”; whether the Products contain Titanium Dioxide; whether  
11 Defendant breached these warranties; and whether Defendant committed the statutory and common  
12 law violations alleged against them herein by doing so.

13           55.    **Typicality.** The claims of the named Plaintiff is typical of the claims of the Class  
14 in that Plaintiffs purchased one of Defendant’s Products in reliance on the presentations and  
15 warranties described above and suffered a loss as a result of that purchase.

16           56.    **Adequacy.** Plaintiff is an adequate representative of the Class and respective  
17 Subclass because his interest does not conflict with the interests of the Class and Subclass members  
18 he seeks to represent, he has retained competent counsel experienced in prosecuting class actions,  
19 and they intend to prosecute this action vigorously. The interests of the Class and Subclass members  
20 will be fairly and adequately protected by Plaintiffs and their counsel.

21           57.    **Superiority.** The class mechanism is superior to other available means for the fair  
22 and efficient adjudication of the claims of Class members. Each individual Class members may lack  
23 the resources to undergo the burden and expense of individual prosecution of the complex and  
24 extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases  
25 the delay and expense of all parties and multiplies the burden on the judicial system presented by the  
26 complex legal and factual issues of the case. Individualized litigation also presents a potential for  
27 inconsistent or contradictory judgments. In contrast, the class action device presents far fewer  
28 management difficulties and provides the benefits of single adjudication, economy of scale, and

1 comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment  
2 of the liability issue will ensure that all claims and claimants are before this Court for consistent  
3 adjudication of liability issues.

4 58. Defendant has acted or failed to act on grounds generally applicable to the Class,  
5 thereby making appropriate final injunctive relief with respect to the Class and Subclass as a whole.

6 59. Without a class action, Defendant will continue a course of action that will result in  
7 further damages to Plaintiff and members of the Class and Subclass and will likely retain the benefits  
8 of its wrongdoing.

9 60. Based on the foregoing allegations, Plaintiff’s claims for relief include those set forth  
10 below.

11 **COUNT I**  
12 **Violation of California’s Unfair Competition Law,**  
13 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

14 61. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

15 62. Plaintiff brings this claim individually and on behalf of the Class against Defendant.

16 63. California Business and Professions Code § 17200 prohibits “any unlawful, unfair, or  
17 fraudulent business act or practice.” For the reasons discussed above, Defendant has engaged in  
18 unlawful, unfair, and fraudulent business acts or practices in violation of California Business &  
19 Professions Code § 17200.

20 64. By committing the acts and practices alleged herein, Defendant has violated  
21 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210, as to the  
22 Class, by engaging in unlawful, fraudulent, and unfair conduct.

23 65. Defendant has violated the UCL’s proscription against engaging in **Unlawful**  
24 **Business Practices** as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and  
25 (a)(9) as alleged below, violations of California’s Song-Beverly Act, and violations of California’s  
26 False Advertising Law, in addition to breaches of warranty and violations of common law.

27 66. As more fully described above, Defendant’s misleading marketing, advertising,  
28 packaging, and labeling of the Product is likely to deceive reasonable consumers. In addition,

1 Defendant has committed unlawful business practices by, inter alia, making the omissions of material  
2 facts, as set forth more fully herein, and violating the common law.

3 67. Plaintiff and the Class Members reserve the right to allege other violations of law  
4 which constitute other unlawful business acts or practices.

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

11 69. There were reasonably available alternatives to further Defendant's legitimate  
12 business interests, other than the conduct described herein.

13 70. Defendant has further violated the UCL's proscription against engaging in  
14 **Fraudulent Business Practices**. Defendant's claims, nondisclosures and misleading statements  
15 with respect to the Product, as more fully set forth above, were false, misleading and/or likely to  
16 deceive the consuming public within the meaning of Business & Professions Code § 17200.

17 71. Plaintiff and the other Class Members suffered a substantial injury by virtue of buying  
18 the Products that they would not have purchased absent Defendant's unlawful, fraudulent, and unfair  
19 marketing, advertising, packaging, and omission about the defective nature of the Products.

20 72. There is no benefit to consumers or competition from deceptively marketing and  
21 omitting material facts about the true nature of the Products.

22 73. Plaintiff and the other Class Members had no way of reasonably knowing that the  
23 Products they purchased were not as marketed, advertised, packaged, or labeled. Thus, they could  
24 not have reasonably avoided the injury each of them suffered.

