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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHELSEA FREDERICK, on behalf of
herself, all others similarly situated, and the
general public,

Plaintiff,

v.

PERRIGO COMPANY,

Defendant.

Case No: **'22CV1333 L WVG**

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

CAL. CIV. CODE §§ 1750 *ET SEQ.*;

CAL. BUS. & PROF. CODE §§17500 *ET SEQ.*;

CAL. BUS. & PROF. CODE §§17200 *ET SEQ.*;

**FOR BREACH OF EXPRESS & IMPLIED
WARRANTIES;**

**FOR INTENTIONAL & NEGLIGENT
MISREPRESENTATION; AND**

UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

1 Plaintiff Chelsea Frederick, on behalf of herself, all others similarly situated, and the general public,
2 by and through her undersigned counsel, brings this action against Perrigo Company (“Perrigo”) and alleges
3 the following upon her own personal knowledge or, where she lacks personal knowledge, upon information
4 and belief, including the investigation of her counsel.

5 **SUMMARY OF CASE**

6 1. Perrigo is the manufacturer and seller of Burt’s Bees Infant Formulas,¹ which it represents
7 make a certain number of bottles (the “Burt’s Bees Formulas”). However, following the instructions on the
8 label results in fewer bottles than Perrigo promises, short-selling the consumer.

9 2. For example, the 34 oz. Ultra Gentle label says that it “Makes 63 4 Fl Oz Bottles.” That
10 representation is false, however, because following the back-label “FEEDING CHART,” which explains
11 how to make a “4 fl oz bottle,” yields only 56 4-oz. bottles—not 63 (a nearly 12% difference).

12 3. Plaintiff brings this action to enjoin Perrigo from continuing to falsely advertise the Burt’s
13 Bees Formulas in this manner, and to recover restitution and damages for herself and other purchasers.

14 **JURISDICTION & VENUE**

15 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class
16 Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of
17 interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from
18 Perrigo. In addition, more than two-thirds of the members of the class reside in states other than the state in
19 which Perrigo is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under
20 28 U.S.C. § 1332(d) do not apply.

21 5. The Court has personal jurisdiction over Perrigo pursuant to Cal. Code Civ. P. § 410.10, as a
22 result of Perrigo’s substantial, continuous and systematic contacts with the state and because Perrigo has
23 purposely availed itself of the benefits and privileges of conducting business activities within the state,
24 including by distributing and selling the Burt’s Bees Formulas in California.

25 6. Venue is proper in this Northern District of California pursuant to 28 U.S.C. § 1391(b) and
26 (c), because Perrigo resides (*i.e.*, is subject to personal jurisdiction) in this district, and a substantial part of
27 the events or omissions giving rise to the claims occurred in this district.

PARTIES

7. Plaintiff Chelsea Frederick is a resident of San Diego, California.

8. Defendant Perrigo is a Michigan corporation with its principal place of business in Allegan, Michigan.

FACTS

9. Perrigo is a global manufacturer of many different products, including its Burt's Bees infant formulas.

10. Perrigo manufactures, markets, and sells each of the three sub-brands of the Burt's Bees Formulas in 34 oz container sizes.² The Burt's Bees Formulas are not ready-to-use; instead, the purchaser must first mix with water, using an enclosed scoop provided by Perrigo and following specific directions on the label, before feeding to an infant.

11. On each package of Burt's Bees Formula, Perrigo claims the product makes a certain number of bottles of prepared formula. These statements are false or misleading because—given the dilution instructions set forth on the back panel of each Burt's Bees Formula—the number of bottles Perrigo represents each product makes is not what each product actually makes when mixed with water according to Perrigo's own instructions, and thus the value is not what Perrigo represents.

12. An example of the challenged Burt's Bees Ultra Gentle packaging is shown below.

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² Perrigo also markets and sells the same sub-brands in 23.3 oz containers. However, at this time, Plaintiff is



FEEDING CHART

To Make™	Water	Powder (Use scoop enclosed)
2 fl oz bottle	2 fl oz	1 unpacked level scoop (8.6 g)
4 fl oz bottle	4 fl oz	2 unpacked level scoops (17.2 g)
6 fl oz bottle	6 fl oz	3 unpacked level scoops (25.8 g)
8 fl oz bottle	8 fl oz	4 unpacked level scoops (34.4 g)

13. The promised number of bottles and the mixing instructions are the same for each of the 34 oz Burt's Bees Formula sub-brands.

14. As shown, a 34 oz container of Burt's Bees Ultra Gentle promises to make "63 [4 fl oz] Bottles." The on-label "FEEDING CHART" says in order make a ready-for-feeding "4 fl oz bottle," start with 4 fl oz of water, and then "us[ing the] scoop enclosed," add "2 unpacked level scoops (17.2g)." However,

1 consumers can make only approximately 88% of the bottles Perrigo promised.

2 15. Perrigo consistently employs this misleading practice across the challenged products.

3 16. Because the Burt's Bees Formulas are typically used over the course of several days or weeks,
4 consumers are unlikely to notice the discrepancy through normal use of the Burt's Bees Formulas.

5 17. Additionally, some of the larger packages of Burt's Bees Formula also promise to make 46%
6 more compared to the smaller, 23.2 oz sized versions of the same type of powder formula. These statements
7 are false or at least highly misleading because following the dilution instructions set forth on the back panel
8 of each Burt's Bees Formula, those larger packages do not yield the promised number of additional prepared
9 bottles of formula. Thus, the value is not what Perrigo represents.

10 **PLAINTIFF'S PURCHASE, RELIANCE, AND INJURY**

11 18. In June 2022, Plaintiff Chelsea Frederick purchased, on two occasions, Burt's Bees Infant
12 Milk in packaging bearing the challenged bottle representations, from Amazon. In purchasing the Burt's
13 Bees Infant Milk, Plaintiff relied on statements on the products' labels representing the number of bottles the
14 containers would make.

15 19. Those representations were false, however, and had the capacity, tendency, and likelihood to
16 confuse or confound Plaintiff and other consumers acting reasonably because, as described herein, the Burt's
17 Bees Formulas *do not* yield the number of bottles promised when following the preparation instructions
18 provided and set forth on the product's back label.

19 20. By representing the number of bottles Plaintiff was supposedly buying, Perrigo implicitly also
20 represented the product's value to Plaintiff. That representation, however, was false because, based on
21 Perrigo's preparation instructions, the Burt's Bees Formulas were under-filled, such that Plaintiff received a
22 different and substantially lesser value—one with a higher cost—than Perrigo represented. Accordingly,
23 Plaintiff did not obtain the benefit of her bargain and her expectations were not met.

24 21. In addition, Plaintiff paid substantially more than the market value represented by the price
25 she and Perrigo bargained for. Like other consumer Class members, Plaintiff bargained with Perrigo on a
26 particular market value for a certain number of bottles of infant formula made by mixing the powder with
27 water as instructed. But because Perrigo only delivered a portion of those bottles, Plaintiff paid a price-per-

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