

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ASHLEY CAMPBELL, on behalf of :
herself and all other similarly situated persons :

PLAINTIFFS

v.

CASE NO. _____

PLAYTEX PRODUCTS, INC., on behalf of :
itself and on behalf of a Defendant Class of :
producers, manufacturers, and/or distributors of :
polycarbonate plastic bottle products containing :
the industrial chemical Bisphenol-A :

DEFENDANTS

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Ashley Campbell (“Plaintiff”), individually and on behalf of all other persons similarly situated, files this Class Action Complaint (the “Complaint”) and alleges upon personal knowledge matters pertaining to herself and her own acts, and as to all other matters, upon information and belief, based upon the investigation undertaken by her counsel:

I. SUMMARY OF THE ACTION

1. This is a nationwide class action lawsuit brought on behalf of Plaintiff and other similarly situated individuals (the “Plaintiffs” and the “Plaintiff Class”) against Playtex Products, Inc. (“Defendant Playtex”) individually, and as the representative of a Defendant class (the “Defendants” and the “Defendant Class”) comprised of all entities which produce, manufacture, and/or otherwise distribute polycarbonate plastic bottle products containing the industrial chemical Bisphenol-A (“BPA”) that have been subsequently purchased by Plaintiffs.

Specifically, Plaintiff brings this action on behalf of those who, over the past five years, purchased polycarbonate plastic bottle products containing BPA that were produced, manufactured, distributed, and/or sold by the Defendants and who were accordingly damaged thereby.

2. BPA, a chemical which Defendants use to make their polycarbonate plastic bottle products, is a dangerous chemical that has been linked to serious human health problems. Indeed, researchers and scientists have been very concerned with the harmful effects of BPA for an extended period of time. For well over a decade, hundreds of studies and papers, including very recent reports, have repeatedly shown that BPA can be toxic to humans even at extremely low doses. Recent studies on lab animals have confirmed significant health risks associated with exposure to very low levels of BPA, and in particular, its estrogenic effect.

3. Yet, as alleged more fully below, despite this well-documented scientific evidence, the Defendants have failed (and continue to fail) to disclose that their polycarbonate plastic bottle products are formulated using this dangerous chemical which has been known for years to be toxic in several respects and which poses serious hazards to individuals' health. Indeed, the products are often marketed by highlighting their supposed benefits to the overall environmental and, most disturbingly, individual human health with no mention as to potentially toxic substance the products contain.

4. Quite simply, Defendants have breached (and continue to breach) their duty to disclose relevant and appropriate information regarding BPA in the marketing and sale of their polycarbonate plastic bottle products. Accordingly, Plaintiff seeks redress in the form of damages, disgorgement, restitution and any other appropriate relief including injunctive relief.

II. PARTIES

5. Plaintiff is a resident of the State of Arkansas, Pulaski County. Plaintiff purchased polycarbonate plastic bottle products containing BPA and bearing the mark of Defendant Playtex.

6. Defendant Playtex, is a Connecticut Corporation with its principal offices located at 300 Nyala Farms Road, Westport, Connecticut. Defendant Playtex produces, manufactures, distributes, and/or sells an array of polycarbonate plastic bottle products, primarily baby bottles and baby bottle accessories.

III. JURISDICTION AND VENUE

7. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332. The Plaintiff Class involves more than 100 individuals. A member of the Plaintiff Class is a citizen of a state different from the Defendants, and the amount of controversy, in the aggregate, exceeds the sum of \$5,000,000.00 exclusive of interest and costs.

8. Venue is proper in this district pursuant to Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. §1332, and 28 U.S.C. §1391. Defendant Playtex is incorporated under the laws of the State of Connecticut; has availed itself to the laws and protection of the State of Connecticut; markets and sells plastic bottle products here; and has its principal offices in this District.

IV. FACTUAL ALLEGATIONS

A. Bisphenol A, Its Uses, And Actual/Potential Health Risks.

9. As discussed above, this action concerns potentially toxic material used in polycarbonate plastic bottle products produced, manufactured, distributed, and/or sold by Defendants. The potentially toxic material, otherwise known as the industrial chemical

Bisphenol-A (2, 2-bis (4-hydroxyphenyl)-propane, hereinafter referred to as “BPA”), is currently used as a primary monomer¹ in polycarbonate plastic and epoxy resins.²

10. BPA is a fundamental building block in polycarbonate plastics that are widely used in a myriad of consumer products – from mostly clear plastic baby bottles, training or spill-proof cups, and reusable drink containers (like those produced, manufactured, distributed, and/or sold by Defendants and purchased by Plaintiffs) to children’s toys, microwavable food containers, beverage cans with epoxy linings, and hundreds of other products that consumers come into contact with every day.

