

1 Naomi Spector (SBN 222573)
2 Email: nspector@kamberlaw.com
3 **KAMBERLAW, LLP**
4 3451 Via Montebello, Ste.192-212
5 Carlsbad, CA 92009
6 Phone: 310.400.1053
7 Fax: 212.202.6364

8
9 Counsel for Plaintiff Allison Barton, and the
10 Putative Class

11
12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 **CASE NO. '24CV1332 GPC SBC**

16 **CLASS ACTION COMPLAINT FOR:**

17 **ALLISON BARTON, individually,**
18 **and on behalf of others similarly**
19 **situated,**

20 **Plaintiff,**

21 **vs.**

22 **THE PROCTER & GAMBLE**
23 **COMPANY,**

24 **Defendant.**

- 25 **1. UNFAIR AND UNLAWFUL**
26 **BUSINESS ACTS AND PRACTICES**
27 **(CAL. BUS & PROF. CODE §17200 ET**
28 **SEQ.);**
2. DECEPTIVE ADVERTISING
PRACTICES (CAL. BUS & PROF.
CODE §§ 17500, ET SEQ.); AND
3. CONSUMER LEGAL REMEDIES
ACT (CAL. CIV. CODE § 1750, ET
SEQ.).

“DEMAND FOR JURY TRIAL”

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Plaintiff Allison Barton on behalf of herself and others similarly situated in California, by and through her undersigned counsel, hereby files this Class Action Complaint and states as follows based on investigation and information and belief:

1 **I. INTRODUCTION**

2 1. In violation of California consumer protection law, Defendant The Procter
3 & Gamble Company (“Defendant”) fails to disclose, and materially omits, that its
4 Tampax Pearl tampons (the “Products”)¹ contain an unsafe amount of lead.

5 2. California’s Proposition 65 sets the Maximum Allowable Dose Level
6 (“MADL”) for reproductive toxicity at 0.5 micrograms of lead per day.²

7 3. Based on independent scientific testing and analysis, ordinary and expected
8 use of the Products exposes consumers to far more than 0.5 micrograms of lead per day.

9 4. The World Health Organization states: “There is no level of exposure to
10 lead that is known to be without harmful effects.”³

11 5. The lead in the Products is particularly problematic for consumers based on
12 the intended manner of use of the Products.

13 6. The Products are intended to be inserted vaginally.

14 7. Thus, unlike food containing lead that is consumed orally, the Products do
15 not metabolize, and the lead contained in the Products is not filtered by the liver.

16 8. The lead contained in the Products can directly enter the bloodstream.

17 9. The lead in the Products presents an unreasonable safety hazard, both due
18

19 ¹ This action includes in the definition of “Products” all sizes and configurations of
20 Tampax Pearl tampons sold during the Class Period (defined below), including but not
21 limited to: Tampax Pearl Light, Regular, Super, Super Plus, and Ultra tampons.

22 ² This action is not brought pursuant to Proposition 65 but, as set forth herein, is brought
23 pursuant to California’s consumer protection laws based on consumer deception due to
24 the mislabeling of the Products. Proposition 65, however, provides a predicate basis for
25 violation of the consumer protection law. Proposition 65 also establishes the specific
26 levels of exposure set forth by the California legislature at which “businesses [are
27 required] to provide warnings to Californians about significant exposures to chemicals
28 that cause cancer, birth defects or other reproductive harm.”
<https://oehha.ca.gov/proposition-65/about-proposition-65#:~:text=What%20is%20Proposition%2065?,into%20sources%20of%20drinking%20water>.

³ <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>

1 to the manner of use of the Products and the amount of lead contained in the Products.

2 10. Defendant knows or should know that the Products contain lead.

3 11. Defendant has an independent duty to disclose the lead in the Products
4 based on the health risk associated with use of the Products and/or because the Products
5 are unfit for consumer use.

6 12. Defendant does not disclose, and materially omits, that the Products contain
7 lead.

8 13. Although Defendant does not disclose that the Products contain lead,
9 Defendant makes other advertising statements on the Product labels, which are designed
10 to increase sales of the Products.

11 14. The Product labels state, for example, that the Products provide “ALL
12 DAY* COMFORT & PROTECTION”, are the “#1 U.S. GYNECOLOGIST
13 RECOMMENDED TAMPON BRAND” and that they are “FREE OF PERFUME”;
14 “FREE OF ELEMENTAL CHLORINE BLEACHING”; “TAMPON FREE OF DYES”;
15 and “CLINICALLY TESTED GENTLE TO SKIN”.

