

No. 25-4978

**In the United States Court of Appeals
for the Ninth Circuit**

BRITTANY BOUNTHON; VIVIANNA RIVERA; GINA ALLEN,
Plaintiffs-Appellants,

v.

THE PROCTER & GAMBLE COMPANY,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of California
Case No. 3:23-cv-00765-AMO (The Hon. Araceli Martínez-Olguín)

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INTRODUCTION

Procter & Gamble, one of the world’s largest consumer goods companies, presumably designs its product packaging to appeal to potential customers’ values. The plaintiffs here allege that the carefully crafted messaging on P&G’s Tampax Pure Cotton packaging—while appealing to women across the country—misrepresents the tampons. Specifically, they allege that a typical shopper would see the Tampax Pure Cotton box, prominently labeled “contains **100% organic** cotton core,” and reasonably think the tampons are made exclusively of organic cotton and are therefore free from man-made chemicals or contaminants. Given the number of modern innovations that have turned out to be harmful, this shopper is doing what she can—including paying more—to avoid exposure to unnecessary and even potentially harmful man-made substances. She’d be surprised to learn that, despite the picture P&G paints, third-party testing of Tampax Pure Cotton tampons detected measurable amounts of organic fluorine—a chemical compound that is almost exclusively if not exclusively man-made when found in consumer products.

P&G has no real response to these allegations so it either mischaracterizes them or resists the applicable standards. Its arguments fail.

P&G first claims the plaintiffs lack standing. It starts by accusing them of not plausibly alleging the detected organic fluorine is man-made. But that complaint goes to whether the plaintiffs have stated valid legal claims, not whether they are the

proper parties to bring this suit. Assuming (as the Court must for standing) the merits of the plaintiffs' claims that P&G misrepresented Tampax Pure Cotton tampons as something they're not, the question is whether they plausibly allege an injury-in-fact. They do. By alleging they paid more for Tampax Pure Cotton tampons than they would have absent P&G's misrepresentations, the plaintiffs allege a quintessential concrete economic injury. Nothing more is required to have a personal stake in this case. P&G's remaining standing arguments likewise ignore the nature of the alleged economic injury or conflict with the plausibility standard that governs at the pleadings stage.

P&G's arguments on the merits fare no better because they, too, would require this Court to depart from the controlling standards that apply at this stage. P&G speculates (again) the organic fluorine in its tampons might not be man-made. But the plaintiffs' allegations based on industry practice and the relative prevalence of man-made versus natural organic fluorine are sufficient to reasonably infer that it is. Next, P&G invites the Court to prematurely select between the parties' competing interpretations of the Tampax Pure Cotton label. But in arguing that no reasonable consumer could plausibly believe what the plaintiffs allege, P&G invokes a consumer with far more technical know-how than the reasonable one this Court's precedent requires. And finally, it urges this Court to conclude, in the first instance and as a matter of law, that avoiding man-made chemicals or contaminants is so obviously

unimportant that no reasonable consumer would mind that P&G misrepresented the composition of Tampax Pure Cotton tampons. It's P&G that is unreasonable by ignoring normal consumer behavior and urging the Court to resolve, on the pleadings, this question of fact.

This Court should reverse.

ARGUMENT

I. The plaintiffs have standing because they plausibly allege they paid more for Tampax Pure Cotton tampons than they would have absent P&G's misrepresentations.

Each plaintiff alleges a quintessential concrete economic injury—overpayment.¹ They allege that, by misrepresenting the composition of Tampax Pure Cotton tampons, P&G is able to charge a “premium” for those tampons as compared to “comparable” products. ER-27. Each plaintiff alleges she therefore “paid more” for Tampax Pure Cotton tampons than she would have absent the misrepresentations. ER-26–30. That is all that is required to satisfy Article III. *See Bowen v. Energizer Holdings*, 118 F.4th 1134, 1145 (9th Cir. 2024) (holding that Article III is satisfied where a complaint alleges an “overpayment theory” of “economic injury”); *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1104 n.3 (9th Cir. 2023) (holding that plaintiffs “suffer[] an Article III injury in fact” where they “paid more for a product than they

¹ Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this brief.

otherwise would have paid”). As the district court itself recognized, *Bowen* “dispenses with P&G’s standing arguments.” ER-60–61.

P&G’s arguments to the contrary are wrong.

First, P&G asserts (at 30–31) that the plaintiffs have not plausibly alleged the organic fluorine in its tampons is man-made and have therefore failed to establish a “factual predicate” for an economic injury. But that is just a repackaged merits argument. *See id.* at 38–41. As the Supreme Court and this Court have long recognized, “standing in no way depends on the merits of the plaintiff’s contention that particular conduct is illegal.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975); *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). Because the “focus” of standing is “whether the plaintiff is the proper party to bring those claims,” a plaintiff need not plausibly allege the merits of her claims to have standing. *Cottrell v. Alcon Labs.*, 874 F.3d 154, 162 (3d Cir. 2017); *see Maya*, 658 F.3d at 1068. Instead, a court “assume[s]” the “plaintiff has stated valid legal claims” and then asks whether, accepting “as true all material allegations” and “constru[ing] them in favor of the plaintiff,” she has alleged an injury-in-fact. *Cottrell*, 874 F.3d at 159 n.1, 162; *see Maya*, 658 F.3d at 1068; Answering Br. 31 n.5 (acknowledging that because P&G brings a “facial” attack to standing, the court must “accept[] the truth of the plaintiff’s allegations” (quoting *Bowen*, 118 F.4th at 1142 n.6)).

