IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STACI COLLIER, as parent and natural guardian of **Bo Collier and Caroline Collier,** and **PAIGE ENGLE**, as parent and natural guardian of **Jack Engle and Amelia Engle**, and **KELLY AND DAVID JOHNSON**, as parents and natural guardians of **Henry Brian Johnson**, who purchased plastic baby bottles, bottle liners, and cups containing the synthetic chemical BISPHENOL-A within the state of Ohio,

Plaintiffs,

v.

AVENT AMERICA, INC., an Illinois corporation; **HANDICRAFT COMPANY** d/b/a **DR. BROWN'S,** a Missouri corporation; **EVENFLO COMPANY, INC.,** an Ohio corporation; **GERBER NOVARTIS AG,** a Swiss corporation; and **PLAYTEX PRODUCTS, INC.,** a Connecticut Corporation,

Defendants.

Case No. 2:08 cv 571
JUDGE HOLSCHUH

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs, Staci Collier, Paige Engle and Kelly and David Johnson, individually and on behalf of the classes of persons within the state of Ohio who purchased plastic baby bottles, bottle liners and training cups containing the synthetic chemical Bisphenol-A, state and allege as follows:

NATURE OF THE CASE

1. For many years, the Defendants have manufactured and sold plastic baby bottles, bottle liners, and training cups containing BPA to parents, grandparents, day care providers, and

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other consumers throughout the state of Ohio. These products are sold under some of the most recognized and trusted brand names in America: Avent®, Dr. Brown's®, Evenflo®, Gerber®, and Playtex®. Indeed, it is nearly impossible to walk down the baby aisle of a retail store in America without seeing some or all of these brand names.

2. For many years, Plaintiffs and other consumers who comprise the Class in this case did not know something that was known to Defendants: that a mounting number of independent scientific and laboratory studies indicate that the synthetic chemical Bisphenol-A (which is commonly referred to as "BPA") used in Defendants' baby bottles, bottle liners and "sippy cups" was leaching into children's milk, formula, and juice. Furthermore, although the information was known to Defendants, the Plaintiffs and other consumers who comprise the Class did not know that exposure to BPA, even at low doses, is associated with a staggering number of health problems, including: breast and prostate cancer, diabetes, obesity, hyperactivity, miscarriage, impaired female reproductive development, sperm defects and low sperm cell counts, chromosome abnormalities and sorting errors (similar to those that cause Down Syndrome), Turner Syndrome (where a female is born with only one X- Chromosome and never develops ovaries), Klinefelter Syndrome (where a male is born with one or more extra X-Chromosomes and is sterile), genitalia deformity and malformations, early onset of puberty, impaired learning and memory, increased aggression, reversal of normal sex differences in the brain structure, and elimination of sex differences in behavior.

3. Even after researchers began to amass substantial and credible data linking BPA to certain health risks, which was well known to Defendants, the Defendants dismissed the research and continued to market their products as safe and healthful to the American public. Indeed, to this day, Defendants continue to represent that their BPA-laced products are safe

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despite mounting evidence to the contrary.

4. If Defendants had disclosed that their products contained BPA and the health risks associated with BPA, Plaintiffs and the other members of the Class would not have purchased Defendants' products for their infants and children. Instead, they would have purchased a known safer alternative. However, because Defendants failed to disclose this information, and because Plaintiffs trust the Defendants and their products, Plaintiffs and other members of the Class unwittingly (and regrettably) purchased millions of BPA-laced baby bottles, bottle liners and sippy cups from Defendants.

5. This action is brought on behalf of Plaintiffs, both individually and on behalf of the classes of persons in Ohio who purchased plastic baby bottles, liners and training cups containing BPA which were manufactured by Defendants. If Defendants had disclosed that their products contained BPA, a chemical shown to cause health risks in laboratory tests, or not promoted their products as safe and healthful, Plaintiffs would not have purchased Defendants' plastic baby bottles, liners and training cups for their minor children. Plaintiffs seek to recover the amounts they have spent to purchase Defendants' products as a result of Defendants' deception and lack of disclosure and the amount Plaintiffs have spent and will spend in the future, to replace their BPA-laced bottles, liners and cups with safe and healthful products.

THE PARTIES

6. Plaintiff Staci Collier is an individual residing in Franklin County, Ohio. She is the natural parent and guardian of Bo Collier and Caroline Collier, minors. On behalf of and for use by her minor children, Ms. Collier has in the past purchased products manufactured by the Defendants, containing the synthetic chemical BPA.

7. Plaintiff Paige Engle is an individual residing in Franklin County, Ohio. She is the

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natural parent and guardian of John "Jack" Engle and Amelia Engle, minors. On behalf of and for use by her minor children, Ms. Engle has in the past purchased products manufactured by the Defendants, containing the synthetic chemical BPA.

8. Plaintiff David Johnson is an individual residing in Franklin County, Ohio. He is the natural parent and guardian of Henry Brian Johnson, a minor. On behalf of and for use by his minor child, Mr. Johnson has in the past purchased products manufactured by the Defendants, containing the synthetic chemical BPA.

9. Plaintiff Kelly Johnson is an individual residing in Franklin County, Ohio. She is the natural parent and guardian of Henry Brian Johnson, a minor. On behalf of and for use by her minor child, Mrs. Johnson has in the past purchased products manufactured by the Defendants, containing the synthetic chemical BPA.

10. Defendant Avent America, Inc. ("Avent") is a corporation organized and existing under the laws of the state of Illinois which maintains its principal place of business in Bensenville, Illinois. Avent manufactures plastic baby bottles, nipples, training cups, and/or other products that contain BPA. Avent has conducted and continues to conduct business in Ohio by distributing for sale and selling its products through various stores or supermarkets located in Ohio.

11. Defendant Handi-Craft Company d/b/a Dr. Brown's ("Dr. Brown's") is a corporation organized and existing under the laws of the state of Ohio which maintains its principal place of business in St. Louis, Missouri. Dr. Brown's manufactures plastic baby bottles, nipples, training cups, and/or other products that contain BPA. Dr. Brown's has conducted and continues to conduct business in Ohio by distributing for sale and selling its products through various stores or supermarkets located in Ohio.

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12. Defendant Evenflo Company, Inc. ("Evenflo") is a corporation organized and existing under the laws of the state of Ohio which maintains its principal place of business in Vandalia, Ohio. Evenflo manufactures plastic baby bottles, nipples, training cups, and/or other products that contain BPA. Evenflo has conducted and continues to conduct business in Ohio by distributing for sale and selling its products through various stores or supermarkets located in Ohio.

