

1 Jon Eardley, Esq. (CA Bar No. 132577)
LAW OFFICES OF JON EARDLEY
2 16020 Puesta Del Sol
Whittier, California 90603
3 Tel: (562) 947-2006
Fax: (562) 947-2006

4 Robert H. Weiss, Esq.
5 Stephen David Murakami, Esq.
Law Offices of Robert H. Weiss, PLLC
6 50 Jericho Turnpike, Suite 201
Jericho, New York 11753
7 Tel: (516) 876-4213
Fax: (516) 876-6906

8
9 SUPERIOR COURT OF CALIFORNIA, STATE OF CALIFORNIA
10 CITY & COUNTY OF LOS ANGELES - UNLIMITED JURISDICTION

11 JACK GANJEI, an Infant Minor, by his
Natural Father and *Guardian Ad Litem*,
12 FREDERICK GANJEI,
JANE DOE, as *Guardian Ad Litem*, for the
13 Infant, BABY DOE,

14 *Plaintiffs,*

15 v.

16 THE RETAIL DEFENDANTS:
RALPHS, a Delaware Corporation;
17 GELSON'S, INC., a California
Corporation; STATER BROTHERS
18 HOLDINGS, INC., a California
Corporation; THE VONS/PAVILLIONS
19 COMPANIES, a Michigan Corporation;

20 THE MANUFACTURER
DEFENDANTS: AVENT AMERICA, INC.,
21 an Illinois Corporation; DR. BROWN'S, a
Missouri Corporation; EVENFLO
22 COMPANY, INC., an Ohio Corporation;
GERBER NOVARTIS AG, a Swiss
23 Corporation, NALGENE® NUNC™
INTERNATIONAL CORPORATION,
24 OUTDOOR PRODUCTS DIVISION, a New
York Corporation, and PLAYTEX
25 PRODUCTS INC., a Connecticut Corporation;
and DOE DEFENDANTS:
26 DOES 1 through 10,000

27 *Defendants.*
28

No.:

**COMPLAINT FOR DAMAGES,
INJUNCTIVE, AND OTHER RELIEF**

CAUSES OF ACTION

1. Intentional Misrepresentation;
2. Negligent Misrepresentation;
3. Violations of Bus. & Prof. Code §17200 et seq.;
4. Violations of Bus. & Prof. Code §17500 et seq.
5. Violations of the Consumers Legal Remedies Act (Civil Code § 1750 et seq.)

CLASS ACTION

1 California with respect to the use of plastic products consisting of baby bottles and infant training
2 cups, all containing the chemical Bisphenol-A, manufactured by one or more of the Manufacturer
3 Defendants, and sold at the Retail Stores or Supermarkets owned and operated by one or more of the
4 Retail Defendants, Jack will serve as the Class Representative for similarly situated infants and
5 children who used these plastic baby bottles and training cups made by one or more Manufacturer
6 Defendants and purchased from one or more retail stores or supermarkets owned and operated by
7 one or more Retail Defendants.

9 2. Jack Ganjei was born with an injury to his genitalia, the type of which is known to be
10 associated with exposure to harmful levels of the chemical designated as Bisphenol-A. Due to
11 Jack's status as a minor, specific details about his injury shall be filed Under Seal to protect Jack's
12 privacy and to minimize any possible embarrassment or ridicule caused by the discussion of this
13 sensitive area. During Jack's gestation period, his mother was exposed to scores of products made
14 with Bisphenol-A. Jack Ganjei, will at times hereafter be referred to as "**THE PLAINTIFF**" or
15 "**CLASS REPRESENTATIVE.**" References to "**THE PLAINTIFF**" will include Jack's father,
16 Frederick Ganjei.

18 **THE RETAIL DEFENDANTS**

19
20 3. **RALPHS**, is a Delaware Corporation, which maintains numerous retail outlets throughout
21 the State of California, and more particularly in or near Woodside, California, stocked and offered
22 for sale to the Plaintiff and other consumers of the State of California, Plastic Baby Bottles, Plastic
23 Breast (Milk) Pumps and accessories, and Training or Spill Resistant type Plastic Cups, made by the
24 Manufacturer Defendants, each containing unsafe levels of the chemical Bisphenol-A, exposing
25 infants and children using these products to an unnecessary serious risk of harm and injury, in
26 violation of California law, more specifically set forth below.

27
28 4. **GELSON'S, INC.**, is a California Corporation, which maintains numerous retail outlets

1 throughout the State of California, and more particularly in or near Woodside, California, stocked
2 and offered for sale to the Plaintiff and other consumers of the State of California, Plastic Baby
3 Bottles, Plastic Breast (Milk) Pumps and accessories, and Plastic Training or Spill Resistant Plastic
4 Cups, made by the Manufacturer Defendants, each containing unsafe levels of the chemical
5 Bisphenol-A, exposing the infants and children using these products to an unnecessary serious risk
6 of harm and injury, in violation of California law, more specifically set forth below.
7

8 5. **STATER BROTHERS HOLDINGS, INC.**, is a California Corporation, which maintains
9 numerous retail outlets throughout the State of California, and more particularly in or near
10 Woodside, California, stocked and offered for sale to the Plaintiff and other consumers of the State
11 of California, Plastic Baby Bottles, Plastic Breast (Milk) Pumps and accessories, and Plastic
12 Training or Spill Resistant Plastic Cups, made by the Manufacturer Defendants, each containing
13 unsafe levels of the chemical Bisphenol-A, exposing the infants and children using these products to
14 an unnecessary serious risk of harm and injury, in violation of California law, more specifically set
15 forth below.
16

17 6. **THE VONS/PAVILLIONS COMPANIES**, a Michigan Corporation; doing business in the
18 State of California, maintains numerous retail outlets throughout the State of California, and more
19 particularly in or near Woodside, California, stocked and offered for sale to the Plaintiff and other
20 consumers of the State of California, Plastic Baby Bottles, Plastic Breast (Milk) Pumps and
21 accessories, and Plastic Training or Spill Resistant Plastic Cups, made by the Manufacturer
22 Defendants, each containing unsafe levels of the chemical Bisphenol-A, exposing the infants and
23 children using these products, to an unnecessary serious risk of harm and injury, in violation of
24 California law, more specifically set forth below.
25