16 15. These label representations are likely to lead reasonable consumers to
17 believe that the Products are safe to use and free from harmful elements and ingredients.

18 16. These label representations are misleading based on the lead contained in
19 the Products.

20 17. Reasonable consumers who purchase Defendant’s Products bearing the
21 label representations—and without any disclosure that the Products contain lead—are
22 misled and deceived.

23 18. Plaintiff and Class members have suffered economic injury based on their
24 purchase of the Products, which they would not have bought had they known that the
25 Products contain an unsafe amount of lead.

26 **II. JURISDICTION AND VENUE**

27 19. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
28 1332(d) because this is a class action in which: (1) there are over 100 members in the

1 proposed class; (2) members of the proposed class have a different citizenship from
2 Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the
3 aggregate.

4 20. This Court has personal jurisdiction over Defendant because Defendant’s
5 contacts with the forum are continuous and substantial, and Defendant intentionally
6 availed itself of the markets within California through the sale and distribution of the
7 Products in California and through the privilege of conducting business in California.

8 21. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
9 Defendant engages in continuous and systematic business activities within the State of
10 California. Moreover, a substantial part of the events and conduct giving rise to the
11 claims alleged herein occurred in this district. *See also* Declaration of Allison Barton
12 Regarding Venue Pursuant to Cal. Civ. Code § 1780(d), attached as Exh. A.

13 **III. FACTUAL ALLEGATIONS**

14 **A. Lead Is Harmful and Dangerous**

15 22. Lead affects almost every organ and system in the body and accumulates in
16 the body over time, leading to severe health risks and toxicity, including inhibiting
17 neurological function, anemia, kidney damage, seizures, and in extreme cases, coma and
18 death.⁴

19 23. The lead contained in the Products is particularly detrimental to consumer
20 health because the Products are not consumed orally, but instead are intended to be
21 inserted vaginally where the lead can be directly absorbed into the blood stream.

22 24. In other words, there is no “first-pass metabolism and detoxification via the
23 liver” but instead the lead in the Products “directly enter[s] systemic circulation.”⁵

24
25 _____
26 ⁴ Wani AL, et al., Lead toxicity: a review, INTERDISCIP TOXICOL. (June 2015),
available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4961898>.

27 ⁵ Environmental International 190 (2024) 108849, Tampons as a source of exposure to
28 metal(loid)s, Jenni A. Shearson, et al. (citing Kim and De Jesus, 2022) (hereinafter,
“Environmental International”).

1 25. A study addressing Medication Routes of Administration states that the
2 “first pass effect” for oral administration refers to the “drug metabolism whereby the
3 drug concentration is significantly diminished before it reaches the systemic circulation,
4 often due to the metabolism in the liver.”⁶

5 26. By contrast, vaginal administration bypasses the system of veins that
6 transport blood from the digestive tract to the liver.⁷

7 27. Vaginal administration directly accesses the networks of blood vessels that
8 surround vital organs, including the pelvic organs.⁸

9 28. Vaginal walls are permeable and allow for efficient absorption, including
10 in absorption tests of certain medications.⁹

11 29. Toxins can pass through the vaginal epithelium and enter systemic
12 circulation.¹⁰

13 30. Accordingly, the lead in the Products is not diminished or filtered by
14 metabolic function, but can be absorbed directly into the bloodstream.

15 31. According to the World Health Organization, “[e]xposure to lead can affect
16 multiple body systems and is particularly harmful to young children and women of child-
17 bearing age.”¹¹

18
19
20 ⁶ Kim J, De Jesus O, Medication Routes of Administration, EUROPE PMC (March
21 2021), available at <https://europepmc.org/article/NBK/nbk568677>.

22 ⁷ *Id.*

23 ⁸ *Id.*

24 ⁹ P. van der Bijl, et al., Comparative permeability of human vaginal and buccal mucosa
25 to water, *Eur J Oral Sci.* (Dec. 1997), available at
26 <https://pubmed.ncbi.nlm.nih.gov/9469607/>; *see also* Environmental International (citing
27 (Patel et al., 1983; Vorontsova et al., 2022).

28 ¹⁰ Environmental International (discussing the toxic shock syndrome outbreak of the
1980s) (citations omitted).