13. Defendant Gerber Products Company ("Gerber") is a corporation organized and existing under the laws of the state of Michigan which maintains its principal place of business in Parsippany, New Jersey. Gerber manufactures plastic baby bottles, nipples, training cups, and other products that contain BPA. Gerber has conducted and continues to conduct business in Ohio by distributing for sale and selling its products through various stores or supermarkets located in Ohio.

14. Defendant Playtex Products, Inc. ("Playtex") is a corporation organized and existing under the laws of the state of Connecticut which maintains its principal place of business in Westport, Connecticut. Playtex manufactures plastic baby bottles, nipples, training cups, and/or other products that contain BPA. Playtex has conducted and continues to conduct business in Ohio by distributing for sale and selling its products through various stores or supermarkets located in Ohio.

CLASS ALLEGATIONS

15. Each of the Plaintiffs identified in paragraphs 6 through 9 purchased plastic baby bottles, bottle liners, and training cups manufactured by Defendants and containing BPA.

16. Plaintiffs bring this action individually and on behalf of: (a) the Ohio Class, consisting all of persons who reside in the state of Ohio and who purchased plastic baby

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bottles, bottle liners, nipples and plastic training cups which were manufactured by Defendants and which contained BPA, where the product packaging and labeling did not disclose the fact that the product contained BPA and that laboratory studies indicate that BPA is associated with health risks.

17. Depending on information in the control of Defendants and unavailable to Plaintiffs without discovery, the class definitions set forth above may merge into a single national class or into certain sub-classes, the final resolution of which will depend upon the results of discovery.

JURISDICTION AND VENUE

18. Defendants are subject to personal jurisdiction in this Court because they transact business in this State, have committed torts within this State (as discussed below), and their acts or omissions giving rise to Plaintiffs' claims occurred in this State and/or caused injury in this State.

19. Subject matter jurisdiction is proper because Plaintiffs' claim, when aggregated with those claims of all similarly situated individuals within the state of Ohio, exceeds the sum of $5 million, exclusive of interest and costs, providing this Court with original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

20. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this Court because one or more of the Defendants reside in this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Plaintiffs reside in the state of Ohio and all have suffered economic injury and damage within this state.

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ALLEGATIONS COMMON TO ALL COUNTS

21. This action concerns the use of the industrial chemical known as Bisphenol-A (2, 2-bis (4-hydroxyphenly)-propane), or BPA, which is currently used as a primary monomer[1] in polycarbonate plastic and epoxy resins.[2] BPA is a building block in polycarbonate plastics used in clear plastic baby bottles and "training" or spill-resistant cups, as manufactured by Defendants, then distributed and sold in the state of Ohio through various retail outlets.

22. BPA is now one of the highest volume chemicals produced globally, with an annual worldwide production (post-2003) of nearly 6.5 billion pounds. Short-term exposure to environmentally relevant doses of BPA have been linked to a variety of reproductive effects in laboratory animals, including reduced sperm production, alterations in prostate development, and increased susceptibility to prostate carcinogenesis in the male and alterations in mammary gland organization, brain development, and estrous cyclicity in the female. Several studies have reported levels of BPA in human tissues.[3]

23. In studying human exposure to BPA, the U. S. Centers for Disease Control confirmed 95% of all adults tested were found to have significant levels of BPA in their system.

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[1] A monomer (from Greek mono "one" and meros "part") is a small molecule that may beeome chemically bonded to other monomers to form a polymer. A polymer is a substanee composed of molecules with large molecular mass consisting of repeating structural units, or monomers, connected by covalent chemical bonds. The term is derived from the Greek words: "polys" meaning many, and "meros" meaning parts. The individual molecules that 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.

[2] Epoxy Resins are polyether resins formed originally by the polymerization of BPA and epichlorohydrin, having high strength, and low shrinkage during curing and can be used as a coating, adhesive, casting, or foam.

[3] F. vom Saal and C. Hughes, "An Extensive New Literature Concerning Low-Dose Effects of Bisphenol A Shows the Need for a New Risk Assessment," *Environmental Health Perspectives* 113:926-933, 2005.

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Most people carry the chemical around in their bodies, as measured in blood, urine and tissues.[4] This is significant when one considers that estrogen, the natural hormone BPA mimics, works at levels 10,000 times lower than that.

24. In the 1930s, BPA was investigated as part of the search for a synthetic estrogen but another synthesized compound known as Diethylstilbestrol (DES) was found to be an even more powerful estrogen. Thereafter, BPA was virtually forgotten – until the early 1950's when chemists discovered it could be polymerized to fabricate polycarbonate plastics. Unfortunately, the ester bond that links BPA monomers to one another to form polymer chains is unstable, and thus the polymer decays with time. When a liquid, such as baby formula comes into contact with the plastic bottle and training cups containing BPA, the chemical is released into the formula or liquid and ingested by infants.

25. Leaching of BPA from plastic into baby formula or liquid is accelerated when bottles and training cups are subjected to high heat, such as when a bottle is put into a microwave oven to heat the formula or liquid, or when the bottles are boiled for common cleaning or sterilization.

26. BPA is deeply embedded in these polycarbonate plastic baby bottles and training cups. These are common products the infants and young children in the state of Ohio are exposed to everyday.[5]

27. Of immediate and urgent concern is BPA's toxicity and its link to significant health problems and the risks of dangerous developmental, neural and reproductive health effects on infants and young children.

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[4] Tina Hesman Saey, "Government Panel Will Examine Safety of Plastic Chemical" *St. Louis Post- March 5, 2005*

[5] Bill Smith, *"Chemical Used in Plastics is Toxic, Dangerous, Mizzou Researcher Says,"* St. Louis Post-Dispatch, April 30, 2003

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28. For well over a decade, scientists have been concerned with the harmful effects of BPA. Hundreds of studies and papers have repeatedly shown BPA can be toxic, even at extremely low doses, and recent studies have repeatedly confirmed the existence of significant health risks associated with exposure to very low levels of BPA.

29. BPA is a synthetic estrogen known as "xenoestrogen." Synthetic estrogens have been implicated in a variety of endocrine related diseases such as hypospadias and various cancers. These compounds ("xenoestrogens") are a diverse group of substances that mimic the action of the natural hormone "17b-estradiol" in estrogen responsive tissues, and bind to estrogen receptor cells. Agents that cause adverse effects in target organs and tissues act by interfering with the actions of endogenous hormones and receptors.

30. Scientifically, these substances are called "endocrine disrupters." Studies have found that BPA disrupts normal hormone function at low doses and is linked to a wide array of health problems in animals, including brain damage, obesity, abnormal organ development and hyperactivity.