That basic understanding forecloses P&G’s argument here. Allegations about whether a manufacturer misrepresented a product “go to the merits of the plaintiffs’ claims.” *Gagetta v. Walmart, Inc.*, 646 F. Supp. 3d 1164, 1173 (N.D. Cal. 2022). Allegations about whether the plaintiff paid more for the product than they would have absent the misrepresentation, by contrast, go to standing. *Id.* That’s why, even when something like the presence of artificial contaminants is a “hotly contested issue of fact,” a court takes the allegations about the contamination as true to determine whether the plaintiff has alleged a viable economic injury under Article III. *Id.*; see *Krystofiak v. BellRing Brands, Inc.*, 737 F. Supp. 3d 782, 792–93 (N.D. Cal. 2024) (distinguishing between alleged “overpayment theory of injury” and parties’ factual dispute over “lead levels found in the product”); *Howard v. Alchemee, LLC*, 2024 WL 4272931, at *3 (C.D. Cal. Sept. 19, 2024) (emphasizing that court “must accept the allegations” about harmful levels of benzene in product “as true for purposes of Defendant’s Rule 12(b)(1) facial challenge” to plaintiffs’ alleged economic injury).

Applied here, the relevant question for standing purposes is not whether the plaintiffs plausibly allege the organic fluorine is man-made (though they do, *infra* Part II(A)). It’s whether, taking the allegations (including that the organic fluorine in Tampax Pure Cotton tampons is man-made) as true, they plausibly allege an economic injury because they paid a premium for the tampons that they wouldn’t have paid absent P&G’s misrepresentations. They do. *Supra* pp. 3–4.

Second, P&G claims (at 31–32) there is no particularized injury because the plaintiffs have not plausibly alleged the “particular” tampons they purchased contained organic fluorine.

Not so. The plaintiffs plausibly allege that *all* Tampax Pure Cotton tampons purchased around the time of the testing (including the ones they purchased) contained organic fluorine. As the complaint details, third-party testing performed by a certified laboratory in March 2022 and April 2023 detected consistent amounts of organic fluorine. ER-23.² And the plaintiffs purchased Tampax Pure Cotton tampons within this timeframe. ER-28–30. That’s enough to draw the “reasonable inference” that every Tampax Pure Cotton tampon sold around this time was made using or contaminated with organic fluorine. *Rodriguez v. Mondelēz Global LLC*, 703 F. Supp. 3d 1191, 1205–06, 1205 n.1 (S.D. Cal. 2023) (reasonable to infer chocolate contained heavy metals when testing performed in 2014, 2016, and 2022 “repeatedly” yielded such results and chocolate was purchased in that timeframe); *Castillo v. Prime Hydration LLC*, 748 F. Supp. 3d 757, 767 (N.D. Cal. 2024) (reasonable to infer drinks purchased around time of testing shared same quality as tested samples); *see also Solis*

² This Court’s recent decision in *Trammell v. KLN Enterprises*, --F.4th--, 2026 WL 1356403 (9th Cir. May 15, 2026) forecloses the Chamber of Commerce’s argument that the plaintiffs’ testing-related allegations do not satisfy Rule 9(b). COC Amicus Br. 13–14. Here, as in *Trammell*, the complaint provides sufficient “details of the laboratory testing” to allow P&G to “conduct targeted discovery to test the validity” of the results, including the general “qualifications of the laboratory,” the “methodology” it used, and the “date[s] of the testing.” 2026 WL 1356403, at *3.

v. Coty, Inc., 2023 WL 2394640, at *11 (S.D. Cal. Mar. 7, 2023) (reasonable to infer makeup contained PFAS where plaintiff alleged the “product line,” rather than “some of the units of product[,] had been adulterated”).

Ultimately, P&G’s argument (at 31–33) boils down to a complaint that the plaintiffs did not test *enough* tampons to support this inference. Relying on *Ward v. J.M. Smucker Co.*, 2025 WL 2613489 (6th Cir. Sept. 10, 2025), P&G insists (at 32) that “limited testing of a few product samples” isn’t enough. But *Ward* didn’t even involve testing.³ And this Court has never treated sample size as dispositive. Just the opposite. *See Bowen*, 118 F.4th at 1139–40, 1149 n.13 (inferring widespread contamination of SPF 30 sunscreen based in part on allegations that testing detected benzene in “one bottle” of the manufacturer’s SPF 50 sunscreen and “a bottle” of its SPF 100 sunscreen); *Scheibe v. ProSupps USA, LLC*, 141 F.4th 1094, 1099–1100 (9th Cir. 2025) (holding, for preemption purposes, that “test[ing] of a single sample allows a court reasonably to infer” widespread mislabeling even if there is a chance the “first and only test result” turns out to be “an outlier”).