11. Although the strong polycarbonate plastic that BPA is used for appears indestructible and safe, unfortunately the material is dangerously flawed in a manner undetectable to the human eye. The ester bond that links BPA monomers to one another to form polymer chains is not stable, and thus the polymer decays with time. When liquid or food comes into contact with the decayed area, BPA is released into the liquid or food and ingested by the consumer. This leaching of BPA from the plastic into the liquid or food is accelerated when these bottles are subjected to heat such as when the bottle is microwaved.

12. The extreme cause for concern is that, for well over a decade, scientists have commented on, and been very troubled with, the harmful effects of BPA on human health. Hundreds of studies and papers have repeatedly shown that BPA can be toxic even at extremely low doses and recent studies on lab animals have confirmed significant health risks associated with exposure to very low levels of BPA, and in particular, its estrogenic effect.

¹ A monomer is a small molecule that may become chemically bonded to other monomers to form a polymer. A polymer is a substance composed of molecules with large molecular mass consisting of repeating structural units, or monomers, connected by covalent chemical bonds. The individual molecules that comprise a polymer are referred to as polymer molecules. In popular usage, the term “polymer” is used as a synonym for plastic.

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

13. Most recently, in April 2008, the National Toxicology Program (“NTP”) issued a draft brief prepared by the NTP Center for the Evaluation of Risks to Human Reproduction (“CERHR”) titled *DRAFT NTP BRIEF ON BISPHENOL A* (hereafter “NTP Draft Brief,” attached hereto as Exhibit A) that discusses the chemical, human exposure, and whether BPA can affect human development or reproduction.

14. The salient points about what BPA is and its uses are summarized below:

a. BPA is a high production volume chemical that is widely used in the manufacture of polycarbonate plastics and epoxy resins;

b. Polycarbonate plastics have many applications including use in certain food and drink packaging, e.g., water and infant bottles, compact discs, impact-resistant safety equipment, and medical devices;

c. Polycarbonate plastics are typically clear and hard and marked with the recycle symbol “7” or may contain the letters “PC” near the recycle symbol; and

d. Epoxy resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes.

15. NTP also explains how humans come into contact with BPA:

a. The primary source of exposure to BPA for most people is through the diet, in food and beverages;

b. BPA can migrate into food from food and beverage containers with internal epoxy resin coatings and from consumer products made of polycarbonate plastic such as baby bottles, tableware, food containers, and water bottles;

c. The highest estimated intakes of BPA in the general population occur in infants and children. Infants and children have higher intakes of many widely detected

environmental chemicals because they eat, drink, and breathe more than adults on a pound for pound basis. In addition, infants and children spend more time on the floor than adults and may engage in certain behaviors, such as dirt ingestion or mouthing of plastic items that can increase the potential for exposure; and

d. Biomonitoring studies show that human exposure to BPA is widespread. The 2003 – 2004 National Health and Nutrition Examination Survey (NHANES III) conducted by the Centers for Disease Control and Prevention (CDC) found detectable levels of BPA in 93% of 2517 urine samples from people 6 years and older. This study did not include children younger than 6 years of age. The CDC NHANES data are considered representative of exposures in the United States because of the large number of people included in the survey and the process used to select participants. In addition, the analytical techniques used by the CDC to measure BPA are considered very accurate by the scientific community.

16. NTP observed that studies with laboratory rodents show that exposure to high dose levels of BPA during pregnancy and/or lactation can reduce survival, birth weight, and growth of offspring early in life, and delay the onset of puberty in males and females. “These ‘high’ dose effects of [BPA] are not considered scientifically controversial and provide *clear evidence* of adverse effects on development in laboratory animals.” *NTP Draft Brief*, at 9.

17. NTP also observed that a variety of effects related to neural and behavior alterations, precancerous lesions in the prostate and mammary glands, altered prostate gland and urinary tract development, and early onset of puberty in females have been reported in laboratory rodents exposed during development to much lower doses of BPA that are more similar to human exposures.

18. NTP concluded, in part, that current exposures to BPA are possibly high enough to cause concern:

“The ‘high’ dose effects of [BPA] in laboratory animals that provide *clear evidence* for adverse effects on development, i.e., reduced survival, birth weight, and growth of offspring early in life, and delayed puberty in female rats and male rats and mice, are observed at levels of exposure that far exceed those encountered by humans. However, estimated exposures in pregnant women and fetuses, infants, and children are similar to levels of [BPA] associated with several ‘low’ dose laboratory animal findings of effects on the brain and behavior, prostate and mammary gland development, and early onset of puberty in females.”

NTP Draft Brief, at 32.