25 74. The gravity of the consequences of Defendant's conduct as described outweighs any  
26 justification, motive, or reason therefore, particularly considering the available legal alternatives  
27 which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous, offends  
28 established public policy, or is substantially injurious to Plaintiff and the other Class Members.

1 75. Pursuant to California Business and Professional Code § 17203, Plaintiff and the  
2 Class seek an order of this Court that includes, but is not limited to, an order requiring Defendant to  
3 (a) provide restitution to Plaintiff and the other Class Members; (b) disgorge all revenues obtained  
4 as a result of violations of the UCL; and (c) pay Plaintiff's and Class members' attorneys' fees and  
5 costs.

6 76. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy at  
7 law, if, for instance damages resulting from his purchase of the Products is determined to be an  
8 amount less than the premium price of the Product. Without compensation for the full premium  
9 price of the Products, Plaintiff would be left without the parity in purchasing power to which he is  
10 entitled.

11 77. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
12 provide full and accurate disclosures regarding the Products so that Plaintiff and Class members can  
13 reasonably rely on Defendant's representations as well of those of Defendant's competitors who may  
14 then have an incentive to follow Defendant's deceptive practices, further misleading consumers.

15 78. Restitution and/or injunctive relief may also be more certain, prompt, and efficient  
16 than other legal remedies requested herein. The return of the full premium price, and an injunction  
17 requiring either (1) adequate disclosure of TiO<sub>2</sub> in the Product and its effects; or (2) the removal of  
18 such chemicals from the Product packaging, will ensure that Plaintiff is in the same place he would  
19 have been in had Defendant's wrongful conduct not occurred, i.e., the position to make an informed  
20 decision about the purchase of the Products absent omissions with the full purchase price at his  
21 disposal.

22 **COUNT II**  
23 **Violation of California's Consumers Legal Remedies Act ("CLRA"),**  
24 **California Civil Code § 1750, et seq.**

25 79. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

26 80. Plaintiff brings this claim individually and on behalf of the Class against Defendant

27 81. Civil Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have  
28 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not

1 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
2 does not have.”

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

5 83. Civil § 1770(a)(9) prohibits “advertising goods or services with intent not to sell them  
6 as advertised.”

7 84. Defendant violated Civil Code § 1770(a)(5), (a)(7), and (a)(9) by holding out the  
8 Product as safe for human consumption, when in fact the Product is not safe, dangerous, and useless.

9 85. The Products are not safe because they contain TiO<sub>2</sub>, a harmful toxin with known  
10 adverse health effects.

11 86. Defendant has exclusive or superior knowledge of the Product’s composition and the  
12 associated health concerns, which was not known to Plaintiff or Class Members.

13 87. Plaintiff and Class Members have suffered harm as a result of these violations of the  
14 CLRA because they have incurred charges and/or paid monies for the Product that they otherwise  
15 would not have incurred or paid, and were unknowingly exposed to a significant and substantial  
16 health risk.

17 88. On April 13, 2022, prior to the filing of this Complaint, Plaintiff’s counsel sent  
18 Defendant a CLRA notice letter, which complies in all respects with California Civil Code § 1782(a).  
19 The letter was sent via certified mail, return receipt requested, advising Defendant that it was in  
20 violation of the CLRA and demanding that it cease and desist from such violations and make full  
21 restitution by refunding the monies received therefrom. The letter stated that it was sent on behalf  
22 of all other similarly situated purchasers. Defendant refused to correct its practices. Accordingly,  
23 Plaintiff, individually, and on behalf of the proposed Class, seeks, in addition to injunctive relief,  
24 monetary damages from Defendant as permitted by Civil Code § 1782(d) for Defendant’s violations  
25 of the CLRA.

26 89. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy at  
27 law, if, for instance damages resulting from his purchase of the Products is determined to be an  
28 amount less than the premium price of the Products. Without compensation for the full premium

1 price of the Products, Plaintiff would be left without the parity in purchasing power to which he is  
2 entitled.

3 90. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
4 provide full and accurate disclosures regarding the Products so that Plaintiff and Class members can  
5 reasonably rely on Defendant's representations as well of those of Defendant's competitors who may  
6 then have an incentive to follow Defendant's deceptive practices, further misleading consumers.