³ Instead, the plaintiffs alleged the products they bought contained Salmonella based on the existence of a “product recall, by itself.” *Ward*, 2025 WL 2613489, at *3. And instead of alleging an overpayment injury, the *Ward* plaintiffs alleged they were denied the “benefit of their bargain” because they bought a “contaminated” product. *Id.* at *2. So, unlike the price-premium theory here, the injury actually turned on the purchase of a contaminated product. *See also infra* p. 8.

Even if the allegations weren't sufficient to draw this product-wide inference (and they are), P&G's argument is irrelevant for purposes of *constitutional* standing. The plaintiffs don't allege they were denied the benefit of the bargain because they bought a defective product. They allege that, because of its deceptive conduct, P&G charges *all* consumers, including the plaintiffs, more for Tampax Pure Cotton tampons. ER-27. Put another way, a consumer pays that premium—and therefore suffers an Article III injury—regardless of whether the particular product contains organic fluorine (even if, as explained, all Tampax Pure Cotton tampons do, in fact, contain organic fluorine). See *Quinn v. Procter & Gamble Co.*, 2025 WL 437905, at *11 n.3 (S.D. Cal. Feb. 6, 2025) (explaining that, in “a false advertising case,” an “overpayment injury” does not depend on whether “the false information complained of ... necessarily manifest[ed] itself in the specific product purchased by the plaintiff”); *Dana v. Hershey Co.*, 180 F. Supp. 3d 652, 661–62 (N.D. Cal. 2016), *aff'd*, 730 F. App'x 460 (9th Cir. 2018) (holding that plaintiff plausibly alleged standing because “alleged damage” of paying premium for “child-labor-free chocolate” was “done by the purchase itself”).

Third, P&G asserts (at 33–34) that the plaintiffs couldn't have been misled because they each bought Tampax Pure Cotton tampons after the first round of testing detected organic fluorine. But, at this stage, the Court must accept as true the plaintiffs' allegations that they did not know the tampons contained organic fluorine

when purchasing them. *See* ER-28, ER-29, ER-31. And P&G’s contrary argument ignores the relationship between the nature of the testing and the alleged misrepresentation here.

The complaint alleges that testing in March 2022 detected organic fluorine in “the whole finished Tampon Product.” ER-23. While P&G says (at 35) the plaintiffs therefore necessarily “accept[ed] the possibility that the portions represented as 100% organic cotton might contain [organic fluorine],” that’s simply not so. It would have been perfectly reasonable to expect the source of the detected organic fluorine to be the obviously non-cotton components of the product, like the 60% plant-based applicator and the wrapper around it, and not the tampon itself. *See* Opening Br. 31–32 (citing ER-10–11); Answering Br. 47–48 (emphasizing that consumers would understand a 60% plant-based applicator to contain “40% synthetic material”). However, once additional testing in April 2023 confirmed organic fluorine in the actual tampon, rather than just the applicator or wrapper, P&G’s deception became apparent. ER-23. It’s therefore plausible that the plaintiffs still reasonably understood Tampax Pure Cotton tampons to be chemical- and contaminant-free when they bought them between March 2022 and April 2023.

II. The plaintiffs plausibly allege a material misrepresentation.

As with standing, P&G’s arguments on the merits would require this Court to disregard the controlling standards that apply at the pleading stage. It asks this Court

to (1) credit the company’s preferred explanation for the presence of organic fluorine over the plaintiffs’ one, (2) adopt its narrow version of how an unusually savvy consumer would necessarily understand Tampax Pure Cotton’s labeling, and (3) conclude that avoiding unnecessary, potentially harmful man-made chemicals or contaminants is so obviously unimportant that no consumers would care that P&G misrepresented the composition of its tampons. These arguments involve issues of fact not properly resolved at the pleading stage. The Court should reject them all.

A. The plaintiffs plausibly allege the organic fluorine in Tampax Pure Cotton tampons is man-made.

P&G doesn’t dispute the plaintiffs plausibly allege, based on third-party testing, that Tampax Pure Cotton tampons contain organic fluorine. Instead, it disputes the plaintiffs’ *interpretation* of the testing results. In particular, P&G argues the plaintiffs haven’t plausibly alleged the organic fluorine is “artificial” because they “do not allege any basis for ruling out” P&G’s alternative “natural explanation”—rainwater that happens to contain naturally occurring organic fluorine. Answering Br. 38, 40–41.