26 7. **RALPHS, GELSON'S, INC., STATER BROTHERS HOLDINGS, INC., and THE**
27 **VONS/PAVILLIONS COMPANIES**, shall collectively be referred to as the '**RETAIL**
28

1 **DEFENDANTS.”**

2
3 **THE MANUFACTURER DEFENDANTS**

4 8. **AVENT AMERICA, INC.**, with Corporate Offices located at 475 Supreme Drive,
5 Bensenville, Illinois, manufactures Plastic Baby Bottles, Toddler Cups, and Breast (Milk) Pumps
6 and Accessories (more particularly set forth in Exhibit 1, listing its products manufactured with
7 Bisphenol-A, attached hereto) containing unsafe levels of Bisphenol-A, does business in the State of
8 California through one or more Retail Defendants’ stores or supermarkets, by offering its products to
9 the Plaintiff and other consumers for use by California’s infants and children, exposing these infants
10 and children to an unnecessary serious risk of harm and injury, in violation of California law, more
11 specifically set forth below.

13 9. **DR. BROWN’S** Handicraft Company, located at 4433 Fyler Ave, Saint Louis, MO , 63116,
14 manufactures Plastic Baby Bottles, Toddler Cups, and Breast (Milk) Pumps (more particularly set
15 forth in Exhibit 2, listing its products manufactured with Bisphenol-A, attached hereto) containing
16 unsafe levels of Bisphenol-A, does business in the State of California through one or more Retail
17 Defendants’ stores or supermarkets, by offering its products to the Plaintiff and other consumers for
18 use by California’s infants and children, exposing these infants and children to an unnecessary
19 serious risk of harm and injury, in violation of California law, more specifically set forth below.

21 10. **EVENFLO COMPANY, INC.**, Spalding Holdings Corporation, located at 707 Crossroads
22 Court, Vandalia, OH 45377, manufactures Plastic Baby Bottles, Toddler Cups, and Breast (Milk)
23 Pumps (more particularly set forth in Exhibit 3, listing its products manufactured with Bisphenol-A,
24 attached hereto) containing unsafe levels of Bisphenol-A, does business in the State of California
25 through one or more Retail Defendants’ stores or supermarkets, by offering its products to the
26 Plaintiff and other consumers for use by California’s infants and children, exposing these infants and
27 children to an unnecessary serious risk of harm and injury, in violation of California law, more
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1 specifically set forth below.

2 11. **GERBER NOVARTIS AG**, Lichtstrasse 35, Basel, 4056, Switzerland, manufactures Plastic
3 Baby Bottles, Toddler Cups, and Breast (Milk) Pumps (more particularly set forth in Exhibit 4,
4 listing its products manufactured with Bisphenol-A, attached hereto) containing unsafe levels of
5 Bisphenol-A, does business in the State of California through one or more Retail Defendants' stores
6 or supermarkets, by offering its products to the Plaintiff and other consumers for use by California's
7 infants and children, exposing these infants and children to an unnecessary serious risk of harm and
8 injury, in violation of California law, more specifically set forth below.

10 12. **NALGENE® NUNC™ INTERNATIONAL CORPORATION, OUTDOOR**
11 **PRODUCTS DIVISION**, located at 75 Panorama Creek Drive, Rochester, NY 14625,
12 manufactures Plastic Baby Bottles, Toddler Cups, and Breast (Milk) Pumps (more particularly set
13 forth in Exhibit 5, listing its products manufactured with Bisphenol-A, attached hereto) containing
14 unsafe levels of Bisphenol-A, does business in the State of California through one or more Retail
15 Defendants' stores or supermarkets, by offering its products to the Plaintiff and other consumers for
16 use by California's infants and children, exposing these infants and children to an unnecessary
17 serious risk of harm and injury, in violation of California law, more specifically set forth below.

19 13. **PLAYTEX PRODUCTS INC.**, 300 Nyala Farms Road, Westport, CT 06880, manufactures
20 Plastic Baby Bottles, Toddler Cups, and Breast (Milk) Pumps (more particularly set forth in Exhibit
21 6, listing its products manufactured with Bisphenol-A, attached hereto) containing unsafe levels of
22 Bisphenol-A, does business in the State of California through one or more Retail Defendants' stores
23 or supermarkets, by offering its products to the Plaintiff and other consumers for use by California's
24 infants and children, exposing these infants and children to an unnecessary serious risk of harm and
25 injury, in violation of California law, more specifically set forth below.

1 **THE DOE DEFENDANTS**

2 14. **DEFENDANTS DOES 1 through 10,000** are unknown at this time but are nevertheless
3 named herein as Defendants. These Defendants will be known as, or referred to, as **“THE DOE**
4 **DEFENDANTS.”**
5

6 **II. JURISDICTION and VENUE**

7 15. Jurisdiction over all Defendants is appropriate pursuant to relevant sections of the California
8 Civ. Pro. Code in that Plaintiff is a resident of the State of California and one or more Defendants
9 are California corporations with a principle place of business located in California and is doing
10 business in the County of Los Angeles and throughout the State of California.
11

12 16. Venue is appropriately laid in the City and County of Los Angeles, California pursuant to
13 relevant sections of the California Civ. Pro. Code in that Plaintiff is a resident of the State of
14 California and one or more Defendants are California corporations doing business in the County of
15 Los Angeles and throughout the State of California.
16

17 **INTRODUCTION**

18
19 16. If Pandora’s Box were opened today in the 21st Century, there is no doubt that the scourge
20 released to wreak havoc upon all modern technologically and chemically “advanced” nations, would
21 be Bisphenol-A, with its destructive potential for ubiquitous exposure causing as much as 20% of all
22 birth defects and disease, as well as *in utero* insults, that threaten to impact generations to come.
23 More than 150 laboratory animal studies to date strongly suggest that Bisphenol-A exposure, even at
24 very low doses, is linked to a staggering number of health problems, including, Breast Cancer,
25 Prostate Disease and Cancer, Diabetes, Obesity, Hyperactivity, Impaired, Altered, and Compromised
26 Immune System and Functions, Miscarriage, Impaired Female Reproductive Development, Sperm
27 Defects and Lowered Sperm Cell Count, Chromosome Abnormalities and Chromosome Sorting
28