¹¹ <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>

B. The Products Contain Lead in Excess of the Maximum Allowable Dose

32. California’s Proposition 65 establishes a Maximum Allowable Dose Level (“MADL”) of .5 mcg of lead per day for reproductive toxicity.¹²

33. According to independent laboratory testing and analysis, the Products contain .181 mcg of lead per gram of Product.¹³

34. The Products are sold in various sizes, which have different gram weights.

35. Per day, based on an average number of tampons used, consumers are exposed to lead in excess of the MADL, irrespective of the size of the Product used.

1. Consumers Use Multiple Tampons Per Day

36. The Product labels specify that a single tampon should be used “FOR 8 HOURS MAXIMUM” and for “UP TO 8 hr”.

37. The Product labels also provide information about Toxic Shock Syndrome (“TSS”).

38. The Product labels state: “THE RISK OF TOXIC SHOCK SYNDROME (TSS) INCREASES WITH HIGHER ABSORBENCY. IN ORDER TO REDUCE YOUR RISK OF TSS, YOU SHOULD USE THE LOWEST ABSORBENCY THAT MEETS YOUR NEEDS.”

39. Based on the instruction to use a single tampon for a maximum of 8 hours, consumers will use a minimum of three tampons in a 24-hour period.

40. Most consumers of Defendant’s Products, however, use an average of more than three tampons in a 24-hour period.

41. According to Defendant’s tampax.com website, use of “3-6 products per day (pads or tampons) is normal.”¹⁴

¹² <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.

¹³ Based on independent laboratory testing of super Tampax Pearl tampons. The Products at issue are all manufactured by Defendant and contain the same ingredients.

¹⁴ <https://tampax.com/en-us/tampon-truths/best-tampons-sizes-for-heavy-light-flow/>

1 42. According to Defendant’s tampax.com website, “[i]deally, a tampon should
2 last about 4-6 hours.”¹⁵

3 ***Tampax Pearl Light.***

4 43. The fabric portion of a single Tampax Pearl light tampon weighs an average
5 of 1.34 grams.

6 44. Each Tampax Pearl light tampon contains approximately .243 mcg of lead.

7 45. If consumers use three Tampax Pearl light tampons in a 24-hour period they
8 are exposed to approximately .729 mcg of lead, which exceeds the MADL.

9 46. If consumers use six Tampax Pearl light tampons in a 24-hour period they
10 are exposed to approximately 1.46 mcg of lead, which is almost three times the MADL.

11 ***Tampax Pearl Regular.***

12 47. The fabric portion of a single Tampax Pearl regular tampon weighs an
13 average of 1.89 grams.

14 48. Each Tampax Pearl regular tampon contains approximately .342 mcg of
15 lead.

16 49. If consumers use three Tampax Pearl regular tampons in a 24-hour period
17 they are exposed to approximately 1.026 mcg of lead, or double the MADL.

18 50. If consumers use six Tampax Pearl regular tampons in a 24-hour period
19 they are exposed to approximately 2.052 mcg of lead, which is more than four times the
20 MADL.

21 ***Tampax Pearl Super.***

22 51. The fabric portion of a single Tampax Pearl super tampon weighs an
23 average of 2.65 grams.

24 52. Each Tampax Pearl super tampon contains approximately .480 mcg of lead.

25 53. If consumers use three Tampax Pearl super tampons in a 24-hour period
26 they are exposed to approximately 1.44 mcg of lead, which is almost three times the
27

28 ¹⁵ *Id.*

1 MADL.

2 54. If consumers use six Tampax Pearl super tampons in a 24-hour period they
3 are exposed to approximately 2.88 mcg of lead, which is almost six times the MADL.

4 ***Tampax Pearl Super Plus.***

5 55. The fabric portion of a single Tampax Pearl super plus tampon weighs an
6 average of 3.53 grams.

7 56. Each Tampax Pearl super plus tampon contains approximately .639 mcg of
8 lead, which exceeds the MADL.

9 57. If consumers use three Tampax Pearl super plus tampons in a 24-hour
10 period they are exposed to approximately 1.92 mcg of lead, which is almost four times
11 the MADL.

12 58. If consumers use six Tampax Pearl super plus tampons in a 24-hour period,
13 they are exposed to approximately 3.84 mcg of lead, which is almost eight times the
14 MADL.

15 ***Tampax Pearl Ultra.***

16 59. The fabric portion of a single Tampax Pearl ultra tampon weighs an average
17 of 4.35 grams.

18 60. Each Tampax Pearl ultra tampon contains approximately .787 mcg of lead,
19 which exceeds the MADL.