This overstates the plaintiffs’ burden. Even assuming P&G’s rainwater hypothesis water holds weight,⁴ when there are multiple possible explanations, a

⁴ It doesn’t. *See* Opening Br. 38. Indeed, P&G can’t even keep its explanation straight, arguing below that rainwater must be the source of organic fluorine because P&G uses rainwater to clean cotton and arguing here it’s because rain falls on cotton

plaintiff need only allege some “facts tending to exclude the possibility that the alternative explanation is true.” *In re Century Aluminum Co. Secs. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 544 (2007)); *Starr v. Baca*, 652 F.3d 1202, 1216–17 (9th Cir. 2011); *Scheibe*, 141 F.4th at 1100 (relying on, *inter alia*, *Starr* to hold that “lingering possibilities” defendant’s “alternative explanation” for test results would bear out did “not make mislabeling allegations” based on those test results “implausible”).

In analogous cases, plaintiffs have satisfied this requirement by including allegations about the relative prevalence of an artificial additive compared to its natural counterpart. For example, in *Carbine v. Target Corp.*, 2025 WL 501829 (C.D. Cal. Feb. 13, 2025), although “citric acid may be naturally occurring,” the court found plausible the plaintiff’s “chain of reasoning” that the citric acid in the product was “produced using heavy chemical processing” because “99% of the world’s production” of citric acid is done that way. *Id.* at *3–4. Similarly, in *Holve v. McCormick & Co.*, 334 F. Supp. 3d 535 (W.D.N.Y. 2018), the plaintiff alleged that “the vast majority (89%) of corn in the United States is genetically modified.” *Id.* at 558. Although that meant 11% of corn is not genetically modified, the plaintiff’s

crops. *Compare* Mot. to Dismiss Third Am. Compl., ECF 82, at 14–15 (suggesting “cotton requires a significant amount of water to clean and [be] process[ed]”), *with* Answering Br. 15 (emphasizing potential exposure to rainwater “in natural growing conditions”).

“overwhelming statistical allegation ... render[ed] plausible” their allegation that the corn in the products was genetically modified too. *Id.* at 558–59; *see also Squeo v. Campbell Soup Co.*, 2024 WL 4557680, at *4 (N.D. Cal. Oct. 22, 2024) (cited at Opening Br. 36–37).

Here, too, the plaintiffs allege “facts tending to exclude the possibility that [P&G’s] alternative explanation is true.” *In re Century Aluminum Co. Secs. Litig.*, 729 F.3d at 1108. For instance, the complaint includes statistical allegations that the organic fluorine found in consumer products like Tampax Pure Cotton tampons is “almost exclusively man-made.” ER-22. The complaint also relies on scientific literature to allege that naturally derived organic fluorine will almost “never be the source of organic fluorine in a consumer product” because it is “exceedingly rare.” *Id.* This statistical improbability isn’t undermined, as P&G claims (at 38–39), because organic fluorine has been found in the natural world a small number of times. The same literature P&G relies on emphasizes that these natural examples remain “extremely rare” when compared to man-made ones—and that rainwater only “sometimes” contains organic fluorine. SER-004, SER-006. What’s more, the complaint points to the numerous places P&G markets its cotton as “purified to remove contaminants,” further reducing the likelihood the organic fluorine came from rain upstream from the manufacturing process. ER-20.

P&G claims (at 41) more was required to plausibly allege the organic fluorine in *its* products is artificial. But it offers zero support for this claim. And cases like *Carbine*, *Holve*, and *Squeo* confirm a statistical likelihood based on general industry practice is enough at this stage. *See Carbine*, 2025 WL 501829, at *3–4 (describing plaintiff’s “chain of reasoning” as sufficient to “link” defendant’s product to “manufactured citric acid” based on materials describing “common industry practice” even though they didn’t “apply to Defendant directly”); *Holve*, 334 F. Supp. 3d at 558–59; *Squeo*, 2024 WL 4557680, at *4.

In short, based on the plaintiffs’ allegations, it’s far more likely the organic fluorine in Tampax Pure Cotton tampons is from an artificial chemical intentionally used or an artificial contaminant inadvertently picked up during the manufacturing process, not rainwater. Whether the evidence ultimately proves these allegations—or P&G instead proves its speculative rainwater theory, which it certainly hasn’t done at this stage—“is an issue for summary judgment.” *Gasser v. Kiss My Face, LLC*, 2018 WL 4538729, at *4 (N.D. Cal. Sept. 21, 2018).⁵

⁵ To bolster its argument that the organic fluorine is natural, and therefore the result of an incidental impurity, P&G repeatedly describes the amount detected as “trace.” *See, e.g.*, Answering Br. 40–41. But the operative complaint alleges that third-party testing identified organic fluorine in “above trace amounts and well within the detection limits.” ER-23. That allegation must be taken as true. P&G attempts to undermine this point by seizing (at 16 n.2) on the district court’s earlier description of the amount detected as not “exceed[ing] trace amounts.” ER-65. But the court made that comment when addressing an entirely separate issue—whether, based on

B. The plaintiffs plausibly allege a reasonable consumer would understand Tampax Pure Cotton tampons to be free from man-made chemicals or contaminants.