31. In more than 100 experiments conducted on laboratory animals, BPA has been shown to cause genetic changes leading to prostate cancer, decreased testosterone, low sperm counts, and the acceleration of the effects of puberty in young females. In support for the conclusion that human populations are at risk from the effects of BPA, a number of respected scientists have conducted rigorous studies on human tissue and independently confirmed that BPA exposure can cause changes in prostate and breast tissue.[6]

32. As recently as April 2008, the National Institutes of Health (National Toxicology Program) concluded an extensive investigation into the use of BPA. The NIH concluded "there

[6] S. Honma, et al, "Low Dose Effect of In Utero Exposure to Bisphenol-A and Diethylstilbestrol on Female Mouse Reproduction," *Reproductive Toxicology, 16:117-122, 2002.*

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is some concern for neural and behavioral effects in fetuses, infants, and children at current human exposures." Further, the National Toxicology Program has "some concern for Bisphenol A exposure in these populations based on effects in the prostate gland, mammary gland, and an earlier age for puberty in females." "The scientific evidence that supports a conclusion of some concern for exposures in fetuses, infants, and children comes from a number of laboratory animal studies reporting that low level exposure to Bisphenol A during development can cause changes in behavior and the brain, prostate gland, mammary gland, and the age at which females attain puberty."

33. Growing infants are particularly at risk to BPA because they are more susceptible to toxic exposures which can begin at conception as BPA crosses the placental barrier in pregnant women, potentially affecting the embryo or fetus during some of the most critical periods of development and growth.[7] Even after an infant is born its body and immune system remain immature and is not equipped to detoxify powerful estrogen-acting chemicals like BPA.

34. While it is undisputed children are particularly susceptible to the devastatingly harmful effects of endocrine disrupters like BPA, many of the problems associated with BPA exposure do not become obvious or recognizable until years after the exposure takes place. Thus, there can be an unknown number of years in the life of a child before he or she is actually or correctly diagnosed with a disorder, disease, or illness caused by BPA.

35. For these reasons, growing infants and children are particularly at risk from BPA exposure. Because these adverse effects on a child's intellectual ability and growth, as well as the potential for exposure related disease(s), take years or even decades to detect or diagnose, measures must be taken now to protect Ohio's infants and children from exposure to baby bottles and training cups made with BPA.

[7] Philip J. Landrigan et al, Pesticides in the Diets of Infants and Children, *National Academy Press,* 1993.

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36. Parents and consumers who purchase polycarbonate plastic baby bottles and training cups made by Defendants, which are injected into Ohio's marketplace by various retail outlets, are kept in the dark and deliberately not provided with even a word of warning or information on the bottle or cup itself, or on the packaging accompanying these products. They are not informed of the risks of potentially devastating effects their children are exposed to by using baby bottles and cups made with BPA. The Defendants should not be allowed to continue gambling with the health and welfare of Ohio's infants and children while reaping enormous profits year after year in the face of clear and convincing scientific evidence calling for intervention. The risk of harm and injury to the children of Ohio clearly outweighs the utility of including a highly dangerous and controversial chemical component (BPA) in the manufacture of plastic baby bottles and cups intended for use by innocent and vulnerable infants and children of this state.

37. Each year a growing number of studies verify the fact that polycarbonate plastic breaks down and leaches BPA into food or beverages coming in contact with the polycarbonate plastic. To address this contamination issue, in April 1999, Consumer Reports (hereafter "CR") concerned with the growing danger posed by polycarbonate plastic baby bottles leaching BPA into formula and milk consumed by Infants, purchased six such bottles and heated plastic from each in simulated formula. CR found that the plastic from each of these bottles leached the chemical BPA, which in laboratory animals produced physiological effects similar to those produced by estrogen. CR confirmed that during this "endocrine disruption," chemicals interfere with or mimic the action of hormones that can upset normal development and cause permanent injury.

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38. CR calculated that a typical infant who drank formula from a bottle sterilized by heat would be exposed to a BPA dose of about four percent of an amount shown to affect test animals. While this exposure may seem to be very low, safety limits for infant exposure are often set as low as 0.1 percent of the level that has adversely affected animals. By this standard, CR concluded Infants who used the type of bottles tested could be exposed to a BPA dose 40 times higher than the conservative definition of safety most frequently employed. Finally, CR further concluded, based upon its data and the results of the tests it conducted combined with the heightened concern expressed by the scientific community with the sensitivity of Infants to the estrogen-like effects of chemicals such as BPA, that the FDA should re-examine its position on the safety of BPA.[8]

39. In 1999, new evidence and research concerning how BPA affects laboratory animals and how it can leach out of polycarbonate plastic bottles was published by Koji Arizono of Japan's Kumamoto University. Mr. Arizono found that a used polycarbonate baby bottle can leach BPA at daily levels that damaged the brain and reproductive systems in laboratory animals. Mr. Arizono found that if a 9-pound baby drank a quart of liquid per day from the polycarbonate plastic bottle, it could ingest 4 micrograms of BPA.

40. A similar study in 2003 was conducted in Norway on polycarbonate baby bottles. The Norwegian study detected BPA leaching in 12 polycarbonate baby bottles subjected to simulated use, *e.g.* dishwashing, brushing and scrubbing, and boiling.[9] The level of BPA found in the liquids in these bottles exceeded 8 ppb (parts per billion).

41. Following the Norwegian study, the Environment California Research and Policy

[8] Consumer Reports Special Report, 21 April 1999. (http://www.mindfully.org/Plastic/Baby-Bottles-CU21apr99.htm)

[9] C. Brede et al, "Increased Migration Levels of Bisphenol A From Polycarbonate Baby Bottles After Dishwashing, Boiling And Brushing," *Food Additives and Contaminants* 20(7):684-9, 2003

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Center selected five leading baby bottles that were identified by a survey and sold in California, conducted its own study to determine whether BPA is released or leaches into the liquids within these bottles (hereinafter the "California Study"). The California Study confirmed the findings of the Norwegian Study and reported that "all five bottles leached BPA at varying levels in the same range detected in the Norway study." A summary of the testing for BPA leaching from these particular baby bottles is reflected by the following table:

BABY BOTTLE BRAND RANGE OF BPA DETECTED
(in parts per billion)

Brand	BPA Levels
Avent (Natural Feeding Bottle)	8-10 ppb
Dr. Brown's (Natural Flow)	6-7 ppb
Evenflo (Level Classic)	8-9 ppb
Gerber (Premium Feeding System)	6-7 ppb
Playtex (VentAire)	5-6 ppb

42. Most alarming about the California Study is that all five polycarbonate plastic bottles leached BPA at levels found to cause harm according to numerous animal studies evaluating the various health effects from BPA exposure.