20 61. If consumers use three Tampax Pearl ultra tampons in a 24-hour period they
21 are exposed to approximately 2.36 mcg of lead, which is almost five times the MADL.

22 62. If consumers use six Tampax Pearl ultra tampons in a 24-hour period they
23 are exposed to approximately 4.72 mcg of lead, which is almost ten times the MADL.

24 **C. Defendant Fails to Disclose and Materially Omits that the Products**
25 **Contain Lead**

26 63. Defendant fails to disclose the lead in the Products in violation of California
27 consumer protection law.

1 64. Defendant's conduct is unlawful, misleading and constitutes a material
2 omission, including because the Products pose a hidden health risk.

3 65. Defendant had an independent duty to disclose the lead in the Products
4 based on the unreasonable safety hazard associated with using the Products and/or
5 because the Products are unfit for use.

6 66. As set forth herein, lead is dangerous to human health, and particularly
7 dangerous based on the manner of use of the Products.

8 67. Based on the lead contained in the Products, Defendant is required to
9 provide a "clear and reasonable" warning to consumers, including by "labeling a
10 consumer product" pursuant to Proposition 65.

11 68. Despite this express requirement, there is no warning on the products.

12 69. Although Plaintiff does not bring claims pursuant to Proposition 65,
13 Defendant's violation of Proposition 65 provides a predicate basis for violation of
14 California's Unfair Competition Law, as set forth below.

15 **D. Reasonable Consumers Are Likely to Be Misled and Deceived by**
16 **Defendant's Omission that the Products Contain Lead**

17 70. Tampax tampons are trusted brands and household names.

18 71. Reasonable consumers of Defendant's Products, like Plaintiff, have no
19 reason to suspect or know that the Products contain lead.

20 72. Defendant knew, or should have known, that the Products contain lead and
21 willfully or intentionally failed to disclose this fact to consumers.

22 73. Defendant owed consumers a duty of care to adequately test its Products
23 for the presence of heavy metals and, if any such metals were found, to remediate or
24 disclose their presence.

25 74. Defendant, however, failed to disclose and materially omitted that the
26 Products contain lead.

27 75. The disclosure of lead in the Products would negatively impact Defendant's
28 sales of the Products and its bottom line.

1 76. If consumers knew that the Products contain lead, particularly in the
2 amounts set forth herein, they would not purchase the Products.

3 77. There are other menstrual options besides Defendant's tampons available
4 on the market.

5 78. Consumers, however, are deprived of making the informed choice between
6 the Products and other menstrual products because Defendant fails to disclose the
7 presence of lead in the Products.

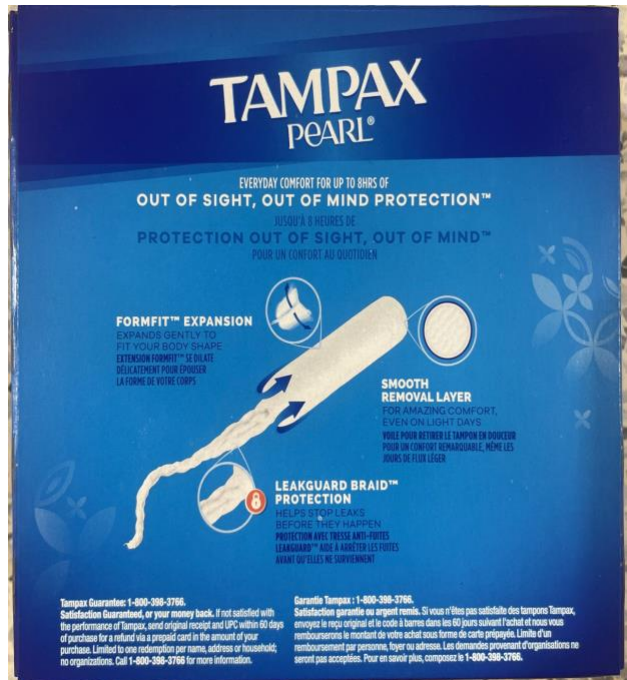
8 79. Plaintiff and reasonable consumers suffered economic injury based on the
9 purchase price of the Products.