7 91. Restitution and/or injunctive relief may also be more certain, prompt, and efficient  
8 than other legal remedies requested herein. The return of the full premium price, and an injunction  
9 requiring either (1) adequate disclosure of TiO<sub>2</sub> in the Products and its effects; or (2) the removal of  
10 such chemicals from the Products', will ensure that Plaintiff is in the same place he would have been  
11 in had Defendant's wrongful conduct not occurred, i.e., the position to make an informed decision  
12 about the purchase of the Products absent omissions with the full purchase price at his disposal.

13 **COUNT III**

14 **Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code  
§ 1790, *et seq.* and California Commercial Code § 2314**

15 92. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

16 93. Plaintiff brings this claim individually and on behalf of the Class against Defendant.

17 94. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790. *et seq.*, and  
18 California Commercial Code § 2314, every sale of consumer goods in the State of California is  
19 accompanied by both a manufacturer's and retailer seller's implied warranty that the goods are  
20 merchantable, as defined in that Act. In addition, every sale of consumer goods in California is  
21 accompanied by both a manufacturer's and retail seller's implied warranty of fitness when the  
22 manufacturer or retailer has reason to know that the goods as represented have a particular purpose  
23 and that the buyer is relying on the manufacturer's or retailer's skill or judgment to furnish suitable  
24 goods consistent with that represented purpose.

25 95. The Products at issue here are "consumer goods" within the meaning of Cal. Civ.  
26 Code § 1791(a).



1           96. Plaintiff and the Class Members who purchased the Products are “retail buyers”  
2 within the meaning of Cal. Civ. Code § 1791.

3           97. Defendant is in the business of manufacturing, assembling, and/or producing the  
4 Product and/or selling the Product to retail buyers, and therefore are a “manufacturer” and “seller”  
5 within the meaning of Cal. Civ. Code § 1791.

6           98. Defendant impliedly warranted to retailer buyers that the Products were merchantable  
7 in that they would: (a) pass without objection in the trade or industry under the contract description,  
8 and (b) were fit for the ordinary purposes for which the Products are used. For a consumer good to  
9 be “merchantable” under the Act, it must satisfy both of these elements. Defendant breached these  
10 implied warranties because the Products were unsafe for human consumption. Therefore, the  
11 Products would not pass without objection in the trade or industry and were not fit for the ordinary  
12 purpose for which they are used.

13           99. Plaintiff and Class Members purchased the Products in reliance upon Defendant’s  
14 skill and judgment in properly packaging and labeling the Products.

15           100. The Products were not altered by Plaintiff or the Class Members.

16           101. The Products were defective at the time of sale when they were in the exclusive  
17 control of Defendant. The issue as described in this complaint was latent in the product and not  
18 reasonably discoverable at the time of sale.

19           102. Defendant knew that the Products would be purchased and consumed without  
20 additional testing by Plaintiff and Class Members.

21           103. As a direct and proximate cause of Defendant’s breach of the implied warranty,  
22 Plaintiff and Class Members have been injured and harmed because they would not have purchased  
23 the Products if they knew the truth about the Products, namely, that they were unfit for use and posed  
24 a significant safety risk.

25           104. Plaintiff and the Class seek compensatory damages, attorneys’ fees, costs, and any  
26 other just and proper relief available under law.

27 ///

28 ///

**COUNT IV**  
**(Violation of California’s False Advertising Law,  
Cal. Bus. & Prof. Code § 17500, *et seq.*)**

105. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

106. Plaintiff brings this claim individually and on behalf of Class against Defendant.

107. Defendant’s acts and practices, as described herein, have deceived and/or are likely to continue to deceive Class Members and the public. As described above, and throughout this Complaint, Defendant misrepresented the Products as safe for human consumption, in fact, the Products were not safe.

108. By its actions, Defendant disseminated uniform advertising regarding the Products to and across California. The advertising was, by its very nature, unfair, deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code § 17500, *et seq.* Such advertisements were intended to and likely did deceive the consuming public for the reasons detailed herein.

109. The above-described false, misleading, and deceptive advertising Defendant disseminated continues to have a likelihood to deceive in that Defendant failed to disclose that the Products contain substances that pose a significant risk to the health and well-being of Plaintiff and the Class Members.

110. Defendant continues to misrepresent to consumers that the Products are safe for consumption. However, as described, that is not the case.