19. Some other important recent studies concerning BPA and its potential effects on human health are summarized below:

a. Experiments with rats demonstrate that low level exposure to BPA during fetal growth causes breast cancer in adults. *See Murray, T. J., et al., Induction of mammary gland ductal hyperplasias and carcinoma in situ following fetal bisphenol A exposure*, *Reproductive Toxicology* 23: 383-390.

b. *In utero* exposure to BPA causes long-term effects on mammary tissue development in rats, increasing risks to cancer, and also increases to a chemical known to cause breast cancer. *See Durando, M., et al. Prenatal Bispheno A Exposure Induces Preneoplastic Lesions in the Mammary Gland in Wistar Rats*, *Environmental Health Perspectives* 115, No. 1 (January 2007).

c. Perinatal exposure to extremely low levels of BPA causes precancerous prostate lesions in rats. *See Ho, S-M, et al., Developmental Exposure to Estradiol and Bisphenol A Increases Susceptibility to Prostate Carcinogenesis and Epigenetically Regulates Phosphodiesterase Type 4 Variant 4*, *Cancer Research* 66: 5624-5632.

d. Experiments with mice reveal that chronic adult exposure to BPA causes insulin resistance. See Alonso-Magdalena, P., et al., *The Estrogenic Effect of Bisphenol-A Disrupts the Pancreatic B-Cell Function in vivo and Induces Insulin Resistance*, Environmental Health Perspectives 114:106-112.

e. In a small prospective study, researchers in Japan report that BPA levels are higher in women with a history of repeated spontaneous miscarriages. See Sugiura-Ogasawara, M., et al., *Exposure to bisphenol A is associated with recurrent miscarriage*, Human Reproduction 20: 2325-2329.

f. BPA and the birth control pharmaceutical ethinylestradiol cause adverse effects in prostate development in mice at levels to which millions of Americans are exposed each year. See Timms, B. G., et al., *Estrogenic chemicals in plastic and oral contraceptives disrupt development of the fetal mouse prostate and urethra*, Proceedings of the National Academy of Sciences, 10.1073/pnas.0502544102.

g. A flood of new information about BPA revealing both widespread human exposure and effects at extremely low doses sparks a call for a new risk assessment of the compound. See vom Saal, F., et al., *An Extensive New Literature Concerning Low-Dose Effects of Bisphenol A Shows the Need for a New Risk Assessment*, Environmental Health Perspectives 115:8 (August 2005).

h. Several weakly estrogenic compounds including BPA are as powerful as estrogen at increasing calcium influx into cells and stimulating prolactin secretion. See Wozniak, A. L., et al., *Xenoestrogens at Picomolar to Nanomolar Concentrations Trigger Membrane Estrogen Receptor-alpha-Mediated Ca⁺⁺ Fluxes and Prolactin*

Release in GH3/B6 Pituitary Tumor Cells, Environmental Health Perspectives 113:431-439.

i. BPA at extremely low levels causes changes in brain structure and behavior in rats. See Kubo, K., et al., *Low dose effects of bisphenol A on sexual differentiation of the brain and behavior in rats*, Neuroscience Research 45: 345-356.

j. Exposures to 1/5th the level considered safe are sufficient to alter maternal behavior in mice. See Palanza, P., et al., *Exposure to a low dose of bisphenol A during fetal life or in adulthood alters maternal behavior in mice*, Environmental Health Perspectives 110 (suppl 3): 415-422.

k. An accident in the lab, followed by careful analysis and a series of experiments reveals that BPA causes aneuploidy in mice at low levels of exposure. Because aneuploidy in humans causes spontaneous miscarriages and some 10-20% of all birth defects, this implicates BPA in a broad range of human developmental errors. See Thomas, B. F., et al., *Bisphenol A exposure causes meiotic aneuploidy in the female mouse*, Current Biology 13: 546-553.

l. Experiments by researchers at the University of Missouri raise the possibility of widespread contamination of laboratory experiments by BPA. Their results demonstrate that at room temperature significant amounts of this estrogenic substance leach into water from old polycarbonate animal cages. This inadvertent contamination could interfere with experiments designed to test the safety of estrogenic chemicals, and lead to false negatives and conflicting results. See Howdeshell, K. A., et al., *Bisphenol A is released from used polycarbonate animal cages into water at room temperature*, Environmental Health Perspectives doi:10.1289/ehp.5993.

m. An analysis of the biochemical mechanisms of endocrine disruption suggests why industry has been unable to replicate crucial low-dose impacts of BPA on prostate development. See Welshons, W. V., et al., *Large effects from small exposures. I. Mechanisms for endocrine disrupting chemicals with estrogenic activity*, Environmental Health Perspects doi:10.1289/ehp.5494.

n. Using new analytical methods, a team of German scientists measured BPA in the blood of pregnant women, in umbilical blood at birth and in placental tissue. All samples examined contained BPA, at levels within the range shown to alter development. Thus widespread exposure to BPA at levels of concern is no longer a hypothetical issue. See Schonfelder, G., et al., *Parent Bisphenol A Accumulation in the Human Maternal-Fetal-Placental Unit*, Environmental Health Perspectives 110:A703-A707.