43. The dangerous health effects revealed by the California Study was confirmed in a study by the Centers for Disease Control (CDC). This study observed BPA levels at between 0.1 to 9 parts per billion—amounts which equaled or exceeded concentrations known to cause adverse effects in laboratory experiments.

44. In 1953, polymer chemists discovered that BPA could be made into polycarbonate plastic. Despite its harmful effects on humans, BPA-laced plastics were "valued" for their clear,

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rigid, and shatter resistant properties.[10] Despite the fact that BPA was well known to mimic estrogen inside the human body and that the polymer chains tended to be unstable, manufacturers nevertheless went on to make wide use of BPA in the manufacture of a variety of consumer products, including baby bottles and cups. Until recently, BPA has been utilized in virtually every bottle and training cup marketed by major retail outlets for the containment and dispensation of baby formula, milk, and other liquids utilized in the care and feeding of infants and children throughout the state of Ohio. The leading baby bottles are marketed by such household (trade) names as Avent, Dr. Brown's (Handi-Craft), Evenflo, Gerber, and Playtex. They are made by the Defendants.

45. In an attempt to halt the spread of BPA exposure to infants and children, the California Assembly Health and Toxics Committee introduced a Bill (AB 319) which proposed a ban on the manufacture and sale of toys and childcare products containing BPA and phthalates.[11] These chemicals are found in hard, clear-plastic bottles, dishes, teething rings, vinyl books, and beach balls. Most alarming was the fact that the median BPA level in human blood and tissues, including in human fetal blood, was found to be higher than the level that causes adverse effects

[10] E.C. Dodds and W. Lawson, "Molecular Structure in Relation to Estrogenic Activity: Compounds Without a Phenanthrene Nucleus," *Proceedings of the Royal Society of London B* 125:222-232, 1938

[11] Phthalates or phthalate esters, are a group of chemical compounds that are mainly used as plasticizers (substances added to plastics to increase their flexibility). They are ehiefly used to turn polyvinyl chloride from a hard plastic into a flexible plastic. High doses of many phthalates have shown hormonal activity in rodent studies. Studies on rodents involving large amounts of phthalates have shown damage to the liver, kidneys, lungs, and the developing testes. A 2005 - study reported that phthalates may mimic the female hormone oestrogen (xenoestrogens), and cause "feminisation" of baby boys. Phthalates and Baby Boys: Potential Disruption of Human Genital Development. Barrett JR. Environ Health Perspect. 2005 Aug; 113(8): A542. In a 2004 Missouri University Study, urine samples were collected from pregnant women in four U.S. cities. All were found to have levels of phthalate residues in their urine Upon birth of the children whose mother's urine had been previously measured, the genital features and anogenital distance were measured and correlated with the residue levels in the mother's urine. In boys, the highest levels of residue were seven times more likely to have a shortened anogenital distance. There was also a correlation between heightened residue levels and smaller penis sizes. The testes of boys with smaller penises were more likely to have testes that didn't descend properly into the scrotum. Khodayar Rais-Bahram (9 2004). Follow-Up Study of Adolescents Exposed to Di(2-Ethylhexyl) Phthalate (DEHP) as Neonates on Extracorporeal Membrane Oxygenation (ECMO) Support.

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in rodents. These findings suggest that human exposure to significant amounts of BPA is unrelenting and continuous.

46. Professor Frederick vom Saal, an endocrinologist from the University of Missouri-Columbia, has studied BPA for well over a decade and is considered one of this Country's leading researchers on BPA. Dr. vom Saal and his colleagues published one of the first studies linking reduced sperm production with BPA exposure.[12] These scientists fed BPA to female rats at a dose of 20 μg/kg/day for six days during pregnancy. They found that males born to exposed rats produced 20 percent less sperm after they matured, than normal males. They also found that treated offspring had physical changes in hormone-secreting glands that were not found in untreated mice, even at a dose 10 times smaller. Professor vom Saal has conducted dozens of studies on BPA and believes it is essentially a female sex hormone similar to estrogen. Vom Saal's research, which includes numerous tests on lab mice, has shown that embryonic and infant mice exposed to small amounts of BPA tend to become obese as adults. He posits this same chemical could be responsible for the current rise in record numbers of human obesity. His tests on male mice established that BPA can also cause increased prostate size, decreased sperm production and increased aggression.

47. Professor vom Saal concluded that because the ester bonds in BPA-based polymers are subject to hydrolysis, the leaching of BPA into the food and water contained by polycarbonate plastics has led to widespread human exposure which poses a threat to human health.[13] In his Commentary, published in August 2005, vom Saal documented the exposure of

[12] F. vom Saal, *et al,* "A Physiologically Based Approach to the Study of Bisphenol A and Other Estrogenic Chemicals on the Size of Reproductive Organs, Daily Sperm Production, and Behavior," *Toxicology & Industrial Health,* 14:239-260, 1998.

[13] Frederick S. Vom Saal and Claude Hughes, *An Extensive New Literature Concerning Low-dose Effects of Bisphenol- A Shows the need for a New Risk Assessment,* Environmental Health Perspectives, Volume 113, Number 8, August 2005.

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experimental animals to "low-doses" of BPA, which result in tissue levels within and even below the range of human exposure, has been related to adverse effects in a large number of recently published studies. He cites a case control study that reported blood levels of BPA that were related to ovarian disease in women.[14]

48. As of December 2004, there were 115 published *in vivo* studies concerning low-dose effects of BPA, with 94 of these studies reporting significant effects. In 31 publications with vertebrate and invertebrate animals, significant effects occurred below the predicted "safe" or reference dose of 50 μg/kg/day of BPA. An estrogenic mode of action of BPA was confirmed by *in vitro* experiments, which observed disruption of cell function at 10 – 12 M or 0.23 PPT. Vom Saal notes that chemical manufacturers continue to discount these published findings because Industry-funded studies have declined to report significant effects of low doses of BPA, even though more than 90% of government-funded studies have reported significant effects. Unfortunately, some industry-funded studies have simply ignored the results of positive controls, and many other studies reporting no significant effects elected to use a strain of rat that was wholly inappropriate for the study of estrogenic responses. Professor vom Saal and his colleagues propose that a new risk assessment for BPA is unquestionably overdue, based upon the following scientific conclusions: *a)* the extensive new literature reporting adverse effects in animals at doses below the current reference dose; *b)* the high rate of leaching of BPA from food and beverage containers, leading to widespread human exposure; *c)* that the median BPA level in human blood and tissues, including in human fetal blood, is higher than the level that causes

[14] T. Takeuchi, et al., *Positive relationship Between androgen and the endocrine Disruptor, Bisphenol -A, in normal women and Women with Ovarian Dysfunction.* Endocrine J. 51:165-169, 2004.