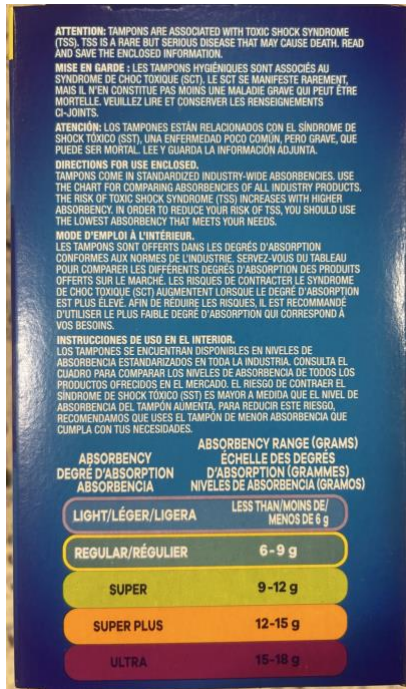
10 80. If Plaintiff had known the truth about Defendant's Products, she would not
11 have purchased the Products.

12 81. Plaintiff and Class members were harmed based on money spent to
13 purchase the Products, which they otherwise would not have spent if they had known
14 that the Products contain lead.

15 **E. Reasonable Consumers Are Likley to Be Misled by Defendant's Label**
16 **Representations**

17 82. The following are examples of the box label images of the Products:





83. As depicted above, the Products contain the following Representations:

84. The prominent, uniform “Front Label Representation” that the Products provide “ALL DAY* COMFORT & PROTECTION”.¹⁶

85. The prominent, uniform “Back Label Representation” that the Products provide “OUT OF SIGHT, OUT OF MIND PROTECTION™”.

86. The prominent, uniform “Side Label Representations” that the Products are the “#1 U.S. GYNECOLOGIST RECOMMENDED TAMPON BRAND” and that they are “FREE OF PERFUME”; “FREE OF ELEMENTAL CHLORINE BLEACHING”; “TAMPON FREE OF DYES”; and “CLINICALLY TESTED GENTLE TO SKIN”.

87. The Representations lead reasonable consumers to believe that the Products are safe to use, including because they are free for potentially harmful elements and ingredients.

88. The Representations are misleading based on the lead contained in the Products.

89. The Representations are advertising statements.

¹⁶ The asterisk references the statement “UP TO 8 hr” on the front label.

1 90. The Representations are not governed by any government or FDA
2 regulation or requirement.

3 91. Defendant voluntarily makes the Representations on the labels of the
4 Products to appeal to consumers and to increase sales of the Products.

5 **IV. PARTIES**

6 92. Plaintiff Allison Barton is a citizen of California who purchased the
7 Products in this judicial district during the class period. Plaintiff's claim is typical of all
8 Class members in this regard.

9 93. The advertising and labeling on the package of the Products purchased by
10 Plaintiff, including the Representations, is typical of the advertising, labeling and
11 representation of the Products purchased by members of the Class.

12 94. The price paid by Plaintiff for the Products is typical of the price paid by
13 members of the Class.

14 95. Defendant The Procter & Gamble Company is an Ohio corporation with its
15 principal place of business in Cincinnati, Ohio, and is a citizen of Ohio.

16 96. Defendant and its agents manufacture, market, distribute, label, promote,
17 advertise and sell the Products.

18 97. At all times material hereto, Defendant was conducting business in the
19 United States, including in California, through its services as a manufacturer and supplier
20 to various stores in California and by, among other things, maintaining agents for the
21 customary transaction of business in California.

22 98. Defendant and its agents promoted, marketed and sold the Products at issue
23 in this jurisdiction and in this judicial district.

24 99. The deceptive acts and omissions giving rise to Plaintiff's claims occurred
25 in this jurisdiction and in this judicial district.

26 100. The unfair, unlawful, deceptive, and misleading advertising and labeling of
27 the Products was prepared and/or approved by Defendant and its agents, and was
28

1 disseminated by Defendant and its agents through labeling and advertising containing
2 the misrepresentations and omission alleged herein.

3 **A. Plaintiff Was Misled and Injured by Defendant's Misconduct**

4 101. Plaintiff purchased the Products on numerous occasions during the Class
5 Period, including in the following sizes: light, regular and super.

6 102. To the best of her recollection, Plaintiff purchased the Products from CVS,
7 Target, Rite Aid and Walgreens stores located in this judicial district.

8 103. The price paid by Plaintiff for the Products varied based on the number of
9 tampons included in the box, however, to the best of her recollection, the prices ranged
10 from approximately \$5.99 to \$13.99 per box.

11 104. To the best of her recollection, Plaintiff purchased the Products from a CVS
12 store located in this judicial district between April and July of 2024.

13 105. Plaintiff purchased the Products for personal use.

14 106. At the time of purchase, Plaintiff viewed the label box images, including
15 the Representations.