1 Errors Similar to the same Chromosome Errors that cause Down Syndrome (where a child has an
2 extra copy of Chromosome 21 and suffers Multiple Mental and Physical Impairments), Turner
3 Syndrome (where a Female has only one X- Chromosome and Never Develops Ovaries), and
4 Klinefelter Syndrome (where a Male has one or more extra X-Chromosomes and is Sterile),
5 Genitalia Deformity and Malformations, Early Onset of Puberty, Impaired Learning and Memory,
6 Increased Aggression, Reversal of Normal Sex Differences in the Brain Structure, Elimination of
7 Sex Differences in Behavior, and Changes in Response to Painful or Fear-Provoking Stimuli (See
8 Exhibits 7 and 8, listing several Studies and Articles related to Studies and Articles discussing these
9 and other consequences of Bisphenol-A exposure, attached hereto).

11 17. This action is brought on behalf of Plaintiff individually, as Representative of the Infants and
12 Children of the State of California and the Common or General Interest, pursuant to Cal. Civ. Proc.
13 Code 382, and as Class Representative for all Others Similarly Situated in the State of California
14 against all Defendants captioned above, for Intentional Misrepresentation, Negligent
15 Misrepresentation, Violations of California Business and Professional Code, § 17200 et seq.,
16 Violations of California Business and Professional Code, § 17500 et seq., and for violations of
17 California Consumer Legal Remedies Act, § 1750.
18

21 **III. GENERAL FACTUAL ALLEGATIONS**

22 **A. Plaintiffs' Allegations**

23 18. This action concerns the use of the ubiquitous chemical known as Bisphenol-A (hereinafter
24 referred to as “BPA”). BPA is currently used as a primary monomer¹ in polycarbonate plastic and
25

27 ¹ A monomer (from Greek mono "one" and meros "part") is a small molecule that may become chemically bonded to
28 other monomers to form a polymer.

1 epoxy resins.² It is a fundamental building block in polycarbonate plastics that are widely used in
2 myriad consumer products, from mostly clear plastic baby bottles and training cups such as those
3 manufactured by the Manufacturer Defendants and sold in California by the Retail Manufacturers, to
4 children's toys, microwavable food containers, reusable drink containers, epoxy lining of food and
5 beverage cans, dental sealants, CDs, electronic equipment, sunglasses, eyeglass lens, and hundreds
6 of other products that humans come into contact with every day.
7

8 19. In the 1930s BPA was investigated as part of the search for synthetic estrogen but another
9 synthesized compound known as diethylstilbestrol (DES) was found to be a more powerful estrogen
10 so BPA was virtually forgotten – until polymer chemists discovered that it could be polymerized to
11 fabricate polycarbonate plastics. Unfortunately, the ester bond that links BPA monomers to one
12 another to form the polymer chains is not stable, and thus the polymer decays with time and when
13 liquid, such as baby formula, water and food come into contact with the baby's bottle and training
14 cups, BPA is released into the baby formula or liquid and ingested by infants.
15

16 20. BPA-based polycarbonate is also used as a plastic coating for children's teeth to prevent
17 cavities, teething products for infants, water bottles, returnable containers for juice, milk and water,
18 microwave ovenware and eating utensils. BPA is now deeply embedded in these baby products as
19 well as the hundreds of products that a modern consumer society is exposed to throughout the day
20 regardless of occupation or economic background. These are common products that the infants and
21 children of California are incessantly exposed to.
22

23 21. Of immediate and urgent concern is BPA's toxicity and its link to significant health problems
24 and the dangerous developmental, neural and reproductive health effects on the infants and children
25 of the State of California.

26 ² A polymer is a substance composed of molecules with large molecular mass consisting of repeating structural units, or
27 monomers, connected by covalent chemical bonds. The term is derived from the Greek words: polys meaning many, and
28 meros meaning parts. The individual molecules which comprise a polymer are referred to as polymer molecules, where
the word "polymer" functions as an adjective. In popular usage, the term polymer is often used as a synonym for plastic.

1 22. Growing children are particularly at risk to BPA because they are more susceptible to toxic
2 exposures which often begin at conception, as BPA crosses the placental barrier in pregnant women,
3 potentially affecting an embryo or the fetus during some of the most critical periods of development.
4 Even after an infant is born its body remains immature as it is not equipped to detoxify powerful
5 chemicals like BPA. Newborn infants and children have underdeveloped detoxification mechanisms
6 to protect them from toxic chemicals. Their brains and other organ systems are constantly
7 developing as they undergo periods of fragile sensitivity to damage or disruption. While it is
8 undisputed that children are particularly susceptible to the devastatingly harmful effects of BPA,
9 many of the problems associated with BPA exposure during these critical stages of development do
10 not become obvious or recognizable until years after the exposure takes place.

12 23. It is especially for this very reason that because growing children are particularly at risk from
13 BPA exposure and because such adverse effects on a child's intellectual ability and growth, social
14 behaviors, fertility and potential for disease may take years or even decades to detect or diagnose,
15 measure must be taken now to protect the infants and children of California from exposure to
16 products made with BPA such as the plastic baby bottles, breast (milk) products, and training cups
17 manufactured by the Manufacturer Defendants and injected into California's marketplace by the
18 Retail Defendants through their stores and supermarkets without so much as a word of warning or
19 information about the potential devastating effects posed by the risk of using these products.