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adverse effects in mice; and *d)* recent epidemiologic evidence that BPA is related to disease in women.[15]

49. Other studies have shown that BPA has been associated with changes in brain, pancreas, and thyroid function, as well as hormone levels and behavior. It has been linked with the increased secretion of insulin, which can lead to Type II Diabetes, obesity, and hypertension. In fact, the link between exposure to synthetic chemicals that mimic the actions of endogenous hormones and risks to human health has been an area of concern to independent, unbiased scientists and researchers for a long time. As early as 1970, Herbst and Scully reported vaginal clear-cell adenocarcinoma in six, 14 to 21 year old women exposed *in utero* to the synthetic estrogenic drug diethylstilbestrol ("DES"). This rare cancer had been reported previously only in elderly women, but subsequent studies confirmed an increased incidence among daughters of women who were given DES during pregnancy to prevent miscarriage.

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

51. Other recent studies reveal a unique set of meiotic defects in BPA-exposed females and demonstrate that a knockout of one of the two known estrogen receptors phenocopies fetal BPA exposure.[16] Together, these findings provide the first known demonstration that early meiotic events in the fetal ovary are responsive to estrogen.

52. Extensive scientific literature reports adverse health effects from BPA at very low

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[15] Frederick Vom Saal and Claude Hughes, cited above.

[16] P. Alonso-Magdalena, et al, *"The Estrogenic Effect of Bisphenol A Disrupts the Pancreatic β-Cell Function In Vivo and Induces Insulin Resistance,"* Environmental Health Perspectives, 114:106-112, 2006.

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

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

54. Dr. Hunt's findings confirmed that extremely low doses of BPA exposure are linked to an error in cell division called aneuploidy, which may be the culprit in causing up to 20 percent of all birth defects in infants. When chromosomes sort incorrectly in a father's sperm or a mother's egg, diseases and frequent miscarriages can occur. It has been well established that the incorrect sorting of chromosomes leads to diseases like Down Syndrome, Turner Syndrome, and Klinefelter Syndrome. The damage is seen in egg cells of female mice. When these cells try to divide, their chromosomes don't line up right and in humans, this results in spontaneous abortion, birth defects, or mental retardation, says Dr. Hunt. "We were stunned by how low a

[17] P.A. Hunt et al, "Bisphenol A Exposure Causes Meiotic Aneuploidy in the Female Mouse," *Current Biology* 13:546-553, 2003.

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dose it took. I am becoming pretty convinced there are significant effects [of BPA] at pretty low exposures.[18]

55. While Dr. vom Saal acknowledged there have been scores of studies that all show polycarbonate plastic to be dangerous, he stated that Dr. Hunt's findings scare him most of all. "What is so important about this finding is we are talking about something that causes spontaneous abortions of babies, . . .and then there is the horrifying fact that babies are born with these chromosomal abnormalities. This is a higher level of concern, a major new finding of a really profound adverse effect of this chemical in mice that were just drinking out of old baby bottles."[19]

56. Dr. Hunt's findings also concern Dr. vom Saal's colleague Wade Welshons, Ph.D., a reproductive endocrinologist. He considers it shocking that Dr. Hunt's study shows that BPA exposure may be unavoidable. Dr. Hunt concluded that as the polycarbonate products get reused, they start to leach BPA. "The part that will make your hair stand on end is baby bottles. There are made of polycarbonate plastic. People who use them say that after just washing them in the dishwater they see these same changes in the bottles. When we see bottles start to turn cloudy, they are leaching. And when they get sticky, they are giving off a lot of this stuff [BPA]."[20] This led to her finding genetic defects in eggs from mice that were supposed to be normal. Dr. Hunt was surprised to learn that the bottles gave off BPA much more easily than she had originally suspected.

57. Subsequent research by Dr. Hunt and her colleagues that show exposure to BPA can lead to chromosomal abnormalities that affect future generations as well. This is because female mammals, including mice and humans, form their eggs while still in their mother's

[18] Daniel J. DeNoon, *Danger in Plastic Baby Bottles?* WebMD Medical News, March 31, 2003.
[19] *Ibid.*
[20] *Ibid.*

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womb. Thus, the eggs that will become a female's grandchildren are affected through *in utero* exposure to Bisphenol A. Dr. Hunt's research shows us that BPA exposure can affect three generations. This prospect poses an enormous threat not only to the present generation of infants and children, but also to females whose eggs have been affected by BPA exposure. Our ability to reproduce, as well as the health of our children and even our children's children, delicately hinges on an exquisitely timed series of chemical reactions controlled by infinitesimally tiny amounts of hormones. Every key developmental stage is driven by a tightly choreographed fluctuation in hormones. Thus, when an endocrine disrupter like BPA is added to the mix, the list of potential effects covers every aspect of reproductive and sexual development – from preconception to menopause.

58. Other animal studies have linked BPA to low sperm counts, hyperactivity, early puberty, obesity, small testes size, and enlarged prostates.[21] A study by Dr. Beverly Rubin and her colleagues at Tufts University Medical School revealed that BPA makes rodents grow larger after they are exposed in the womb, confirming similar findings from previous studies. When rats were fed 100 μg/kg/day of BPA during pregnancy through lactation, their offspring were notably heavier after birth and into adulthood. Significantly, in the female offspring, the lower of the two BPA doses used in the study produced a larger and more persistent effect on body weight relative to the higher dose. In addition, the fact that the effect persisted long after exposure for the female offspring suggests BPA can increase the number of fat cells in rats and predispose them to heavier weight throughout their lives.[22]

59. In 2002, a Japanese team of researchers at the Ehime College of Health Science

[21] Chhanda Gupta, "Reproductive Malformation of the Male Offspring Following Maternal Exposure to Estrogenic Chemicals," *Proceedings of the Society for Experimental Biology and Medicine* 224:61-68, 2000.