o. At extremely low levels, BPA promotes fat cell (adipocyte) differentiation and accumulation of lipids in a cell culture line used as a model for adipocyte formation. These two steps, differentiation and accumulation, are crucial in the development of human obesity. Hence this result opens up a whole new chapter in efforts to understand the origins of the world-wide obesity epidemic. See Masuno, H., et al., *Bisphenol A in combination with insulin can accelerate the conversion of 3T#-L1 fibroblasts to adipocytes*, Journal of Lipid Research 3:676-684.

p. In cell culture experiments, BPA at very low (nanomolar levels) stimulates androgen-independent proliferation of prostate cancer cells. This finding is especially important because when prostate tumors become androgen-independent they no longer respond to one of the key therapies for prostate cancer. See Wetherill, Y. B., et al., *The Xenoestrogen Bisphenol A Induces Inappropriate Androgen Receptor Activation and*

Mitogenesis in Prostatic Adenocarcinoma Cells, Molecular Cancer Therapeutics 1: 515-524.

q. BPA causes changes in rat ventral prostate cells that appear similar to events that make nascent prostate tumors in humans more potent. See Ramos, JG, et al., *Prenatal Exposure to Low Doses of Bisphenol A Alters the Periductal Stroma and Glandular Cell Function in the Rat Ventral Prostate*, Biology of Reproduction 65: 1271-1277.

r. BPA induces changes in mouse mammary tissue that resemble early stages mouse and human of breast cancer. See Markey, C. M., et al., *In Utero Exposure to Bisphenol A Alters the Development and Tissue Organization of the Mouse Mammary Gland*, Biology of Reproduction 65: 1215-1223.

s. BPA lowers sperm count in adult rates even at extremely low levels. See Sakaue, M., et al., *Bisphenol-A Affects Spermatogenesis in the Adult Rat Even at a Low Dose*, Journal of Occupational Health 43: 185-190.

t. BPA at extremely low levels creates superfemale snails. See Oehlmann, J., et al., *Effects of endocrine disruptors on Prosobranch snails (Mollusca:Gastropoda) in the laboratory. Part I: Bisphenol A and Octylphenol as xenoestrogens*, Exotoxicology 9: 383-397.

u. BPA is rapidly transferred to the fetus after maternal intake. See Takahashi, O., et al., *Disposition of Orally Administered 2,2-Bis (4-hydroxyphenyl) propane (Bisphenol A) in Pregnant Rats and the Placental Transfer to Fetuses*, Environmental Health Perspectives 108: 931-935.

v. An independently funded academic laboratory can verify controversial BPA results, even though industry cannot. See Gupta, Chhanda, *Reproductive malformation of the male offspring following maternal exposure to estrogenic chemicals*, Proceedings of the Society for Experimental Biology and Medicine 224: 61-68.

w. Metabolic differences between rats and humans probably mean that humans are more sensitive to BPA than are rats. See Elsby, R., et al., *Comparison of the modulatory effects of human and rat liver microsomal metabolism on the estrogenicity of bisphenol A: implications for extrapolation to humans*, Journal of Pharmacology and Experimental Therapeutics 297:103-113.

x. A confirmation of BPA low dose effects, and demonstration that the effects include impacts on estrous cyclicity and plasma LH levels. See Rubin, B. S., 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.

y. BPA speeds the pace of sexual development in mice, and causes mice to be obese. See Hodeshell, K., et al., *Plastic bisphenol A speeds growth and puberty*, Nature 401: 762-764.

20. Recently, and worthy of further highlight, on or about November 28-30, 2006, a National Institute of Health Funded Group (the "Group") consisting of 38 of the world's leading scientists with regard to Bisphenol-A, met at Chapel Hill, North Carolina to examine the relationship between BPA and the negative trends in human health that have occurred in recent decades such as increases in abnormal penile/urethra development in males, early sexual maturation caused in females, increased neuron-behavioral problems such as ADHD and autism,

increased childhood and adult obesity and Type II diabetes, regional decreases in sperm count, and an increase in hormonally mediated cancers, such as prostate and 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.

21. This eminent collection of scientists concluded that the wide range of adverse effects of low doses of BPA in laboratory animals exposed both during development and in adulthood “is a great cause for concern with regard to the potential for similar adverse effects in humans.” The Group also concluded that recent trends in human diseases relate to adverse observed in experimental animals exposed to low doses of BPA, the specific examples of which include the conditions described in Paragraph 20.