21 24. There are numerous studies that confirm the fact that polycarbonate plastic breaks down and
22 leaches BPA into food or beverages in contact with the plastic. This fact was dramatically observed
23 in a 2003 study conducted in Norway on polycarbonate baby bottles. The Norwegian study detected
24 BPA leaching in 12 polycarbonate baby bottles subjected to simulated use, *e.g.* dishwashing,
25 brushing & scrubbing, and boiling. The level of BPA found in the liquids in these bottles exceeded
26 8 ppb (part per billion).
27
28

1 24. On the heels of the Norwegian study, the Environment California Research and Policy Center
2 selected baby bottles manufactured by the Manufacturer Defendants based upon a survey and
3 conducted its own study to determine whether BPA is released or leaches into the liquids held within
4 these baby bottles. The California Study confirmed the findings of the Norwegian Study and
5 reported that “all five bottles leached BPA at varying levels in the same range detected in the
6 Norway study. A summary of the testing for BPA leaching from these particular baby bottles is
7 reflected by the following table:

9 *Baby Bottle Brand Range of BPA Detected (parts per billion)

10 Avent (Natural Feeding Bottle)	8-10 ppb
11 Dr. Brown’s (Natural Flow)	6-7 ppb
12 Evenflo (Level Classic)	8-9 ppb
13 Gerber (Premium Feeding System)	6-7 ppb
14 Playtex (VentAire)	5-6 ppb

15 (See Exhibits 1 through 6 for specifications and details on these particular bottles as well as
16 specifications on other baby bottles, breast (milk) pumps and accessories, and training/spill-proof
17 cups made by the Manufacturer Defendants, attached hereto).

18 25. Most alarming about these results is that all five polycarbonate plastic bottles leached BPA at
19 levels found to cause harm in numerous animal studies evaluating various health effects from BPA
20 exposure. (See Exhibits 7 and 8, for a list of relevant studies, attached hereto). The dangerous
21 health effects revealed by the BPA leaching study above is confirmed by the findings of a recent
22 CDC study that observed BPA levels at between 0.1 to 9 parts per billion, were at, or above,
23 concentrations known to reliably cause adverse effects in laboratory experiments.

24 26. There are approximately 53,000 chemical compounds in commerce in the State of California,
25 including BPA which also acts like a synthetic estrogen and is found in virtually every durable
26 plastic container marketed by the Retail Defendants.

27 27. Scientists first learned that BPA could act as a synthetic for estrogen in the 1930s, nearly 30
28 years after its invention. It wasn’t until 1953 that chemists discovered BPA could be made into

1 polycarbonate plastic. Despite the fact that BPA was well known to mimic estrogen inside the
2 human body, it nevertheless went on to become widely used in the manufacture of a variety of
3 consumer products, including baby bottles and cups. As a synthetic estrogen, BPA is known as
4 “xenoestrogen.” BPA is utilized in virtually every bottle marketed by the Retail Defendants for the
5 containment and dispensation of baby formula, milk and other liquids utilized in the care and feeding
6 of infants and toddlers throughout the State of California. The leading baby bottles are marketed by
7 the trade names Avent, Dr. Brown’s, Evenflo, Gerber, Playtex, and Nalgene. (See Exhibits 1
8 through 6 for a complete list of BPA plastic baby bottles and other products made by these
9 Manufacturer Defendants, attached hereto).

11 28. In 1999, new evidence and research concerning how BPA affects laboratory animals and how
12 it can leach out of items such as plastic bottles was published by Koji Arizono at Japan's Kumamoto
13 University. Mr. Arizono found that a used polycarbonate baby bottle can leach out BPA at daily
14 levels that damaged the brain and reproductive systems in laboratory animals. Mr. Arizono found
15 that if a 9-pound baby drinks a quart of liquid from the plastic baby bottle a day, it can ingest 4
16 micrograms of BPA.

18 29. Recently, the Assembly Health and Toxics Committee held its first hearing on AB 319, a Bill
19 introduced by Assembly member Wilma Chan (D-Alameda), which proposes a ban on the
20 manufacture and sale of toys and childcare products containing phthalates and BPA. These
21 chemicals are found in hard, clear-plastic bottles, dishes, teething rings, vinyl books, and beach balls.
22 According to the U.S. Centers for Disease Control and Prevention, 95% of all Americans have
23 detectable levels of BPA in their bodies. Most alarming was the fact that the median BPA level in
24 human blood and tissues, including in human fetal blood, is higher than the level that causes adverse
25 effects in rodents. These findings suggest that human exposure to significant amounts of BPA is
26 continuous and comes from multiple sources.
27
28

1 30. EPA research biologist Earl Gray testified that scientists have conducted laboratory tests on
2 phthalates for 25 years and the findings have repeatedly demonstrated that a disruption in the
3 production of testosterone that can result in low sperm count, malformations of sexual organs, and a
4 disruption of the endocrine system. Similar results were found by Biologist Professor Frederick vom
5 Saal, from the University of Missouri-Columbia who has studied BPA for more than a decade. In
6 1998, Dr. vom Saal and his colleagues published one of the first studies linking reduced sperm
7 production with BPA exposure. The scientists fed BPA to female rats at a dose of 20 µg/kg/day for
8 six days during pregnancy. They found that males born to exposed rats produced 20 percent less
9 sperm after they matured than normal males. They also found that treated offspring had physical
10 changes in hormone-secreting glands not found in untreated mice, even at a dose 10 times smaller.
11 Professor vom Saal has conducted dozens of studies on BPA, and believes BPA is essentially a
12 female sex hormone similar to estrogen. Vom Saal's research, which includes numerous tests on lab
13 mice, has shown that embryonic and infant mice exposed to small amounts of BPA tend to become
14 obese as adults. He posits that the same chemical could be responsible for the current rise in record
15 numbers of human obesity. His tests on male mice have established that BPA can also cause
16 increased prostate size, decreased sperm production and increased aggression.

19 31. Other studies have shown that BPA has been associated with changes in brain, pancreas, and
20 thyroid function, as well as hormone levels and behavior. It has been linked with the increased
21 secretion of insulin, which can lead to Type II diabetes, obesity, and hypertension.

23 32. The link between exposure to synthetic chemicals that mimic the actions of endogenous
24 hormones and risks to human health is a growing concern. As early as 1970, Herbst and Scully
25 reported vaginal clear-cell adenocarcinoma in six 14 to 21-year old women exposed in utero to the
26 synthetic estrogenic drug diethylstilbestrol (DES). This rare cancer had been reported previously
27 only in elderly women, and subsequent studies confirmed an increased incidence among daughters
28

1 of women who were given DES during pregnancy to prevent miscarriage.

