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GERBER PRODUCTS COMPANY
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 FAITH NORMAN, individual, on behalf of
herself and others similarly situated,

13 Plaintiff,

14 v.

15 GERBER PRODUCTS COMPANY,

16 Defendant.
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Case No. 4:21-cv-09940-JSW

**DEFENDANT GERBER PRODUCTS
COMPANY'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT; AND MEMORANDUM
OF POINTS AND AUTHORITIES**

[Request for Judicial Notice Filed
Concurrently]

Date: May 20, 2022

Time: 9:00 a.m.

Place: Courtroom 5

Judge: Hon. Jeffrey S. White

1 **NOTICE OF MOTION AND MOTION TO DISMISS**

2 NOTICE IS HEREBY GIVEN that on May 20, 2022, at 9:00 a.m., or as soon thereafter as
3 this motion may be heard, in the United States District Court, Northern District of California,
4 Oakland Division, in Courtroom 5, before the Honorable Jeffrey S. White, defendant Gerber
5 Products Company (“Gerber”) will and hereby does move the Court for an order dismissing
6 plaintiff Faith Norman’s (“Plaintiff”) First Amended Complaint (“FAC”), and each claim alleged
7 therein, without leave to amend, pursuant to Federal Rules of Civil Procedure 8, 9(b), 12(b)(1),
8 and 12(b)(6).

9 Gerber moves the Court to dismiss the FAC on the following grounds: (1) Plaintiff
10 predicates some allegations entirely upon generalized statistics and processes without alleging
11 facts specific to Gerber; (2) Plaintiff’s added allegation specific to one Gerber product relates
12 only to one category of claims and does not render that category of claims sufficiently pled; (3)
13 Plaintiff fails to plausibly allege a reasonable consumer would be misled by Gerber’s label; (4)
14 Plaintiff fails to plausibly allege a reasonable consumer would share her interpretation of
15 genetically modified organisms; (5) Plaintiff fails to plausibly define genetically modified
16 organisms; and (6) Plaintiff alleges the same theory of liability for her common law claims, which
17 fails to plausibly allege a reasonable consumer is likely to be deceived by Gerber’s label. Gerber
18 respectfully requests the Court dismiss all of Plaintiff’s claims.

19 This motion is based on this notice of motion, the memorandum of points and authorities,
20 the request for judicial notice, the pleadings and documents on file in this lawsuit, and argument
21 and other matters as may be presented to the Court at the hearing.

22 **STATEMENT OF THE ISSUES TO BE DECIDED**

- 23 1. **Federal Rule of Civil Procedure 8’s Pleading Requirements.** Does
24 Plaintiff state a claim when some of her allegations rely solely on
25 generalized statistics and processes without alleging facts specific to
26 Gerber’s products or manufacturing practices? Does one allegation
27 specific to one Gerber product render the relevant category of claims
28 sufficiently pled?
2. **Federal Rule of Civil Procedure 9(b)’s Pleading Requirements.**
Because Plaintiff’s claims “sound in fraud,” do they meet Rule 9(b)’s

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heightened pleading standard?

3. **Standing For Equitable Relief.** Does Plaintiff have standing to sue for equitable relief when she does not allege she lacks an adequate remedy at law?
4. **UCL/FAL/CLRA.** If Plaintiff does not plausibly allege a reasonable consumer would be misled by Gerber’s “NON GMO” claim, does she state a claim under Cal. Bus. & Prof. Code §§ 17200 and 17500, or Cal. Civ. Code § 1750? If Plaintiff’s definition of “GMO” is implausible, does she state a claim under Cal. Bus. & Prof. Code §§ 17200 and 17500, or Cal. Civ. Code § 1750?
5. **Standing For Products Not Purchased.** Does Plaintiff have standing to assert claims based on products she did not purchase, particularly when the product purchased and the products not purchased are not “substantially similar?”
6. **Unjust Enrichment.** Is there a cause of action in California for unjust enrichment? If so, is Plaintiff’s unjust enrichment claim duplicative and therefore barred when it is supported by the same misrepresentation theory underlying her statutory claims? Does Plaintiff state an unjust enrichment claim when she does not allege she lacks an adequate remedy at law?

Dated: April 14, 2022

WHITE & CASE LLP

By: /s/ Bryan A. Merryman
Bryan A. Merryman

Attorneys for Defendant
GERBER PRODUCTS COMPANY

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