[22] B.S. Rubin et al, "Perinatal Exposure to Low Doses of Bisphenol A Affects Body Weight, Patterns of Estrous Cyclicity, and Plasma LH Levels," *Environmental Health Perspectives* 109:675-680, 2001; K.L. Howdeshell et al, "Exposure to Bisphenol A Advances Puberty," *Nature,* 401:763-764, 1999

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discovered that BPA can increase the conversion of embryonic cells into fat cells. In the body this effect could result in larger numbers of fat cells developing. In addition to converting to fat cells, treated cells increased their fat content by 150 percent over 11 days. Combined with insulin, BPA increased the fat content of cells by 1300 percent. In other words, this experiment documented that BPA could trigger and promote the two main processes in developing obesity.[23]

60. In 2004, another study confirmed these findings, showing that BPA alone and with insulin increased the uptake of sugar into fat cells.[24]

61. In most studies, BPA has been found to mimic the actions of estrogen developing neurons. In specific areas of the brain, however, BPA can have the paradoxical effect of *inhibiting* the activity of estrogen, which normally increases growth and regulates the viability of connections between neurons.[25] In this regard, BPA is similar to the breast cancer drug Tamoxifen, which stimulates estrogenic responses in some tissues and inhibits estrogenic responses in other tissues. The concern relating to this inhibitory effect of BPA is that this type of disruption is associated with impaired learning and memory. Whether BPA is mimicking or inhibiting estrogen, BPA appears to trigger steps important in the development of the brain at the wrong times, or encourages improper connections in the brain to be made. Mounting evidence from the last several years show that BPA alters brain development, leading to a number of different potential problems, including hyperactivity, an increase in aggression, changes in response to painful and fear provoking stimuli, impaired learning and memory,

[23] H. Masuno et al, "Bisphenol A in Combination with Insulin Can Accelerate the Conversion of 3T3-L1 Fibroblasts to Adipocytes," *Journal of Lipid Research,* 43:676-684, May 2002.

[24] K. Sakurai et al, "Bisphenol A Affects Glucose Transport in Mouse 3T3-F442A Adipocytes," *British Journal of Pharmacology,* 141:209-214, 2004.

[25] N.J. MacLusky, T. Hajszan, and C. Leranth, "The Environmental Estrogen Bisphenol A Inhibits Estrogen-Induced Hippocampal Synaptogenesis," *Environmental Health Perspectives,* 13:675-679, 2005.

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decreased maternal behavior, altered play and other socio-sexual behaviors, and reversal of normal sex differences in the brain structure and elimination of sex differences in behavior.

62. A recent study showed that prenatal exposure to BPA causes mammary gland cancer in adult rats.[26] Prior research had shown BPA altered the growth of mammary tissues in ways that increase the risk of breast cancer and increase the sensitivity of breast tissue to cancer causing agents. In one of these earlier studies, scientists exposed mouse fetuses to doses of 25 and 250 ng/kg/day—2,000 times lower than the amount deemed "safe" by the U. S. EPA for humans in the U.S—causing increased breast tissue development.[27] Higher density breast tissue is a known risk factor for cancer.

63. Dr. Motoharu Sakaue and his colleagues in Japan independently discovered that BPA reduces the number of sperm in rats, even when given doses after puberty.[28] After feeding small doses to rats (20 μg/kg/day for six days at week 13 of life) they noted a generalized decline in the ability of treated rats to produce sperm. These scientists concluded that BPA retarded the development of germ cells that normally takes place as the male rat's reproductive system matures from week 14 to week 18. They further concluded that the effects occurred in a dose range "relevant to the daily level of exposure in man."

64. On or about November 28-30, 2006, a National Institutes of Health Funded Group consisting of 38 of the world's leading scientists with regard to BPA, met in Chapel Hill, North Carolina to examine the relationship between BPA and the negative trends in human health that

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[26] T.J. Murray et al, "Induction of mammary gland ductal hyperplasias and carcinoma in situ following fetal bisphenol A exposure," *Reproductive Toxicology,* in press, 2006

[27] W.E. Barlow et al, "Prospective Breast Cancer Risk Prediction Model for Women Undergoing Screening Mammography," *Journal of the National Cancer Institute,* 17:Vol. 98, 6 September 2006.

[28] M. Sakaue et al, "Bisphenol A Affects Spermatogenesis in the Adult Rat Even at a Low Dose," *Journal of Occupational Health,* 43:185-190, 2001.

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have occurred in recent decades such as increases in abnormal penile/urethra development in males, early sexual maturation in females, increased neuro-behavioral problems such as ADHD and autism, increased childhood and adult obesity and Type II diabetes, regional decreases in sperm count, and increases in hormonally-mediated cancers, such as prostrate an breast cancers. Heightened concern was paid to the relationship between treatment with "low doses" of BPA and the many negative health outcomes confirmed by experimental studies in laboratory animals as well as *in vitro* studies that identified plausible molecular mechanisms responsible for mediating such effects. This eminent collection of scientists recently concluded there is extensive evidence documenting that negative health outcomes may not become apparent until long after BPA exposure during development has occurred. The issue of a very long latency for effects *in utero* is well known and, furthermore, these developmental effects are irreversible and can occur due to low-dose exposure during brief sensitive periods in development even though BPA may not be detected when the damage or disease is expressed. Furthermore, the Group's findings indicate that acute studies in animals, particularly traditional toxicological studies that only involve the use of high doses of BPA, do not reflect the situation in humans.

65. As the above discussion shows, virtually all polycarbonate baby bottles contain levels of BPA that are potentially unsafe and pose a direct and immediate threat to the health and safety of infants and children, including the children of and in the care of the members of the Ohio Class.

66. This action concerns the use of the chemical BPA and the failure of the Defendants to disclose the fact that their products contain BPA and associated risks of harm to Plaintiffs and the members of the Ohio Class, including Ohio consumers. This failure to disclose is a misrepresentation under statutory and common law in Ohio.

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67. Of the five baby bottles made by the Defendants (Avent, Handi-Craft, Evenflo, Gerber, and Playtex), each of their baby bottle products leached BPA in dangerously significant amounts into the formula and fluid contents that it came into contact with. Alarmingly, all five polycarbonate plastic bottles leached BPA at levels found to cause harm in numerous animal studies evaluating various health effects from exposure to the chemical. Although consumers can try to avoid polycarbonate plastic bottles, most parents are simply unaware that a toxic chemical which acts like a female hormone can leach from these products and contaminate the formula or liquid ingested by their infants and children. This lack of awareness on the part of parents, including the members of the Ohio Class is a direct result of the Defendants' efforts to perpetuate a very lucrative revenue stream that would be interrupted and reduced if the general public and persons similarly situated to Plaintiffs were to learn the facts and seek safer alternatives – which demonstrably exist.