2 33. Over 6 billion pounds are produced worldwide annually, and several studies have reported
3 levels of BPA in human tissues in the parts per billion range. Short-term exposure to
4 environmentally relevant doses of BPA has been linked to a variety of reproductive effects in
5 laboratory rodents, including reduced sperm production, alterations in prostate development, and
6 increased susceptibility to prostate carcinogenesis in the male and alterations in mammary gland
7 organization, brain development, and estrous cyclicity in the female.

9 34. Low-dose BPA exposure *in vivo* during the final stages of oocyte growth or *in vitro* during
10 the resumption and completion of the first meiotic division disrupts meiotic chromosome behavior,
11 resulting in the production of chromosomally abnormal eggs.

12 35. Other Recent studies reveal a unique set of meiotic defects in BPA-exposed females and
13 demonstrate that a knockout of one of the two known estrogen receptors phenocopies fetal BPA
14 exposure. Together, these findings provide the first known demonstration that early meiotic events in
15 the fetal ovary are responsive to estrogen. Synthetic estrogens have been implicated in a variety of
16 endocrine related diseases such as hypospadias and testicular, prostate, and breast cancers. These
17 compounds, also called xenoestrogens, are a diverse group of substances that mimic the action of the
18 natural hormone, 17 β -estradiol, in estrogen responsive tissues. Agents that cause adverse effects in
19 target organs and tissues act by interfering with the actions of endogenous hormones and receptors.

20 36. Extensive scientific literature reports adverse health effects from BPA at very low doses, a
21 proposition that the U.S. chemical industry, including the Manufacturer and Retail Defendants
22 named herein continue to reject despite the growing weight of credible scientific evidence. Studies
23 show that BPA can alter the expression of several hundred genes with effects varying among
24 specific tissues depending upon the timing of exposure. More than 150 laboratory animal studies
25 strongly reinforce the fact that BPA exposure at very low doses is linked to a staggering number of
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1 health problems, including prostate and breast cancer, obesity, hyperactivity, diabetes, altered
2 immune system, lowered sperm count, and early puberty.

3 37. For decades, scientists in the field of toxicology have assumed that the higher the dose of a
4 chemical, the greater the harm. However, in recent decades studies of hormones by
5 endocrinologists, and recent application of methods used to study hormones mimicking chemicals
6 such as BPA, invalidate the long held belief that the dose makes the poison. Numerous studies show
7 that BPA and other hormone-mimicking chemicals result in great harm at very low doses that is not
8 predicted by studies with only very high doses. Rather than having a linear dose-response curve, the
9 dose-response curve for BPA appears more like an inverted “U” in which lower doses of exposure
10 cause greater harm than higher doses. The standard tests used in toxicology to set health standards
11 have assumed that the dose makes the poison, thereby ignoring the low-dose impacts of chemicals
12 that mimic hormones.
13
14

15 38. In 2003, Dr. Pat Hunt and her colleagues made an accidental but dramatic discovery: BPA
16 can cause chromosomes to sort incorrectly, even at very low doses. Germ cells normally split into
17 two cells when forming eggs, separating chromosomes equally into each daughter cell. These cells
18 then enter the reproductive process, and when fertilized by sperm, develop into new organisms. Dr.
19 Hunt showed that exposure to BPA prevents the chromosomes from lining up correctly, resulting in
20 chromosome sorting errors like the kind known to cause Down syndrome.
21

22 39. Dr. Hunt’s findings confirmed that extremely low doses of BPA exposure are linked to an
23 error in cell division called aneuploidy, which can cause up to 10-20 percent of all birth defects in
24 people, including Down syndrome. When chromosomes sort incorrectly in a father’s sperm or a
25 mother’s egg, diseases—and, quite frequently, miscarriages—result. Incorrect sorting of
26 chromosomes leads to diseases like Down syndrome, where a child has an extra copy of
27 chromosome 21 and suffers multiple mental and physical impairments. The same sorting error of
28

1 chromosomes can lead to Turner syndrome, where a female has only one X-chromosome and never
2 develops ovaries, and Klinefelter syndrome, where a male has one or more extra X-chromosomes
3 and is sterile. Extreme significance relates to subsequent research by Dr. Hunt and her colleagues
4 that shows exposure to BPA can lead to chromosomal abnormalities that affect future generations as
5 well. This is because female mammals, including mice and humans, form their eggs while still in
6 their mother's womb. Thus, the eggs that will become a female's grandchildren are affected through
7 *in utero* exposure to Bisphenol A.

9 40. A study by Dr. Beverly Rubin and her colleagues at Tufts University Medical School
10 revealed that BPA makes rodents grow larger after they are exposed in the womb, confirming similar
11 findings from previous studies. When rats were fed 100 µg/kg/day of BPA during pregnancy
12 through lactation, their offspring were notably heavier after birth and into adulthood. Significantly,
13 in the female offspring, the lower of the two BPA doses used in the study produced a larger and
14 more persistent effect on body weight relative to the higher dose. In addition, the fact that the effect
15 persisted long after exposure for the female offspring suggests that BPA may increase the number of
16 fat cells in the rats and predispose them to heavier weight throughout life.

18 41. In 2002, a team of researchers at the Ehime College of Health Science in Japan discovered
19 that BPA can increase the conversion of embryonic cells into fat cells. In the body, this effect could
20 result in larger numbers of fat cells developing. In addition to converting to fat cells, treated cells
21 increased their fat content by 150 percent over 11 days. Combined with insulin, BPA increased the
22 fat content of cells by 1300 percent. In other words, this experiment documented that BPA could
23 trigger and promote the two main processes in developing obesity.

25 42. In 2004, another study confirmed these findings, showing that BPA alone and with insulin
26 increased the uptake of sugar into fat cells.