22. Furthermore, the Group concluded that there is extensive evidence documenting that negative health outcomes may not become apparent until long after BPA exposure during development has occurred – that the issue of a very long latency for effects *in utero* is well known and 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 (like those relied upon by the chemical and plastic industries), do not reflect the situation in humans.

23. Consistent with these well-accepted and well-founded conclusions as reached by the Group, the NTP found that the “possibility that bisphenol-a may alter human development cannot be dismissed.” *NTP Draft Brief*, at 9.

24. Given statements such as these, of immediate and urgent concern is BPA’s toxicity and its link to serious and significant health problems, which pose a serious threat to Plaintiff’s and the proposed Plaintiff Class’ health; and, as in Plaintiff’s case, the health of their infants and children.

B. Defendants’ Wrongful Conduct.

25. Despite the well-documented scientific evidence discussed above, the Defendants have failed, and continue to fail, to adequately disclose that their polycarbonate plastic bottle products are formulated using a dangerous chemical that has been known for years to be toxic in several respects and which poses serious hazards to an individuals’ health. Indeed, the products are often marketed by highlighting their supposed benefits to the overall environmental and, most disturbingly, individual health with no mention as to the potentially toxic substance the products contain.

26. For example, Defendant Playtex’s business strategy seems to target consumers which are new and/or expecting parents by touting its products as superior, in terms of both healthiness and safety, when compared to other similar baby products. On its website, Defendant Playtex’s website touts that it is “thinking of two” and further states that “there is nothing more important to you than your baby’s growth.” See <http://playtexbaby.com/about/default.aspx> (website last checked on May 5, 2008).

27. In promoting the supposed benefits associated with the use of Defendant Playtex’s polycarbonate bottle products, its website brags that “[o]ffers better feeding solutions

for you and your baby.” See <http://www.playtexbaby.com/products/bottles/default.aspx> (website last checked on May 5, 2008).

28. Defendants Playtex’s labeling and packaging of its polycarbonate plastic bottle products make similar claims. Yet, while the labeling and packaging of its polycarbonate plastic bottle products touts the products’ supposed health benefits, safeness, and overall superiority, the labeling and packaging does not sufficiently disclose material information as to the fact that its polycarbonate plastic bottle products are formulated with and/or contain BPA, nor material information as to the potential health risks associated with polycarbonate plastic bottle products and BPA as discussed above.

29. Defendant Playtex has failed (and continues to fail) to adequately disclose the risk of harm to Plaintiff and the proposed Plaintiff Class despite the fact that it knew, or should have known, of the potential harm posed by its polycarbonate plastic bottle products, which contain BPA. The failure to adequately disclose as described herein is a misrepresentation consistent with applicable statutory and common law.

30. The polycarbonate plastic bottle products purchased by Plaintiff from Defendant Playtex are polycarbonate plastic bottle products that contain the dangerous chemical Bisphenol-A. Some of the products bear the recycle symbol “7,” which indicates that the bottle contains BPA.

31. Plaintiff purchased Defendant Playtex’s polycarbonate plastic bottle products unaware that they were formulated with and/or contained BPA, a potentially toxic material, because Defendant Playtex did not disclose such information. Had she known, she would not have purchased Defendant Playtex polycarbonate plastic bottle products.

32. Indeed, although consumers can try to avoid polycarbonate plastic bottle products, most (like Plaintiff) were/are simply unaware that a toxic chemical which acts like a female hormone can leach from these products and contaminate the liquid or food ingested by them, and/or more importantly, their children.

33. This lack of consumer awareness is a direct result of the Defendant Playtex's and the other Defendants' efforts to perpetuate a very lucrative revenue stream that would be interrupted and reduced if the general public and persons similarly situated to Plaintiff were to learn the truth and seek safer alternatives.

V. CLASS ACTION ALLEGATIONS

34. Plaintiff brings this class action claim pursuant to Rule 23 of the Federal Rules of Civil Procedure. The requirements of Rule 23 are met with respect to the classes defined below.

A. The Plaintiff Class.

35. Plaintiff brings her claim on her own behalf, and on behalf of the following class:

All persons in the United States who, over the past five years, purchased polycarbonate plastic bottle products containing the industrial chemical Bisphenol-A that were produced, manufactured, distributed, and/or sold by Defendants and who were accordingly damaged thereby.

36. Plaintiff reserves the right to amend or modify her Complaint and/or the Plaintiff Class definition in connection with meaningful discovery and/or a Motion for Class Certification.

37. Members of the Plaintiff Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. The Plaintiff Class, upon information and belief, includes thousands if not hundreds of thousands of individuals geographically dispersed throughout the United States. The precise number and identities of Class members are unknown

to Plaintiff but can be easily obtained through notice and discovery. Indeed, notice can be provided through a variety of means including publication, the cost of which is properly imposed upon the Defendant.