111. In making and disseminating these statements, Defendant knew, or should have known, its advertisements were untrue and misleading in violation of California law. Plaintiff and other Class Members based their purchasing decisions on Defendant’s omitted material facts. The revenue attributable to the Products sold in those false and misleading advertisements likely amounts to tens of millions of dollars. Plaintiff and Class Members were injured in fact and lost money and property as a result.

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

1 113. As a result of Defendant's wrongful conduct, Plaintiff and Class Members lost money  
2 in an amount to be proven at trial. Plaintiff and Class Members are therefore entitled to restitution  
3 as appropriate for this cause of action.

4 114. Plaintiff and Class Members seek all monetary and non-monetary relief allowed by  
5 law, including restitution of all profits stemming from Defendant's unfair, unlawful, and fraudulent  
6 business practices; declaratory relief; reasonable attorneys' fees and costs under California Code of  
7 Civil Procedure § 1021.5; injunctive relief; and other appropriate equitable relief.

8 115. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy at  
9 law, if, for instance damages resulting from his purchase of the Products is determined to be an  
10 amount less than the premium price of the Products. Without compensation for the full premium  
11 price of the Products, Plaintiff would be left without the parity in purchasing power to which he is  
12 entitled.

13 116. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
14 provide full and accurate disclosures regarding the Products so that Plaintiff and Class members can  
15 reasonably rely on Defendant's representations as well of those of Defendant's competitors who may  
16 then have an incentive to follow Defendant's deceptive practices, further misleading consumers.

17 117. Restitution and/or injunctive relief may also be more certain, prompt, and efficient  
18 than other legal remedies requested herein. The return of the full premium price, and an injunction  
19 requiring either (1) adequate disclosure of the TiO2 in the Products and its effects; or (2) the removal  
20 of such chemicals from the Products, will ensure that Plaintiff is in the same place he would have  
21 been in had Defendant's wrongful conduct not occurred, i.e., the position to make an informed  
22 decision about the purchase of the Products absent omissions and misrepresentations with the full  
23 purchase price at his disposal.

24 **COUNT V**  
**Fraud**

25 118. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

26 119. Plaintiff brings this claim individually and on behalf of the Class.  
27  
28

1           120. At the time Plaintiff and Class Members purchased the Products, Defendant did not  
2 disclose, but instead concealed and misrepresented, the Products as safe for human consumption.

3           121. Defendant also knew that its omissions and misrepresentations regarding the Products  
4 were material, and that a reasonable consumer would rely upon Defendant’s omissions in making  
5 purchasing decisions.

6           122. Plaintiff and Class Members did not know—nor could they have known through  
7 reasonable diligence—about the true nature of the Products.

8           123. Plaintiff and Class Members would have been reasonable in relying on Defendant’s  
9 omissions in making their purchasing decisions.

10          124. Plaintiff and Class Members had a right to rely upon Defendant’s omissions as  
11 Defendant maintained monopolistic control over knowledge of the true nature and quality of the  
12 Products.

13          125. Plaintiff and Class Members sustained damages as a result of their reliance on  
14 Defendant’s omissions, thus causing Plaintiff and Class Members to sustain actual losses and  
15 damages in a sum to be determined at trial, including punitive damages.

16                               **COUNT VI**  
17                               **Fraudulent Inducement**

18           126. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

19           127. Plaintiff brings this claim individually and on behalf of the Class.

20           128. Defendant did not disclose, but instead concealed material information about the  
21 Products as discussed herein.

22           129. Defendant knew, or should have known, that the Products were falsely and  
23 misleadingly portrayed and that knowledge of the safety-related issues discussed throughout was  
24 withheld from the consumer public.

25           130. Defendant also knew that its omissions regarding the Products were material, and that  
26 a reasonable consumer would rely on Defendant’s omissions in making purchasing decision.

27           131. Plaintiff and Class Members did not know—nor could they have known through  
28 reasonable diligence—about the true nature and quality of the Products.



1 Defendant's omissions as to the Products and had no way of knowing that Defendant's omissions  
2 were misleading.

3 144. Although Defendant had a duty to ensure the safety, completeness, and accuracy of  
4 the information regarding the Product, it did not fulfill these duties.