16 107. At the time of purchase, Plaintiff did not know, and had no reason to know,
17 that the Products contain lead.

18 108. Acting reasonably under the circumstances, Plaintiff relied on the
19 reputation of the Products and the Representations, and believed that the Products would
20 be free from harmful effect and safe to use.

21 109. Unbeknownst to Plaintiff at the time of purchase, the Products contain lead.

22 110. Defendant materially omitted the fact that the Products contain lead.

23 111. Had Plaintiff known at the time of purchase that the Products contain lead,
24 Plaintiff would not have purchased the Products.

25 112. Defendant continues to sell the misbranded Products.

26 113. Plaintiff would like to purchase the Products in the future if the Products
27 did not contain lead.

28

1 114. Plaintiff continues to suffer harm because she is not able to rely on the
2 labeling and advertising of the Products for their truth, and thus is unable to determine
3 whether she can purchase the Products in the future.

4 115. Unless Defendant is enjoined from failing to disclose the presence of lead
5 in the Products in the future, Plaintiff and consumers will not be able to reasonably
6 determine whether the lead in the Products has been address and remedied.

7 116. Accordingly, Plaintiff’s legal remedies are inadequate to prevent future
8 injuries.

9 **V. CLASS DEFINITION AND CLASS ALLEGATIONS**

10 117. Plaintiff brings this action as a class action pursuant to Federal Rules of
11 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself, on behalf of all others
12 similarly situated, and as a member of the Class defined as follows:

13 All citizens of California who, within four years prior to the filing
14 of the initial Complaint, purchased Defendant’s Products in the
15 State of California and who do not claim any personal injury from
using the Products (the “Class”).

16 118. Excluded from the Class are: (i) Defendant, its assigns, successors, and
17 legal representatives; (ii) any entities in which Defendant has a controlling interest;
18 (iii) federal, state, and/or local governments, including, but not limited to, their
19 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or
20 subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a
21 bankruptcy discharge in the last three years; and (v) any judicial officer presiding over
22 this matter and their staff, and persons within the third degree of consanguinity to such
23 judicial officer.

24 119. Plaintiff reserves the right to amend or otherwise alter the class definition
25 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in
26 response to facts learned through discovery, legal arguments advanced by Defendant, or
27 otherwise.
28

1 120. This action is properly maintainable as a class action pursuant to Federal
2 Rule of Civil Procedure 23 for the reasons set forth below.

3 121. **Numerosity**: Members of the Class are so numerous that joinder of all
4 members is impracticable. Upon information and belief, the Class consists of hundreds
5 of thousands of purchasers throughout the State of California. Accordingly, it would be
6 impracticable to join all members of the Class before the Court.

7 122. **Common Questions Predominate**: There are numerous and substantial
8 questions of law or fact common to all members of the Class that predominate over any
9 individual issues. Included within the common questions of law or fact are:

- 10 • Whether Defendant’s omission and failure to disclose that the Products
11 contain lead is likely to be material to reasonable consumers;
- 12 • Whether Defendant’s omission and failure to disclose that the Products
13 contain lead is likely to deceive reasonable consumers;
- 14 • Whether Defendant engaged in unlawful, unfair or deceptive business
15 practices by advertising, labeling and selling the Products;
- 16 • Whether Defendant violated California Bus. & Prof. Code § 17200, *et*
17 *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and/or the Consumers
18 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 19 • Whether Plaintiff and the Class have sustained damage as a result of
20 Defendant’s unlawful conduct; and
- 21 • The proper measure of damages sustained by Plaintiff and the Class.

22 123. **Typicality**: Plaintiff’s claims are typical of the claims of the members of
23 the Class she seeks to represent because Plaintiff, like the Class members, purchased
24 Defendant’s Products. Defendant’s unlawful, unfair and/or fraudulent actions concern
25 the same business practices described herein irrespective of where they occurred or were
26 experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant’s
27 conduct. Plaintiff’s and Class member’s claims arise from the same practices and course
28 of conduct and are based on the same legal theories.

1 124. **Adequacy**: Plaintiff is an adequate representative of the Class she seeks to
2 represent because her interests do not conflict with the interests of the members of the
3 Class Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests
4 of the members of the Class and has retained counsel experienced and competent in the
5 prosecution of complex class actions, including complex questions that arise in
6 consumer protection litigation.