27 43. In most studies, BPA has been found to mimic the actions of estrogen developing neurons.
28

1 In specific areas of the brain, however, BPA can have the paradoxical effect of *inhibiting* the activity
2 of estrogen, which normally increases the growth and regulates the viability of connections between
3 neurons. In this regard, BPA is similar to the breast cancer drug Tamoxifen, which stimulates
4 estrogenic responses in some tissues and inhibits estrogenic responses in other tissues. The concern
5 relating to this inhibitory effect of BPA is that this type of disruption is associated with impaired
6 learning and memory. Whether BPA is mimicking or inhibiting estrogen, BPA appears to trigger
7 steps important in the development of the brain at the wrong times or encourages improper
8 connections in the brain to be made. Mounting evidence from the last several years show that BPA
9 alters brain development, leading to a number of different potential problems, including
10 hyperactivity, increase in aggression, changes in response to painful and fear provoking stimuli,
11 impaired learning and memory, decreased maternal behavior, altered play and other socio-sexual
12 behaviors, and reversal of normal sex differences in the brain structure and elimination of sex
13 differences in behavior.
14

15
16 44. A recent study showed that prenatal exposure to BPA causes mammary gland cancer in adult
17 rats. Prior research had shown that BPA altered the growth of mammary tissues in ways that
18 increase the risk of breast cancer and increase the sensitivity of breast tissue to cancer causing
19 agents. In one of these earlier studies, scientists exposed mouse fetuses to doses of 25 and 250
20 ng/kg/day—2,000 times lower than the amount deemed “safe” by the U.S. EPA for humans in the
21 U.S.—causing increased breast tissue development. Higher density breast tissue is a known risk
22 factor for cancer.
23

24 45. Dr. Motoharu Sakaue and his colleagues in Japan independently discovered that BPA
25 reduces the number of sperm in rats, even when given doses after puberty. After feeding small doses
26 to rats (20 µg/kg/day for six days at week 13 of life), they noted a generalized decline in the ability
27 of treated rats to produce sperm. The scientists concluded that BPA retarded the development of
28

1 germ cells that normally takes place as the male rat’s reproductive system matures from week 14 to
2 week 18. These scientists further concluded that the effects occurred in a dose range “relevant to the
3 daily level of exposure in man.”

4 46. As the above discussion shows, virtually all polycarbonate baby bottles contain unsafe levels
5 of BPA and are a direct threat to the health and safety of California’s infants and children.
6

7 8 **IV. SPECIFIC FACTUAL ALLEGATIONS**

9
10 47. This action concerns the use of the ubiquitous chemical Bisphenol-A and the failure of
11 the Retail and Manufacture Defendants to properly disclose the risks of harm to Plaintiffs
12 and other California consumers. This failure to disclose is a misrepresentation consistent
13 with California statutory and common law.

14
15 48. Of the five defendant manufacturers of baby bottles, (Avent, Dr. Brown’s, Evenflo,
16 Gerber, and Playtex) each of their baby bottle products leached BPA in dangerously
17 significant levels and amounts into the fluid contents that it came into contact with.

18 Alarming, all five polycarbonate plastic bottles leached BPA at levels found to cause harm
19 in numerous animal studies evaluating various health effects from exposure to the chemical.
20 Although consumers can try to avoid polycarbonate plastic bottles, most parents are unaware
21 that toxic chemicals can leach from these products. This is lack of awareness on the part of
22 the California consumers is a direct result of the Manufacturer Defendants efforts to continue
23 a very lucrative revenue stream that would be interrupted and reduced if the general public
24 and persons similarly situated to Plaintiff were to learn the truth and seek safer alternatives.
25

26
27 49. Additionally, no disclosure consistent with California law is apparent on any of the
28 Manufacturer Defendants’ plastic baby bottles or children’s products containing BPA and

1 listed on Exhibits 1 through 6 attached hereto.

2 50. That both groups of Defendants continue to claim that there are no credible scientific
3 studies that demonstrate BPA leaches from its products and is ultimately ingested by
4 Plaintiff and other infants and children is irrelevant under California law. Plaintiff is not
5 required to prove in this action that he sustained an injury from the use of Defendants'
6 products. The standard that both groups of Defendants must comply with is simply having
7 knowledge of the existence of the risk of harm or injury that its products might pose to
8 California's infants and children. As discussed above there are numerous studies that
9 confirm not only the risks that infants are subjected to by using these unsafe products, but
10 also, the injuries to lab animals indicate that humans are susceptible to injury as well. The
11 studies have been widely reported and both groups of Defendants cannot state that they are
12 unaware or have not appreciated the risks of injury these products pose. In fact, Defendant
13 Playtex publishes a Statement on its web site indicating that it is aware of the controversy
14 surrounding the use of BPA in plastic baby bottles but it nevertheless clings to the much
15 discredited belief that the weight of scientific evidence ensures the safety of this material for
16 use in food and drink containers and cites the U.S. Food and Drug Administration's
17 recognition for nearly 50 years that polycarbonate is safe for use in food contact applications.
18 Incredibly, it cites as its reason for why this is so, as being due to the notion that
19 polycarbonate can be cleaned with very hot water, does not absorb odors, and over time has
20 shown to be an extremely safe substitute for glass in the medical and food industries.

21 51. Playtex's position on this issue is typical of all the other Manufacturer Defendants
22 who have a vested interest in ensuring that its share of profits derived from the continued
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24
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1 manufacture and sale of one of the top 50 products produced by the chemical industry, which
2 generates revenues amounting to \$6 Million Dollars per day (in the U.S., Europe, and Japan
3 alone) is not curtailed or reduced. Global BPA production exceeds 6.4 billion pounds per
4 year and the chemical industry which would include at least the Manufacturer Defendants,
5 collectively earned \$45 Billion Dollars in 2005.

7 52 During all times relevant hereto, the Manufacturer Defendants engaged in long-term
8 advertising campaigns aimed at large groups of California consumers, including the Plaintiff.
9 The Manufacturer Defendants subjected Plaintiff, and all others similarly situated in the
10 State of California to unnecessary risks of harm and injury by using a chemical substance
11 which these Defendants either knew to be unsafe or was aware of the existence of studies
12 that concluded its products made with BPA, was at the very least, potentially unsafe and
13 unreasonably dangerous. As there have been hundreds of studies concluding that BPA, even
14 at very low studies cause many types of injuries or disorders, the Manufacturer Defendants
15 deliberately and callously ignored the potential injuries its products could cause to Plaintiff
16 and other infants and children residing in California. Defendants' conduct was both
17 reprehensible and despicable and constitutes a degree of calloused indifference toward the
18 Plaintiff and all other California consumers. Considering that the Manufacturer Defendants
19 have available to them a safer alternative to BPA, they could have avoided causing injury to
20 Plaintiff and to the rest of the members of the Class which Plaintiff represents. Both Retail
21 and Manufacturer Defendants put their desire for profits above the welfare, safety and health
22 of Plaintiff and the infants and children residing in the State of California.