38. Plaintiff will fairly and adequately protect the interests of all Plaintiff Class members and has retained counsel competent and experienced in class and consumer litigation.

39. Plaintiff's claims are typical of the claims of the Plaintiff Class and all Plaintiff Class members sustained uniform damages arising out of the conduct challenged in this action. The Plaintiff Class is ascertainable and there is a well-defined community of interests in the questions of law and/or fact alleged since the rights of each Plaintiff Class member were infringed or violated in a similar fashion based upon the Defendants' wrongdoing. The injuries sustained by the Plaintiff and the Plaintiff Class members flow, in each instance, from a common nucleus of operative facts – the Defendant's wrongdoing. In every related case, Plaintiff and the Plaintiff Class members suffered uniform damages caused by their purchase of polycarbonate plastic bottle products produced, manufactured, distributed, and/or sold by the Defendants.

40. There are questions of law and fact common to the Plaintiff Class that predominate over any questions solely affecting individual Plaintiff Class members. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff and the Plaintiff Class members. Individual questions, if any, pale by comparison to the numerous common questions that predominate. Such common questions include but are not limited to:

- a. Whether Defendants represented to consumers that the products had a characteristic, use, benefit or quality that rendered the products safe to use for their intended purpose;
- b. Whether the products in fact have a characteristic, use, benefit or quality that renders them unsafe for their intended purpose;

- c. Whether the products were defectively designed;
- d. Whether Defendants failed to accurately and sufficiently warn of the defective characteristics of the product;
- e. Whether Defendants knowingly concealed the defective design of the products;
- f. Whether Defendants were unjustly enriched.

41. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Plaintiff Class members is impracticable. Furthermore, the expense and burden of individual litigation make it impossible for the Plaintiff Class members to individually redress the wrongs done to them.

42. Defendants have acted or have refused to act on grounds generally applicable to the Plaintiff Class thereby making it appropriate to grant final declaratory and injunctive relief with respect to the Plaintiff Class as a whole.

B. The Defendant Class.

43. Defendant Playtex is sued herein individually and as the representative of the Defendant Class described above consisting of all producers, manufacturers, and/or otherwise distributors of polycarbonate plastic bottle products containing the industrial chemical Bisphenol-A.

44. The Defendant Class is composed of numerous companies substantially similar to Defendant Playtex; so much so that joinder of all of the Defendants as named defendants would be impracticable.

45. The claims and defenses of Defendant Playtex is typical of the claims and defenses of the other Defendants, and Defendant Playtex will fairly and adequately protect the interests of all other members of the Defendant Class.

46. There are questions of law and fact common to the members of the Defendant Class that predominate over any individual questions affecting individual Defendants.

47. Prosecution of separate actions by individual members of the Defendant Class would create a risk of inconsistent or varying adjudications with respect to individual members of the proposed class, which would establish incompatible standards of conduct for the Defendants.

48. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual members of the Defendant Class do not have a great interest in individually controlling the defense of separate actions. Further, many of the members of the proposed Defendant Class do not have individual defenses to this action, and any core ruling or precedent affecting the named Defendants would be equally applicable to all members of the Defendant Class.

49. Concentrating this litigation in one forum is desirable, because it would greatly conserve judicial resources and provide for the expedient and efficient resolution of the claims asserted herein.

50. This proposed class action does not present any extraordinary or unusual difficulties affecting its management as a class action. Plaintiff knows of no difficulties that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Indeed, it would be the most appropriate structure of litigation.

VI. CAUSES OF ACTION

COUNT I: *STRICT PRODUCTS LIABILITY – DEFECT IN DESIGN OR MANUFACTURE*

51. Plaintiff incorporates by reference all of the foregoing paragraphs as if set forth herein.

52. Defendants, as commercial suppliers of polycarbonate plastic bottle products, have an absolute duty to refrain from placing into the stream of commerce an unreasonably dangerous product that is not fit for consumption or use which can cause injury to person or property.

53. Defendants breached that duty (and continue to breach that duty) by placing into the stream of commerce unreasonably dangerous products that are not fit for consumption or use which has caused injury to both persons and property. These products were unreasonably dangerous because they contained manufacturing and/or design defects.

54. The unreasonably dangerous products Defendants placed into the stream of commerce reached consumers such as Plaintiff and the Plaintiff Class members without substantial change in the condition in which they were was supplied.

55. Plaintiff and the Plaintiff Class members were reasonably foreseeable users of Defendants' unreasonably dangerous products and used these unreasonably dangerous products in a foreseeable manner. As a result, they have suffered significant damages caused directly and proximately by their use of Defendants' unreasonably dangerous products.

56. Accordingly, Plaintiff and the Plaintiff Class are entitled to judgment against the Defendants for their actual damages in the form of restitution, attorneys' fees and costs of litigation.