68. Additionally, no disclosure consistent with Ohio law or the law of other states is apparent on any of the Defendants' plastic baby bottles or training cups containing BPA.

69. That Defendants continue to claim there are no credible scientific studies that demonstrate BPA leaches from its products and is ultimately ingested by Plaintiffs and other infants and children is irrelevant under Ohio law and other states' laws.

70. The studies and papers discussed above, as well as many other studies not mentioned here, have been widely reported and the Defendants cannot state that they are unaware or have not appreciated the risks of injury these products present. In fact, on April 18, 2008, defendant Playtex announced in a press release that it would immediately offer non-BPA bottles and cups and will stop using BPA in all products this year.

71. However, all of the Defendants, and even Playtex, have a vested interest in

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ensuring their share of profits derived from the continued manufacture and sale of one of the top 50 products produced by the chemical industry, which generates revenues amounting to $6 million dollars per day (in the U.S., Europe, and Japan alone) is not curtailed or reduced.[29] Global BPA production exceeds 6.5 billion pounds per year and the chemical industry, which would include at least the Defendants, collectively earned $45 billion dollars in 2005.[30]

72. During all times relevant hereto, the Defendants engaged in long-term advertising campaigns aimed at inducing Plaintiffs and the members of the Ohio Class to purchase Defendants' BPA-laced products. The Defendants subjected Plaintiffs, and all other similarly-situated consumers, to unnecessary risks of harm and injury by using a chemical substance, which the Defendants either knew to be unsafe or were aware of studies that concluded products made with BPA, were, at the very least, potentially unsafe and unreasonably dangerous. As there have been hundreds of studies concluding that BPA, even at very low doses cause many types of injuries or disorders, the Defendants have deliberately and callously ignored the potential injuries their products could cause to infants and children. Defendants' conduct is reprehensible and constitutes a degree of callous indifference toward the Plaintiffs and all other similarly-situated consumers. Defendants have available to them a safer alternative to BPA. The Defendants shamefully subordinated the safety, health and welfare of the infants and children to their insatiable desire for profits at any cost.

73. During all times relevant hereto, the Defendants have, upon information and belief, possessed full knowledge of the studies and reports discussed above. Moreover, the Defendants have, upon information and belief, conducted their own independent studies and

[29] Elvira Greiner, Thomas Kaelin and Goro Toki, SRI Consulting, *Chemical Economics Handbook Report: Bisphenol A,* February 2001.

[30] F. vom Saal and C. Hughes, "An Extensive New Literature Concerning Low-Dose Effects of Bisphenol A Show the Need for a New Risk Assessment," *Environmental Health Perspectives* 113:926-933, 2005.

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have made similar conclusions as those reached by independent and unbiased scientists who have found that BPA can cause numerous and varied injuries to lab animals even at very low doses. Moreover, infants and children are particularly sensitive and therefore are at a heightened risk of harm and injury to BPA exposure and ingestion, due to their immature immune systems and underdeveloped detoxification mechanisms.

74. During all times relevant hereto, the Defendants have, upon information and belief, made deliberate misrepresentations concerning the risk of harm associated with their baby bottles and child products containing BPA while refusing to make honest disclosures to Plaintiffs and other similarly-situated consumers. Their efforts to misrepresent and avoid disclosure was part of a deliberate and calculated endeavor to induce Plaintiffs into believing BPA-laced baby bottles and training cups are safe and free from any risk of harm or injury.

75. During all times relevant hereto, these bottles and other children's items containing BPA were and are widely marketed throughout the state of Ohio and other states by various retail outlets.

76. The Plaintiffs, and all other similarly-situated consumers in Ohio, relied upon the Defendants' misrepresentations and lack of disclosure, and have sustained injury as a result thereof.

COUNT I
(Intentional Misrepresentation)

77. Plaintiffs incorporate by reference and reassert the allegations contained in paragraphs 1 through 78, as if fully set forth herein.

78. In their advertising, packaging, labeling and public statements, Defendants represented that Defendants' products were safe and intended for use by infants and children.

79. In addition, Defendants intentionally concealed and failed to disclose the fact that

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their products contained BPA and that laboratory studies indicate that BPA is associated with health risks.

80. Defendants' affirmative representations were false and Defendants knew they were false at the time such representations were made.

81. Further, Defendants had a duty to disclose to Plaintiffs, and the Ohio Class, the fact that Defendants' products contained BPA and that laboratory studies indicate that BPA is associated with health risks.

82. Defendants' representations and their concealment and failure to disclose were material: if Defendants had disclosed the fact that their products contained BPA and that laboratory studies indicate that BPA is associated with health risks, Plaintiffs and the Ohio Class would not have purchased Defendants' bottles, bottle liners and training cups for use by their infants and children.

83. Defendants intended that their representations and their concealment/lack of disclosure would be relied upon. In fact, Defendants knew that if they disclosed the fact that their products contained BPA and that laboratory studies indicate that BPA is associated with health risks, Plaintiffs and the Ohio Class would not purchase Defendants' products.

84. Plaintiffs and the Ohio Class did not know that Defendants' representations were false or that Defendants were intentionally concealing a material fact concerning their products.

85. Plaintiffs had a right to rely upon Defendants' representations and also to rely upon Defendants to disclose material health-related information concerning their products.

86. As a direct and proximate result of Defendants' false and intentional misrepresentations, and Defendants' deliberate concealment and failure to disclose, Plaintiffs

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were damaged because they purchased for and used products with their children that Plaintiffs would not have purchased or used if Defendants had disclosed the truth. To the extent Plaintiffs retain these products, they must be replaced with bottles, liners and training cups that are not laced with BPA.

87. Defendants' false representations and their deliberate concealment and failure to disclose was outrageous because of Defendants' evil motive or reckless indifference to the rights of others, such that Defendants should be held liable for punitive damages in an amount sufficient to punish Defendants and others from like conduct.

WHEREFORE, Plaintiffs and the Ohio Class pray for the entry of judgment in their favor, and against Defendants, and each of them, for:

1. Actual damages in an amount according to proof;

2. Punitive damages in an amount according to proof;

3. Prejudgment and post-judgment interest, to the extent allowed by law;

4. Injunctive relief, including an Order suspending all further sales and advertising by all Defendants who do not include a bold face disclosure indicating the contents of Bisphenol-A in the above-described products and that laboratory studies indicate that Bisphenol-A is associated with health risks, and for corrective advertising;

5. Restitution to the Plaintiffs and to the Class of purchasers for the full value of all sales of all baby bottles, liners and cups containing Bisphenol-A;

6. Plaintiffs' attorney's fees and costs incurred herein; and

7. Such other and further relief as the Court deems just and appropriate.

COUNT II

(Negligent Misrepresentation)

88. Plaintiffs incorporate by reference and reassert the allegations contained in paragraphs 1 through 87 as if fully set forth herein.