P&G continues to resist the applicable standards by urging this Court to conclude, as a matter of law, that the Tampax Pure Cotton label conveys only that the cotton used in one part of the tampon is organic. But P&G relies on a consumer who brings to each shopping decision extensive background knowledge about manufacturing and the federal regulation of organic crop production. That consumer is more sophisticated than the law requires. Under the actual standard, the plaintiffs plausibly allege a reasonable consumer could interpret P&G’s carefully crafted message to mean the tampons are made exclusively of organic cotton and are therefore free from man-made chemicals or contaminants. That is all that is required at this preliminary stage.⁶

thresholds set by California regulations, the plaintiffs plausibly alleged harmful levels of organic fluorine as a proxy for PFAS. ER-64. At this stage, it would of course be improper to credit a defendant’s “characterization” of an amount as “trace.” *In re Trader Joe’s Co. Dark Chocolate Litig.*, 726 F. Supp. 3d 1150, 1168, 1170 (S.D. Cal. 2024) (listing cases).

⁶ Because the district court did not address a reasonable consumer’s understanding of the Tampax Pure Cotton label, this Court may remand for the district court to do so in the first instance.

1. The overall impression of the Tampax Pure Cotton label is that the tampons are made exclusively of organic cotton.

Contrary to P&G’s framing, the “reasonable consumer” standard contemplates a typical experience at a retail store. *See Panelli v. Target Corp.*, 172 F.4th 1120, 1127 (9th Cir. 2026). That’s why this Court frequently describes the reasonable consumer as “a parent walking down the dairy aisle in a grocery store, possibly with a child or two in tow” or a shopper “strolling the bedding aisle of Target and comparing products.” *Whiteside v. Kimberley Clark Corp.*, 108 F.4th 771, 779 (9th Cir. 2024); *Panelli*, 172 F.4th at 1126. Consumers are “likely to take the label for what it says” “when purchasing low-priced, everyday items.” *Panelli*, 172 F.4th at 1126; *see Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939–40 (9th Cir. 2008). And because most “shoppers make quick decisions,” the “context” of the representations is “crucial.” *Salazar v. Walmart, Inc.*, 83 Cal. App. 5th 561, 569 (2022) (quoting, *inter alia*, *Bell v. Publix Super Mkts., Inc.*, 982 F.3d 468, 481 (7th Cir. 2020)). A court therefore considers the overall impression of “the carefully crafted messages aimed” at consumers, *Panelli*, 172 F.4th at 1127, rather than “pars[ing]” individual words for technical truth, because that’s “how real consumers understand and react to [] advertising ... before placing [a product] in their carts.” *Bell*, 982 F.3d at 476.

Applying these principles here, a reasonable consumer could plausibly understand Tampax Pure Cotton tampons to be made exclusively of organic cotton

and therefore not contain man-made chemicals or contaminants, or at least undisclosed ones. Although P&G attempts to parse each word on the label in isolation, those words are designed to be read together as part of a “carefully crafted message[]” that these tampons contain only organic cotton and nothing man-made. *Panelli*, 172 F.4th at 1127. When the term “pure” is used to describe a specific ingredient, it can convey a message of both exclusivity and purity—i.e., that the product is purely or only that ingredient and that it’s otherwise free from man-made substances. *See* Opening Br. 24–25, 27–28 (listing cases). That’s the same impression left by what P&G calls the disclaimer, “contains **100% organic** cotton core.” Using “100%” to describe an ingredient can convey the product is exclusively that ingredient and using “organic” can convey the product lacks artificial substances. *Id.* at 25–26 (listing cases).

Courts across the country have consistently allowed similar claims to proceed. That’s because, at “the motion to dismiss stage,” it would be “improper” for a court “to select between competing plausible interpretations” of the challenged label. *Souter v. Edgewell Pers. Care Co.*, 2023 WL 5011747, at *3 (9th Cir. Aug. 7, 2023). *Bell*, which the plaintiffs cited previously (at Opening Br. 26) but which P&G ignores, is a good example. The Seventh Circuit explained it was possible the evidence developed in discovery would show reasonable consumers interpret “100% Grated Parmesan Cheese” in a number of ways: “that whatever it contains is ‘100% grated,’” “that

whatever cheese it contains is ‘100% Parmesan,’” or, as the plaintiffs alleged, “that ‘100%’ applies to all three words: it’s all cheese; all the cheese is Parmesan, and it’s all grated.” 982 F.3d at 476–77. But because of “the difference between a motion to dismiss on the pleadings and a motion for summary judgment,” “[h]ow reasonable consumers actually understand defendants’ ‘100% Grated Parmesan Cheese’ labels is a question of fact that cannot be resolved on the pleadings.” *Id.* at 483.

Other cases are in accord. In *Pappert v. ConAgra Brands, Inc.*, 2026 WL 1164602 (N.D. Ill. Apr. 29, 2026), the plaintiff argued (like the plaintiffs here) that “100% Whole Fish Fillet” reasonably conveyed that the fillet was “all fish,” *id.* at *7, while ConAgra countered (like P&G here) the phrase conveyed only that the fish in the fillet was whole, “not that there are no other ingredients.” *Id.* at *6. Despite the defendant’s “plausible reading,” the plaintiff’s other “plausible reading of the label” was “sufficient to state a claim.” *Id.*; *see also Dumont v. Reily Foods Co.*, 934 F.3d 35, 41 (1st Cir. 2019) (reasonable consumers could interpret “100% Arabica Coffee” to mean “100% of the coffee in the package is of the Arabica variety,” or “the package contains only coffee (and Arabica coffee at that)”).