COUNT II: STRICT PRODUCTS LIABILITY – FAILURE TO WARN

57. Plaintiff incorporates by reference all of the foregoing paragraphs as if set forth herein.

58. Defendants have placed into the stream of commerce unreasonably dangerous products that are not fit for consumption or use and which can cause injury to person or property.

59. Simultaneously, Defendants have also failed to warn the reasonably foreseeable users of their products, including Plaintiff and the Plaintiff Class members, of the known dangers associated with their unreasonably dangerous products despite the fact that Defendants knew, or should have known, of the known dangers associated with their unreasonably dangerous products. Even after Defendants became, or should have become, aware of the dangerous condition of their products; they still refused to investigate potential problems in a reasonable manner and failed to warn consumers of these potential problems thereby allowing countless other consumers to purchase the unreasonably dangerous products.

60. As a direct and proximate result of Defendants' actions, Plaintiff and the Plaintiff Class members have suffered significant damages.

61. Accordingly, Plaintiff and the Plaintiff Class are entitled to judgment against the Defendants for their actual damages in the form of restitution, attorneys' fees and costs of litigation.

**COUNT III: BREACH OF IMPLIED WARRANTY –
FITNESS FOR PURPOSE**

62. Plaintiff incorporates by reference all of the foregoing paragraphs as if set forth herein.

63. Plaintiff, and the members of the Plaintiff Class, sought to purchase safe, reusable beverage containers. In doing so, Plaintiff and the members of the Plaintiff Class relied on

Defendants' skill and judgment to select and furnish suitable goods for that purpose; on or about the time Defendants sold to Plaintiff and the Plaintiff Class members their polycarbonate plastic bottle products.

64. By the acts set forth in detail above, Defendants warranted that the polycarbonate plastic bottle products were safe, but intentionally omitted, suppressed, and withheld material information regarding risks associated with BPA found in their products. Plaintiff and the members of the Plaintiff Class bought Defendants' polycarbonate plastic bottle products relying on Defendants' skill, judgment and representations. However, Defendants' polycarbonate plastic bottle products are not free from risk from harmful exposure to BPA, as set forth in detail above.

65. At the time of the sale(s), Defendants had reason to know the particular purpose for which their goods were being offered and acquired, and that Plaintiff and the members of the Plaintiff Class were relying on Defendants' skill and judgment to select and furnish suitable and safe goods for that purpose. Accordingly, there was an implied warranty that the goods were fit for this purpose.

66. However, Defendants breached this warranty implied at the time of sale by providing goods that are/were unsuitable for the purpose for which they were made and purchased because the polycarbonate plastic bottle products sold were not free from risk of harmful exposure to BPA as discussed above.

67. As a direct and proximate result of Defendants' actions, Plaintiff and the Plaintiff Class members have suffered significant damages.

68. Accordingly, Plaintiff and the Plaintiff Class are entitled to judgment against the Defendants for their actual damages in the form of restitution, attorneys' fees and costs of litigation.

COUNT IV: UNJUST ENRICHMENT

69. Plaintiff incorporates by reference all of the foregoing paragraphs as if set forth herein.

70. Defendants have benefited and have been unjustly enriched by the above-alleged conduct. Defendants knowingly allowed the products to enter and remain on the market place based upon misrepresentations as to the products' safety as well as concealment and omission of information regarding the products' safety which should have been disseminated.

71. Defendants have knowledge of this benefit, and have voluntarily accepted and retained this benefit.

72. The circumstances described herein are such that it would be inequitable for Defendants to retain these ill-gotten benefits without paying the value thereof to the Plaintiff and Class members.

73. Plaintiff and Class are entitled to the amount of Defendants' ill-gotten gains, including interest, resulting from its unlawful, unjust and inequitable conduct as described above.

**COUNT V: VIOLATION OF
CONNECTICUT UNFAIR TRADE
PRACTICES ACT (CUTPA)**

74. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein and further alleges as follows.

75. CUTPA prohibits businesses from using unfair or deceptive acts or practices in conducting their business.

76. In violation of CUTPA, Conn. Gen. Stat. §§ 42-110b, *et seq.*, Defendants' deceptive, unethical, oppressive and unscrupulous course of conduct and business practices offend public policy and have caused injury to the Plaintiffs and other members of the Plaintiff

Class as well as other consumers. The determination by Defendants to disregard and to fail to disclose the health risks associated with the polycarbonate plastic products containing BPA that they produced, manufactured, distributed, and/or sold has caused a variety of harmful health effects to members of the Plaintiff Class, who would not have purchased these products absent Defendants' deceptive trade practices.