27 53. During all times relevant hereto, the Retail and Manufacture Defendants have, upon
28

1 information and belief, possessed full knowledge of the studies and reports, as stated above.
2 Moreover, the Manufacturer Defendants have, upon information and belief, conducted their
3 own independent studies and have made similar conclusions as those reached by the
4 scientists who found that BPA can cause numerous and varied injuries to lab animals at low
5 doses, and that infants and children are particularly sensitive, due to their immature immune
6 systems and underdeveloped detoxification mechanisms, to the toxic effects of BPA.
7

8 53. During all times relevant hereto, the Retail and Manufacture Defendants have, upon
9 information and belief, made deliberate misrepresentations concerning the risk of harm
10 associated with their baby bottles and child products containing BPA while refusing to make
11 honest disclosures to Plaintiff, and all other similarly situated persons in the State of
12 California. Their efforts to misrepresent and avoid disclosure was part of a deliberate and
13 calculated endeavor to induce Plaintiff into believing BPA baby bottles and cups were safe
14 and free from any risk of harm or injury.
15
16

17 54. During all times relevant hereto, these bottles and other children's items containing
18 BPA are widely marked throughout the State of California by the Retail Defendants through
19 their stores and supermarkets.
20

21 55. The Retail Defendants are likewise aware that there are risks of harm and injury
22 associated with the plastic baby bottles, cups and other children's items containing BPA and
23 did nothing to disclose those risks to Plaintiff, all others similarly situated, and the
24 consumers of the State of California.
25

26 56. The Plaintiff, all others similarly situated, and the consumers of the State of California
27 relied upon these misrepresentations and lack of disclosure, have sustained injury as a result
28

1 thereof.

2 57. The claims herein alleged are typical of the Class of consumers who have purchased
3 the plastic baby bottles, cups and other children's items containing BPA over the last five
4 years and who are residents of the State of California.
5

6 58. The claims herein alleged are common to the Class of consumers who have purchased
7 the plastic baby bottles, cups and other children's items containing BPA over the last five
8 years and who are residents of the State of California.
9

10 59. The action maintained as a Class would benefit the court and the general public
11 because it would allow important claims involving modest purchases to be adjudicated in the
12 first instance; and is in furtherance of the health and safety of children throughout California.
13

14 60. It is impractical to bring all members of the Class before the Court. In addition,
15 questions of law and fact common to the Class are substantially similar and predominate
16 over questions affecting individual members.

17 61. The claims or defenses of the representative Plaintiff are typical of the claims or
18 defenses of the Class.
19

20 62. The representative Plaintiff will fairly and adequately protect the interests of the
21 Class.
22

23 **FIRST CAUSE OF ACTION**

24 **(Intentional Misrepresentation)**

25 63. Plaintiff incorporates paragraphs 1 through 62 as though fully set forth herein.

26 Over the past five years, the Manufacturer Defendants have engaged in a massive advertising
27 campaign throughout California that touts the safety and benefit of utilizing baby bottles and
28

1 other plastic materials that contain BPA.

2 64. The advertising campaigns in print and television conducted by the Manufacturer
3 Defendants include statements and reassurances concerning the safety and effectiveness of
4 their baby bottles, training cups and other children's items, as of the time of the filing of this
5 Complaint.
6

7 65. The Retail Defendants have also engaged in similar advertising campaigns and have
8 made available and provided to California consumers manufacturer-sponsored coupons
9 redeemable at their retail stores or supermarkets throughout California.
10

11 66. The Retail Defendants have also engaged in key product placements of the
12 Manufacturer Defendants' baby bottles and cups containing BPA in prominent product
13 spaces of the Retail Defendants' store locations, thereby aiding and abetting in the display of
14 false and deceptive advertising contained in the packaging of the Manufacturer Defendant's
15 products.
16

17 67. Both Retail and Manufacturer Defendants' misrepresentations and/or lack of
18 disclosure of the harms of BPA has induced the public and California consumers to purchase
19 these plastic baby bottles, breast (milk) pumps and accessories, and plastic cups for the
20 infants and children of the State of California.
21

22 68. Plaintiff, including Mr. Ganjei, was exposed to the Manufacturer and Retail
23 Defendants' advertising for BPA containing products which is widely disseminated by print
24 and television, as well as through the packaging at the time of purchase in Retail Defendants'
25 stores and supermarkets.
26

27 69. Relying upon these misrepresentations and/or lack of disclosure concerning the risks,
28

1 or potential risks of harm posed by these products, Plaintiff, through his father and mother
2 purchased plastic baby bottles and cups containing BPA and used them to dispense liquid
3 formula for the infant child, thereby exposing him to harm and additional injury.
4

5 70. At all times relevant hereto, the Retail and Manufacturer Defendants knew their
6 representations ensuring safety were false, or that they were marketing a product that is
7 dangerous to the health and well being of Plaintiff, infants and children throughout the State
8 of California. Upon information and belief, both Manufacturer and Retail Defendants put
9 their profits, and their desire to reap continued profits, above the safety, health, and well
10 being of the Plaintiff, infants and children of the State of California.
11

12 71. At all times relevant hereto, the Manufacturer and Retail Defendants made false or
13 misleading representations with the intent of depriving the Plaintiff of property or other legal
14 rights, or of otherwise causing the Plaintiff and the infant child injury. As a direct and
15 proximate result of the Manufacturer and Retail Defendants' misrepresentations and/or lack
16 of disclosure concerning the risk of harm associated with the use of BPA baby bottles, breast
17 (milk) pumps and accessories and training or spill proof cups made by the Manufacturer
18 Defendants and sold by the Retail Defendants, Plaintiff spent a total of approximately
19 \$200.00 on the plastic products containing BPA.
20
21

22 72. As a further direct and proximate result of the Retail and Manufacturer Defendants'
23 misrepresentations and/or lack of disclosure concerning the risk of harm associated with the
24 use of BPA baby bottles, breast (milk) pumps and accessories, and training or spill proof
25 cups, the infant Plaintiff was exposed to potentially dangerous levels and amounts of BPA.
26
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28

1 **SECOND CAUSE OF ACTION**

2 **(Negligent Misrepresentation)**

3
4 73. Plaintiff incorporates paragraphs 1 through 72, as though fully set forth herein.