2. P&G’s contrary arguments fail.

P&G counters (at 43–44) that the *only* plausible reading is just that one ingredient in one part of the tampon is organic cotton. That view departs from the well-established plausibility and reasonable consumer standards just described. P&G

therefore fails to establish, as it must at the pleading stage, that “no reasonable consumer” would interpret the label as the plaintiffs allege. *Becerra v. Dr. Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1229 (9th Cir. 2019) (emphasis added); *Williams*, 552 F.3d at 939 (dismissal under Rule 12(b)(6) appropriate only where it would be “impossible for the plaintiff to prove that a reasonable consumer was likely to be deceived”).⁷

First, P&G urges the Court to lose the forest for the trees of the Tampax Pure Cotton label by focusing on individual words in isolation rather than in their proper context.

It starts by asserting that no reasonable consumer could understand the “entire product” to be made exclusively of organic cotton because the disclaimer references the “core.” Answering Br. 47–48, 55. But the plaintiffs don’t contend that consumers would think the entire product, including obviously non-cotton components like the applicator and wrapper, are chemical and contaminant free—just the tampon inside. Opening Br. 30–31; ER-24–25. More fundamentally, although P&G asserts (at 6) that the “core” by definition refers only to the innermost, absorbent part of a tampon “inserted into the body,” a consumer looking at the Tampon Pure Cotton front label could reasonably understand the reference to be to the whole tampon, as distinct

⁷ The plaintiffs agree with P&G’s observation (at 24–25) that dismissal doesn’t require application of the abrogated “no set of facts” standard. But that makes no difference here because the plaintiffs need not disprove P&G’s alternative explanation, *supra* Part II(A), and P&G hasn’t established it would be impossible to prove a reasonable consumer would be deceived, *infra* Part II(B)(2).

from the applicator and wrapper. Indeed, another court considering this very same product concluded as much. *See Palmer v. Procter & Gamble Co.*, 2023 WL 5852252, at *5 (N.D. Ill. Sept. 11, 2023).

Even if P&G were correct that, as a matter of law, a consumer would understand “core” in the way it says, there’s no disputing that P&G conveyed the “core” as containing “**100% organic** cotton.” Opening Br. 28–29 (citing ER-10–11, ER-16–17). And, as the complaint alleges, every part of the tampon, including the innermost absorbent component, contains measurable amounts of organic fluorine. *Id.* (citing ER-23). So, even then, a reasonable consumer would be misled by P&G’s claims.

Contrary to P&G’s argument (at 56), the word “contains” doesn’t foreclose the plaintiffs’ allegations. A shopper selecting tampons in a grocery store could plausibly take from the whole of P&G’s messaging that the only thing the tampons contain is organic cotton. *See Palmer*, 2023 WL 5852252, at *5. That’s consistent with “contains” being in a smaller, un-bolded font than “**100% organic**,” and with how courts have interpreted allegations about similar phrasing. In *Wilson v. Frito-Lay North America, Inc.*, 2013 WL 1320468 (N.D. Cal. Apr. 1, 2013), for example, the court rejected an argument that a consumer would, “as a matter of law,” interpret “made with all natural ingredients” to imply non-natural ingredients too because “with” and “all” together could also plausibly mean “exclusively natural.” *Id.* at *12. Here, too, the combination

of “contains” and “100%” plausibly conveys Tampax Pure Cotton tampons as being exclusively organic cotton.

The phrase “free of dyes, fragrances & chlorine bleaching” doesn’t foreclose the allegations either. *Contra* Answering Br. 53–54. Just because a product label emphasizes the absence of one quality doesn’t “conclusively demonstrate” reasonable consumers would understand the product to lack “only” that quality. *Brenner v. Procter & Gamble Co.*, 2016 WL 8192946, at *6 (C.D. Cal. Oct. 20, 2016). That makes sense: While manufacturers may highlight particular features, they need not list every feature a product doesn’t have because the relevant question is what a reasonable consumer would take from the overall impression of the messaging.⁸

Second, P&G imbues the reasonable consumer with sweeping knowledge of how commercial products are made, how cotton is processed, and what federal regulations define as organic. Because of this technical know-how, they’d also supposedly know that a manufacturer like P&G can’t actually guarantee its products are “literally 100% uncontaminated”—no matter what representations P&G chooses to make to capture consumer attention. Answering Br. 53; *see also, e.g., id.* at 49–50

⁸ P&G agrees there is no need to consult the back label here because reasonable consumers wouldn’t “necessarily require more information before reasonably concluding that the label is making a particular representation.” Answering Br. 46 n.10 (quoting *Whiteside*, 108 F.4th at 781). If this Court disagrees, however, the Opening Brief explained (at 31–32) why the back label plausibly “reinforces” P&G’s deception.