5 145. Defendant omitted or concealed material facts partly to pad and protect its profits, as  
6 it saw that profits and sales of the Products were essential for its continued growth and to maintain  
7 and grow its reputation as a premier designer and vendor of the Products. Such benefits came at the  
8 expense of Plaintiff and Class Members.

9 146. Plaintiff and Class Members were unaware of these material omissions, and they  
10 would not have acted as they did had they known the truth. Plaintiff's and class members' actions  
11 were justified given Defendant's omissions. Defendant was in the exclusive / superior control of  
12 material facts, and such facts were not widely known to the public.

13 147. Due to Defendant's misrepresentations, Plaintiff and Class Members sustained injury  
14 due to the purchase of the Products that did not live up to its advertised representations. Plaintiff and  
15 Class Members are entitled to recover full refunds for the Products they purchased due to  
16 Defendant's omissions.

17 148. Defendant's acts were done maliciously, oppressively, deliberately, and with intent  
18 to defraud, and in reckless disregard of Plaintiff, and Class Members' rights and well-being, and in  
19 part to enrich itself at the expense of consumers. Defendant's acts were done to gain commercial  
20 advantage over competitors, and to drive consumers away from consideration of competing products.  
21 Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter  
22 such conduct in the future.

23 **COUNT VIII**  
24 **Quasi-Contract / Unjust Enrichment**

25 149. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

26 150. Plaintiff brings this claim individually and on behalf of the Class.

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

1 152. Plaintiff and Class Members conferred benefits on Defendant by purchasing the  
2 Product.

3 153. Defendant was unjustly enriched in retaining the revenues derived from Plaintiff and  
4 Class Members' purchases of the Products. Retention of those moneys under these circumstances is  
5 unjust and inequitable because Defendant failed to disclose that the Product was unfit for its intended  
6 purpose as it was unsafe for use. These omissions caused injuries to Plaintiff and Class Members  
7 because they would not have purchased the Products if the true facts were known.

8 154. Because Defendant's retention of the non-gratuitous benefits conferred on them by  
9 Plaintiff and Class Members is unjust and inequitable, Defendant has been unjustly enriched in an  
10 amount to be determined at trial.

11 155. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy at  
12 law, if, for instance damages resulting from his purchase of the Products is determined to be an  
13 amount less than the premium price of the Products. Without compensation for the full premium  
14 price of the Products, Plaintiff would be left without the parity in purchasing power to which he is  
15 entitled.

16 156. Restitution may also be more certain, prompt, and efficient than other legal remedies  
17 requested herein. The return of the full premium price will ensure that Plaintiff is in the same place  
18 he would have been in had Defendant's wrongful conduct not occurred, i.e., the position to make an  
19 informed decision about the purchase of the Products absent omissions and misrepresentations with  
20 the full purchase price at his disposal.

21 **REQUEST FOR RELIEF**

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

- 24 (a) For an order certifying the Class under Fed. R. Civ. P. 23 and naming Plaintiff  
25 as representative of the Class and Plaintiff's attorneys as Class Counsel;
- 26 (b) For an order declaring that Defendant's conduct violates the statutes  
27 referenced herein;
- 28 (c) For an order finding in favor of Plaintiff, the Class on all counts asserted  
herein;

- 1
- 2 (d) For compensatory, statutory, and punitive damages in amounts to be
- 3 determined by the Court and/or jury;
- 4 (e) For prejudgment interest on all amounts awarded;
- 5 (f) For an order of restitution and all other forms of equitable monetary relief;
- 6 (g) For injunctive relief as pleaded or as the Court may deem proper;
- 7 (h) For an order awarding Plaintiff and the Class their reasonable attorneys' fees
- 8 and expenses and costs of suit.

9 **JURY TRIAL DEMANDED**

10 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and

11 all issues in this action so triable of right.

12 Dated: July 14, 2022

**BURSOR & FISHER, P.A.**

13 By: /s/ L. Timothy Fisher

14 L. Timothy Fisher

15 L. Timothy Fisher (State Bar No. 191626)

16 Sean L. Litteral (State Bar No. 331985)

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25 *Attorneys for Plaintiff*

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**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, L. Timothy Fisher, 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 a partner at Bursor & Fisher, P.A., counsel of record for Jenile Thames. Plaintiff Thames resides in San Leandro, 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 Northern District of California, as Plaintiff purchased the Product from a retail store 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 14th day of July, 2022.

/s/ L. Timothy Fisher

L. Timothy Fisher