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89. In their advertising, packaging, labeling and public statements, Defendants represented that Defendants' products were safe and intended for use by infants and children. Such representations were intentionally made in the regular course of business.

90. In addition, Defendants failed to disclose the fact that their products contained BPA and that laboratory studies indicate that BPA is associated with health risks.

91. Defendants failed to supply the foregoing information in the course of their business.

92. Defendants failed to provide the foregoing information for the guidance of Plaintiffs and the Ohio Class in purchasing baby bottles, bottle liners and training cups for their children or children under their care.

93. Because of Defendants' failure to exercise reasonable care, Defendants' affirmative representations were false.

94. Further, Defendants had a duty to disclose to Plaintiffs and the Ohio Class the fact that Defendants' products contained BPA and that laboratory studies indicate that BPA is associated with health risks and Defendants failed to perform such duty as a result of their failure to exercise reasonable care.

95. Defendants' representations and their concealment and failure to disclose were material: if Defendants had disclosed the fact that their products contained BPA and that BPA is associated with health risks, Plaintiffs and the Ohio Class would not have purchased Defendants' bottles, bottle liners and training cups for use by their infants and children.

96. Defendants intended that their representations and their concealment/lack of disclosure would be relied upon by Plaintiffs and the Ohio Class in purchasing products for their children or children under their care.

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97. Plaintiffs and the Ohio Class did not know that Defendants' representations were false or that Defendants had neglected to disclose a material fact concerning their products.

98. Plaintiffs had a right to rely upon Defendants' representations and also to rely upon Defendants to disclose material health-related information concerning their products.

99. As a direct and proximate result of Defendants' negligent misrepresentations and failure to disclose, Plaintiffs were damaged because they purchased and used products with their children that Plaintiffs would not have purchased or used if Defendants had disclosed the truth. To the extent Plaintiffs retain these products, they must be replaced with bottles, liners and training cups that are not laced with BPA.

WHEREFORE, Plaintiffs and the Ohio Class pray for the entry of judgment in their favor, and against Defendants, and each of them, for:

1. Actual damages in an amount according to proof;
2. Punitive damages in an amount according to proof;
3. Prejudgment and post-judgment interest, to the extent allowed by law;
4. Injunctive relief, including an Order suspending all further sales and advertising by all Defendants who do not include a bold face disclosure indicating the contents of Bisphenol-A in the above-described products and that laboratory studies indicate that Bisphenol-A is associated with health risks, and for corrective advertising;
5. Restitution to the Plaintiffs and to the Class of purchasers for the full value of all sales of all baby bottles, liners and cups containing Bisphenol-A;
6. Plaintiffs' attorney's fees and costs incurred herein; and
7. Such other and further relief as the Court deems just and appropriate.

COUNT III

(Violation of Ohio Consumer Protection Act)

100. Plaintiff incorporates paragraphs 1 through 99 as if fully set forth herein.

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101. The representative Plaintiffs and the class of plaintiffs are "consumers" within the meaning of the Ohio Consumer Protection Act, Ohio Revised Code ("O.R.C.") §1345.01 (D).

102. All of the Defendants named herein are "suppliers" within the meaning of the Ohio Consumer Protection Act, O.R.C. § 1345.01 (C).

103. In advertising and other statements, the Defendants have knowingly, or with reason to know, misrepresented the safety and effectiveness of their baby bottles and other children's' products.

104. The Defendants have willfully failed to disclose the risk of harm that BPA can cause from the use of their products.

105. The Defendants have known of the risk of BPA causing harm to individuals and that the representations regarding the safety of said products were false and misleading.

106. The Defendants failed to disclose that there were any studies or evidence indicating that the use of BPA in their products could cause harm or damage to infants, and made affirmative assurances their products were safe that consumers were likely to rely upon..

107. Such information was material to the transaction as defined by the Ohio Consumer Protection Act, specifically that:

a) The Defendants have engaged in deceptive acts and practices in violation of the Ohio Consumer Protection Act, O.R.C. 1345.02(A)

b) The Defendants have engaged in deceptive acts and practices in violation of the Ohio Consumer Protection Act,. O.R.C. 1345.02(B) (1) and (2).

c) The Defendants have engaged in unconscionable acts and practices in violation of the Ohio Consumer Protection Act, O.R.C. 1345.03(A), and O.R.C. 1345.03(B) (1) and (6).

108. As a direct and proximate result of Defendants' false,

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deceptive, and unconscionable acts and practices, and Defendants' concealment or omissions concerning their products, Plaintiffs were damaged through the purchase and use of Defendants' products by their children. Plaintiffs would not have purchased or used such products if Defendants had disclosed the truth.

a) To the extent Plaintiffs retain Defendants' products, these products should be replaced with bottles, liners and training cups that are not laced with BPA.

109. Defendants' violations of the Ohio Consumer Protection Act were outrageous because of Defendants' evil motive or reckless indifference to the rights of others, such that Defendants should be held liable for punitive damages in an amount sufficient to punish Defendants and others from like conduct.

WHEREFORE, Plaintiffs and the Ohio Class pray for the entry of judgment in their favor, and against Defendants, and each of them, for:

1. Actual damages in an amount according to proof;
2. Punitive damages in an amount according to proof;
3. Prejudgment and post-judgment interest, to the extent allowed by law;
4. Injunctive relief, including an Order suspending all further sales and advertising by all Defendants who do not include a bold face disclosure indicating the contents of Bisphenol-A in the above-described products and that laboratory studies indicate that Bisphenol-A is associated with health risks, and for corrective advertising;
5. Restitution to the Plaintiffs and to the Class of purchasers for the full value of all sales of all baby bottles, liners and cups containing Bisphenol-A;
6. Plaintiffs' attorney's fees and costs incurred herein; and
7. Such other and further relief as the Court deems just and appropriate.

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DEMAND FOR JURY TRIAL

Plaintiffs, individually and on behalf of the classes of persons within the state of Ohio who purchased plastic baby bottles, bottle liners and training cups containing the synthetic chemical Bi Bisphenol-A, demand trial by jury on all claims.

Respectfully submitted,

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Counsel for Plaintiffs, individually and on behalf of the classes of persons within the state of Ohio and throughout the United States of America who purchased plastic baby bottles, bottle liners and training cups containing the synthetic chemical Bisphenol-A