(asserting that consumers know cotton labeled “pure” will still have some level of contamination); *id.* at 46, 55, 56 (similar).

At the outset, this argument is premised on P&G’s insistence that Tampax Pure Cotton tampons contain, at most, “trace” organic fluorine. *See supra* p. 13 n.5. But, as explained, that’s not what the complaint says, and the plaintiffs’ allegation that the tampons contain measurable amounts of organic fluorine must be taken as true. *Id.* Thus, while P&G repeatedly tries (at 2, 5, 28, 51) to paint the plaintiffs as alleging a material misrepresentation so long as the tampons “contained even a single synthetic molecule,” that’s just a strawman.

Whatever the exact amount, P&G relies heavily on *Moore v. Trader Joe’s Co.*, 4 F.4th 874 (9th Cir. 2021), to urge this Court to evaluate the Tampax Pure Cotton packaging from the perspective of a manufacturing-savvy consumer. But *Moore* has no bearing here because how tampons are made is not, as in *Moore*, a matter of either “common knowledge” or “common sense.” *Panelli*, 172 F.4th at 1127.

Starting with “common knowledge,” *Moore* involved consumers of “Manuka honey, a niche, specialty product” who “likely know more than most about the production of the product.” 4 F.4th at 884. It was that particularly informed consumer that led the Court to conclude the plaintiffs’ interpretation of the label was “implausible.” *Id.* This Court has repeatedly confirmed, however, that *Moore* does not mean consumers presumptively have “any specialized knowledge” about how

“everyday items” are made. *See Whiteside*, 108 F.4th at 782 (rejecting *Moore*’s application to consumers of baby wipes); *Souter*, 2023 WL 5011747, at *2 (rejecting *Moore*’s application to consumers of hand wipes); *Panelli*, 172 F.4th at 1125–26 (rejecting argument that reasonable consumer could not, as a matter of law, be misled by representation about “100% cotton” sheets because “a reasonable consumer is unlikely to be familiar with the intricacies of textile manufacturing”).

P&G fails to explain why reasonable consumers of tampons are more like consumers of a “niche product” like specialty honey than baby wipes and bedsheets. *Whiteside*, 108 F.4th at 782. It therefore fails to provide any basis for assuming the “deep knowledge” about tampon manufacturing it ascribes to tampon users. *Id.* That is so even though, like parents selecting baby wipes, women across the country care a great deal about the type and quality of feminine hygiene products they use. Rather, consumers of these everyday, albeit consequential, products are entitled to rely on the manufacturer’s representations and “take the label for what it says.” *Panelli*, 172 F.4th at 1126.

Nor should the Court assume that, as a matter of common sense, consumers do not interpret absolute promises about a product’s composition literally because they supposedly know such promises are “impossible.” Answering Br. 45 (quoting *In re Gen. Mills Glyphosate Litig.*, 2017 WL 2983877, at *6 (D. Minn. July 12, 2017)). P&G cites *Moore* for the proposition that reasonable consumers don’t interpret labels to

“promise” the “impossible.” *Id.* (quoting *Moore*, 4 F.4th at 883). But this Court made that observation based on “commonsense inferences” about how bees forage. *Souter*, 2023 WL 5011747, at *2 n.2 (describing *Moore*). And this Court has since cautioned that even if consumers generally know about bees, “they likely would not have that same kind of baseline knowledge about [] manufacturing.” *Panelli*, 172 F.4th at 1127. That’s why courts in this Circuit have been “unwilling” to conclude, “as a matter of law at the pleading stage,” that reasonable consumers would not interpret phrases like “pure” and “100%” to “mean that the final product does not contain any substance (even in trace amounts).” *Tran v. Sioux Honey Ass’n*, 471 F. Supp. 3d 1019, 1026 (C.D. Cal. 2020).⁹ For similar reasons, reasonable consumers are not, as a matter of law, expected to know that categorical representations about a product’s composition allow for what P&G calls (at 54–55) “improper rounding.”

P&G’s argument about what reasonable consumers supposedly know about tampon manufacturing suffers another flaw still. It focuses solely on the problem of potential inadvertent contamination during the manufacturing process. *See* Answering Br. 52–53. But the plaintiffs also allege reasonable consumers would understand Tampax Pure Cotton tampons to be free from man-made chemicals

⁹ *See also, e.g., Wysocki v. Chobani, LLC*, --F. Supp. 3d--, 2026 WL 926713, at *9 (S.D. Cal. Apr. 6, 2026); *Gradney v. Polar Beverages*, 797 F. Supp. 3d 1016, 1024 (N.D. Cal. 2025); *Phan v. Sargento Foods, Inc.*, 2021 WL 2224260, at *3 (N.D. Cal. June 2, 2021); *Organic Consumers Ass’n v. Sanderson Farms, Inc.*, 284 F. Supp. 3d 1005, 1014 (N.D. Cal. 2018).