77. As described above, unfair and deceptive acts and practices employed by defendants in violation of CUTPA include, but are not limited to:

- a. Defendants knowingly allowed the products to enter and remain on the market place based upon misrepresentations as to the products' safety as well as concealment and omission of information regarding the products' safety which should have been disseminated.
- b. Defendants held themselves out as producers, manufacturers, distributors and/or vendors of the safe, reusable beverage containers Plaintiff, and the members of the Plaintiff Class, sought to purchase. Plaintiff and the members of the Plaintiff Class relied on Defendants' skill and judgment to select and furnish suitable goods for that purpose at the encouragement of Defendants.
- c. Defendants warranted that the polycarbonate plastic bottle products were safe, despite their clear understanding of the particular purposes for which their goods – like baby bottles – were purchased, but intentionally omitted, suppressed, and withheld material information regarding risks associated with BPA found in their products and members of the Plaintiff Class bought Defendants' polycarbonate plastic bottle products relying on Defendants' skill, judgment and representations.

- d. Defendants failed to warn the reasonably foreseeable users of their products, including Plaintiff and the Plaintiff Class members, of the known dangers associated with their unreasonably dangerous products despite the fact that Defendants knew, or should have known, of the known dangers associated with their unreasonably dangerous products.
- e. Even after Defendants became, or should have become, aware of the dangerous condition of their products; Defendants continued to refuse to investigate potential problems in a reasonable manner and failed to warn consumers of these potential problems thereby allowing countless other consumers to purchase the unreasonably dangerous products.

78. The many unfair and deceptive acts and practices that defendants have used in conducting their business have proximately caused plaintiff and members of the Class to suffer injury resulting from their reliance on Defendants' assurances that it was safe to purchase and use Defendants' polycarbonate plastic products, including baby bottles and baby accessories, which ultimately turned out to be BPA-laden.

79. As a proximate result of the foregoing, plaintiff and the Class have been damaged in an amount to be determined at the trial of this action. Moreover, in addition to the actual damages suffered by plaintiff and the Class, the egregious nature of defendants' systematic unfair and deceptive conduct warrants an award of punitive damages, as well as reasonable attorneys' fees and costs, as are specifically provided for under CUTPA.

VII. JURY TRIAL DEMANDED

74. Plaintiff and the proposed Plaintiff Class demand a jury of twelve.


VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated; request that she and the other applicable Plaintiff Class members have judgment entered in their favor and against Defendants, as follows:

- A. Declaring that defendants' practices as described herein are against public policy and violate CUTPA, Conn. Gen. Stat. §§ 42-110b, *et seq.*;
- B. An order certifying that this action, involving Plaintiff's and the Plaintiff Class members' claims against Defendant Playtex and the Defendant Class be maintained as a nationwide class action under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and their undersigned counsel to represent the Plaintiff Class;
- C. An award of actual damages in the form of restitution;
- D. An award of punitive damages against defendants pursuant to Conn. Gen. Stat. §§ 42-110b, *et seq.* in an amount to be determined by the jury;
- E. Appropriate injunctive relief;
- F. Reasonable attorneys' fees and costs;
- G. For prejudgment interest; and
- H. Such further appropriate relief this Court deems necessary.

DATED: May 19, 2008

Respectfully Submitted,



James E. Hartley, Jr.
DRUBNER & HARTLEY, LLC
500 Chase Parkway
Waterbury, CT 06708
Phone: (203) 753-9291
Fax: (203) 753-6373
jhart@dhola.com

Edith Kallas
Joe R. Whatley
Dominique Day
WHATLEY DRAKE & KALLAS, LLC
1540 Broadway
37th Floor
New York, New York 10036
Phone: (212) 447-7070
Fax: (212) 447-7077
ekallas@wdklaw.com
jwhatley@wdklaw.com
dday@wdklaw.com

Jack T. Patterson, II
Arkansas State Bar No. 95012
Jeremy Y. Hutchinson
Arkansas State Bar No. 2006-145
PATTON ROBERTS, PLLC
111 Center Street, Suite 1315
Little Rock, AR 72201
Phone: (501) 372-3480
Fax: (501) 372-3488
jpatterson@pattonroberts.com
jhutchinson@pattonroberts.com

Jim Wyly
Arkansas Bar No. 90158
Sean Rommel
PATTON ROBERTS, PLLC
Century Bank Plaza, Suite 400
P.O. Box 6128
Texarkana, Texas 75505-6128
Phone: (903) 334-7000
Fax: (903) 334-7007
jwyly@pattonroberts.com
srommel@pattonroberts.com

James G. Stranch, III
J. Gerard Stranch, IV
**BRANSTETTER STRANCH
& JENNINGS PLLC**
227 Second Avenue North
Fourth Floor
Nashville, TN 37201
Tel.: (615) 254-8801
Fax: (615) 250-3937
gstranch@branstetterlaw.com
jims@branstetterlaw.com

Counsel for Plaintiff