5 When both Retail and Manufacturer Defendants made the representations set forth above,
6 they had no reasonable grounds for believing these representations were true.
7

8
9 **THIRD CAUSE OF ACTION**

10 **(Business and Professions Code Sections 17200 et seq.)**

11 74. Plaintiff incorporates paragraphs 1 through 73, as though fully set forth herein.

12 Both Retail and Manufacturer Defendants have misrepresented the contents of the baby
13 bottles and other children's items in that they have not disclosed the existence of BPA or its
14 harmful health consequences in their advertising and packaging and instead have represented
15 that their products are safe for children.
16

17 75. The acts described hereinabove are unfair because they misrepresent the existence of
18 BPA in the contents of baby bottles, training cups and other children's food items.
19

20 76. The acts described hereinabove also violate California Civil Code section 1770(a)(5),
21 (7), and (9) in that the plastic baby bottles, cups and other children's items containing BPA
22 are described as being "safe" when they do not possess such quality or characteristic; and
23 that because BPA is not "safe," the goods are not sold with the intent to sell them as
24 advertised.
25

26 77. The acts described above are likely to mislead the general public and therefore
27 constitutes unfair, fraudulent, and misleading practices within the meaning of the Business
28

1 and Professions Code, Section 17200.

2
3
4 **FOURTH CAUSE OF ACTION**

5 **(Business and Professions Code section 17500 et seq.)**

6 78. Plaintiff incorporates paragraphs 1 through 77, as though fully set forth herein.

7
8 The Manufacturer Defendants for the last five years have engaged in a campaign to promote
9 the safety and effectiveness of plastic baby bottles containing BPA. The campaign has
10 included print and television ads throughout the state of California. This advertising has
11 included such statements as bisphenol-A is “safe” for the consuming public.

12 79. At all times relevant hereto, the Manufacturer Defendants knew that BPA was and is a
13 dangerous substance that no one would willingly purchase, particularly for the most
14 vulnerable members of society—infant children.

15
16 80. The Retail Defendants willingly allowed the misleading and false advertising adverted
17 to above by permitting the Manufacturer Defendants to display their advertising on
18 packaging in their retail stores and supermarkets.

19
20 81. Unless enjoined by this court, defendants will continue to engage in untrue and
21 misleading advertising as described above and continue to injure unsuspecting California
22 consumers, including infants and children.

23
24 82. Plaintiff, and the Class, is entitled to restitution for the costs of the products
25 purchased, as no consumer would willingly subject their children to the risk of harm and
26 injury posed by products containing BPA.

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of the California Civil Code sections 1750 et seq.)**

3
4 83. Plaintiff incorporates paragraphs 1 through 82, as though fully set forth herein.

5 84. The acts described hereinabove also violate California Civil Code, Section 1770(a)(5),
6 (7), and (9) in that the baby bottles, breast (milk) pumps, cups, and other children's items
7 containing BPA are described as being "safe" when they do not possess such quality or
8 characteristic; and that because the chemical BPA contained in these products is not "safe,"
9 the goods are not sold with the intent to sell them as advertised.
10

11 85. Plaintiff will amend this complaint for damages under these Sections after 30 days
12 from service of this complaint.
13

14 86. Due to the severity and continuing and ongoing marketing of these items, the Plaintiff
15 respectfully seeks an injunction to prohibit further and continued violations of the
16 Consumers Legal Remedies Act.
17

18 **WHEREFORE**, Plaintiff demands judgment against defendants, and each of them for:

- 19 1. General damages in an amount according to proof;
- 20 2. Punitive damages in an amount according to proof;
- 21 3. Injunctive relief, including an order suspending all further advertising by all
22 defendants that does not contain a bold face disclosure indicating the contents of
23 Bisphenol-A in the above described products; and for corrective advertising;
- 24 4. Restitution to the Plaintiff and to the Class of purchasers for the full value of all
25 sales over the last five years of all baby products containing Bisphenol-A;
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- 27 5. Attorney's fees pursuant to Statute;
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- 6. Costs of suit; and
- 7. Such other and further relief as the Court deems just and appropriate.

Date: March 11, 2007

Respectfully submitted,

By: _____

Jon Eardley, Esq.,
LAW OFFICES OF JON EARDLEY
Attorney for Plaintiff
 6020 Puesta Del Sol
 Whittier, California 90603
 Tel: (562) 947-2006
 Fax: (562) 947-2006

By: _____

Robert H. Weiss, Esq.
 Stephen David Murakami, Esq.
 Law Offices of Robert H. Weiss, PLLC
Attorneys for Plaintiff
 50 Jericho Turnpike, Suite 201
 Jericho, New York 11753
 Tel: (516) 876-4213
 Fax: (516) 876-6906

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- 8. Costs of suit; and
- 9. Such other and further relief as the Court deems just and appropriate.

Date: March 11, 2007

Respectfully submitted,

By: _____

Jon Eardley, Esq.,
LAW OFFICES OF JON EARDLEY
Attorney for Plaintiff
6020 Puesta Del Sol
Whittier, California 90603
Tel: (562) 947-2006
Fax: (562) 947-2006

By: _____

Robert H. Weiss, Esq.
Stephen David Murakami, Esq.
Law Offices of Robert H. Weiss, PLLC
Attorneys for Plaintiff
50 Jericho Turnpike, Suite 201
Jericho, New York 11753
Tel: (516) 876-4213
Fax: (516) 876-6906