7 125. **Superiority and Substantial Benefit**: A class action is superior to other
8 methods for the fair and efficient adjudication of this controversy, since individual
9 joinder of all members of the Class is impracticable and no other group method of
10 adjudication of all claims asserted herein is more efficient and manageable for at least
11 the following reasons:

- 12 a. The claims presented in this case predominate over any questions of
13 law or fact, if any exists at all, affecting any individual member of
14 the Class;
- 15 b. Absent a Class, the members of the Class will continue to suffer
16 damage and Defendant's unlawful conduct will continue without
17 remedy while Defendant profits from and enjoys its ill-gotten gains;
- 18 c. Given the size of individual Class members' claims, few, if any,
19 members could afford to or would seek legal redress individually for
20 the wrongs Defendant committed against them, and absent members
21 have no substantial interest in individually controlling the
22 prosecution of individual actions;
- 23 d. When the liability of Defendant has been adjudicated, claims of all
24 members of the Class can be administered efficiently and/or
25 determined uniformly by the Court; and
- 26 e. This action presents no difficulty that would impede its
27 management by the Court as a class action, which is the best
28

1 available means by which Plaintiff and members of the Class can
2 seek redress for the harm caused to them by Defendant.

3 126. Because Plaintiff seeks relief for all members of the Class, the prosecution
4 of separate actions by individual members would create a risk of inconsistent or varying
5 adjudications with respect to individual members of the Class, which would establish
6 incompatible standards of conduct for Defendant.

7 127. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P.
8 23(b)(3) are met as questions of law or fact common to Class members predominate over
9 any questions affecting only individual members, and a class action is superior to other
10 available methods for fairly and efficiently adjudicating the controversy.

11 128. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are
12 likely to be encountered in the management of this action that would preclude its
13 maintenance as a class action.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **Unfair and Unlawful Business Acts and Practices** 17 **(Business and Professions Code § 17200, *et seq.*)** **(for Plaintiff and the Class)**

18 129. Plaintiff re-alleges and incorporates by reference the allegations contained
19 in the preceding paragraphs of this complaint, as though fully set forth herein.

20 130. Defendant's conduct constitutes an unfair business act and practice
21 pursuant to California Business & Professions Code §§ 17200, *et seq.* (the "UCL"). The
22 UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful,
23 unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
24 advertising"

25 131. Plaintiff brings this claim seeking restitution of the amounts Defendant
26 acquired through the unfair, unlawful, and fraudulent business practices, as described
27 herein; and injunctive relief to stop Defendant's misconduct, as described herein.

28 132. Defendant's knowing conduct, as alleged herein, constitutes an "unfair"

1 and/or “fraudulent” business practice, as set forth in California Business & Professions
2 Code §§ 17200-17208.

3 133. Defendant’s conduct was and continues to be unfair and fraudulent because,
4 directly or through its agents and employees, Defendant omitted and failed to disclose
5 that the Products contain lead.

6 134. Defendant was and is aware that its omission is material to consumers.

7 135. Defendant was and is aware that its omission is misleading based on the
8 Representations made on the Product labels, as described and depicted herein.

9 136. Defendant had an improper motive—to derive financial gain at the expense
10 of accuracy or truthfulness—in its practices related to the labeling and advertising of the
11 Products.

12 137. There were reasonable alternatives available to Defendant to further
13 Defendant’s legitimate business interests, other than the conduct described herein.

14 138. Defendant’s misrepresentation and omission of material facts, as set forth
15 herein, also constitute an “unlawful” practice because they violate California Civil Code
16 §§ 1572, 1573, 1709, 1710, 1711, and 1770 and the laws and regulations cited herein, as
17 well as the common law.

18 139. Defendant’s conduct in making the omission described herein constitutes a
19 knowing failure to adopt policies in accordance with and/or adherence to applicable
20 laws, as set forth herein, all of which are binding upon and burdensome to its
21 competitors.

22 140. This conduct engenders an unfair competitive advantage for Defendant,
23 thereby constituting an unfair business practice under California Business & Professions
24 Code §§ 17200-17208.

25 141. In addition, Defendant’s omission that the Products contain lead constitutes
26 an “unlawful” practice because, as described herein, the Product labels fail to comply
27 with California’s Proposition 65.
28

1 142. Accordingly, Proposition 65 provides a predicate violation for a violation
2 of the UCL.

3 143. Plaintiff and members of the Class could not have reasonably avoided
4 injury. Defendant's uniform Representations and material omission regarding the
5 Products were likely to deceive, and Defendant knew or should have known that its
6 Representations and omission were misleading.

7 144. Plaintiff purchased the Products with the reasonable belief that the
8 Products were safe and did not contain harmful elements or ingredients, and without
9 knowledge of Defendant's material omission that the Products contain lead.

10 145. Plaintiff and members of the Class have been directly and proximately
11 injured by Defendant's conduct in ways including, but not limited to, the monies paid to
12 Defendant for the Products, interest lost, and consumers' unwitting support of a business
13 enterprise that promotes deception and undue greed to the detriment of consumers, such
14 as Plaintiff and Class members.

15 146. As a result of the business acts and practices described above, Plaintiff and
16 members of the Class are entitled to such Orders and judgments that may be necessary
17 to disgorge Defendant's ill-gotten gains and to restore to any person in interest any
18 money paid for the Products as a result of the wrongful conduct of Defendant.

19 147. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled
20 to pre-judgment interest as a direct and proximate result of Defendant's unfair and
21 fraudulent business conduct. The amount on which interest is to be calculated is a sum
22 certain and capable of calculation, and Plaintiff and the Class are entitled to interest in
23 an amount according to proof.

24 148. As a result of the business acts and practices described above, pursuant to
25 § 17203, Plaintiff and members of the Class are entitled to an order enjoining such future
26 wrongful conduct on the part of Defendant.

27
28

1 158. As a direct and proximate result of Defendant’s unlawful conduct in
2 violation of § 17500 Plaintiff and members of the Class request an Order requiring
3 Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies
4 wrongfully acquired by Defendant by means of such acts of false advertising, as well as
5 interests and attorneys’ fees.

6 159. As a direct and proximate result of Defendant’s unlawful conduct in
7 violation of § 17500, Plaintiff and members of the Class request an Order pursuant to §
8 17535 enjoining such future wrongful conduct on the part of Defendant.

9 **THIRD CAUSE OF ACTION**
10 **Consumer Legal Remedies Act**
11 **(Cal. Civ. Code § 1750, *et seq.*)**
(for Plaintiff and the Class)

12 160. Plaintiff re-alleges and incorporates by reference the allegations contained
13 in the preceding paragraphs of this complaint, as though fully set forth herein.

14 161. Plaintiff brings this action pursuant to California’s Consumer Legal
15 Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”).

16 162. The CLRA provides that “unfair methods of competition and unfair or
17 deceptive acts or practices undertaken by any person in a transaction intended to result
18 or which results in the sale or lease of goods or services to any consumer are unlawful.”

19 163. The Products are “goods,” as defined by the CLRA in California Civil Code
20 §1761(a).

21 164. Defendant is a “person,” as defined by the CLRA in California Civil Code
22 §1761(c).

23 165. Plaintiff and members of the Class are “consumers,” as defined by the
24 CLRA in California Civil Code §1761(d).

25 166. Purchase of the Products by Plaintiff and members of the Class are
26 “transactions,” as defined by the CLRA in California Civil Code §1761(e).

27 167. Defendant violated Section 1770(a)(5) by representing that the Products
28 have “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the

1 Products are represented as being free from potentially harmful elements and ingredients
2 when they contain an unsafe amount of lead, as described herein.

3 168. Defendant also violated section 1770(a)(7) by representing that the
4 Products “are of a particular standard, quality, or grade . . . if they are of another” by
5 materially omitting and failing to disclose that the Products contain lead.

6 169. In addition, Defendant violated section 1770(a)(9) by advertising the
7 Products “with intent not to sell them as advertised” in that the Products are
8 misrepresented and misbranded as described herein.

9 170. Defendant’s uniform Representations and omission regarding the Products
10 were likely to deceive, and Defendant knew or should have known that its
11 Representations and omission were deceptive and/or misleading.

12 171. Plaintiff and members of the Class relied on Defendant’s unlawful conduct
13 and could not have reasonably avoided injury.

14 172. Plaintiff and members of the Class were unaware of the existence of facts
15 that Defendant suppressed and failed to disclose, including that the Products contain
16 lead.

17 173. Plaintiff and members of the Class would not have purchased the Products
18 had they known the truth about the lead contained in the Products.

19 174. Plaintiff and members of the Class have been directly and proximately
20 injured by Defendant’s conduct.

21 175. As a direct and proximate result of Defendant’s unlawful conduct in
22 violation of the CLRA, Plaintiff and members of the Class request an Order pursuant to
23 § 1780 enjoining such future wrongful conduct on the part of Defendant.

24 **PRAYER**

25 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
26 situated, prays for judgment against Defendant as follows:
27
28