intentionally used during manufacturing too. *See* ER-24, ER-27. And even P&G doesn't argue reasonable consumers would think it couldn't, at a minimum, avoid adding man-made chemicals to the products it touts as "pure" and "**100% organic.**"

Third, P&G asserts (at 44–45) reasonable consumers know that, under federal regulations, the "term 'organic' does not mean completely free of contamination." According to P&G, certain regulations allow a finished product containing organic cotton to still be labeled "organic" even if the product is "treated with certain synthetic substances." *Id.*; *id.* at 7–9. Whether that's so is irrelevant because "the question is what a reasonable consumer expects, not what a regulatory expert ... knows." *Trammell v. KLN Enters.*, --F.4th--, 2026 WL 1356403, at *5 (9th Cir. May 15, 2026); *Williams*, 552 F.3d at 940; *Levit v. Nature's Bakery, LLC*, 767 F. Supp. 3d 955, 968 (N.D. Cal. 2025) (mere compliance with federal labeling requirements "does not eliminate the possibility that reasonable consumers may be misled"). So, whether the "tightly regulated meaning" of "organic" is, as P&G asserts (at 7), "widely understood" by consumers is a quintessential question of fact not properly addressed at the pleading stage.

* * *

At this stage, the plaintiffs need only allege a reasonable consumer could plausibly conclude what P&G designed the front of its packaging to convey: Tampax

Pure Cotton tampons are made exclusively of organic cotton. They do. P&G tries to rely on isolated terms and exacting expectations about consumer knowledge to gloss over its intended message, but this Court should reject that effort. The applicable standards require it—and allowing such tactics would, contrary to California law, empower manufacturers to deploy deeply misleading messaging in an attempt to dupe consumers into paying more than they should.¹⁰

C. The plaintiffs plausibly allege a reasonable consumer would value avoiding any exposure to unnecessary, potentially harmful chemicals or contaminants.

Falling back, P&G turns to another issue the district court did not address—whether its misrepresentation about the composition of Tampax Pure Cotton tampons would be material to a reasonable consumer. According to P&G (at 61), no reasonable consumer would care about the organic fluorine in its tampons because the plaintiffs don’t allege the amount of organic fluorine is unsafe.

¹⁰ The Washington Legal Foundation likewise ignores the settled standards at this stage to argue that reversal would punish P&G for “honest, effective product advocacy” protected by the First Amendment. WLF Amicus Br. 2. But the explicit premise of this argument is that P&G’s packaging is “non-deceptive, non-misleading, truthful speech.” *Id.* at 9. Because the plaintiffs plausibly allege P&G’s representations are the opposite, there’s no constitutional concern here. *See Serova v. Sony Music Ent.*, 13 Cal. 5th 859, 867–68 (2022) (The “First Amendment has long coexisted with no-fault false advertising laws” because “there ‘can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public.’” (quoting *Cent. Hudson Gas & Elec. v. Pub. Serv. Comm’n*, 447 U.S. 557, 563 (1980))).

To start, because the district court did not address materiality, this Court should not reach this question of fact “in the first instance.” *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1212 n.2 (9th Cir. 2020). To avoid a remand, P&G suggests the district court *effectively* considered materiality when addressing the distinct question whether P&G misrepresents Tampax Pure Cotton tampons. Answering Br. 59 (citing ER-6). It didn’t. Although the plaintiffs do not allege that P&G misrepresents Tampax Pure Cotton tampons as being safe, the district court faulted the plaintiffs for not alleging harmful amounts of organic fluorine. Opening Br. 41–43. It was error to dock the plaintiffs for not including allegations irrelevant to their misrepresentation claims. *Id.* And this Court shouldn’t permit P&G to bootstrap one erroneous conclusion about a distinct issue to justify what would amount to another error.

Second, even if this Court were to consider it, “materiality is generally a question of fact” not properly resolved at the pleading stage “unless the fact misrepresented is so obviously unimportant that the jury could not reasonably find that a reasonable man would have been influenced by it.” *Steroid Hormone Prod. Cases*, 181 Cal. App. 4th 145, 157 (2010); *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1021 (9th Cir. 2020) (similar).

P&G hasn’t satisfied this demanding standard. A reasonable consumer could plausibly value whether Tampax Pure Cotton tampons are free from man-made chemicals or contaminants absent a proven risk of harm because minimizing

unknown risk is normal consumer behavior. *See* Opening Br. 42. Scientific understanding of man-made chemicals is constantly evolving. As a result, consumers frequently learn substances once celebrated as modern innovations—think, for example, of lead, Teflon, and flame retardants—actually cause serious health issues. Given the potential downstream effects of exposure, it’s entirely plausible a reasonable consumer wouldn’t want a product with any man-made chemicals or contaminants in it. That’s particularly so when it comes to tampons, which remain in prolonged contact with one of the most absorbent areas of a woman’s body. ER-9, ER-13–14. Contrary to P&G’s claims (at 28), therefore, it wouldn’t be an “abstract technicality” to such consumers if the product they use in the most intimate of places actually contains measurable amounts of an unnecessary man-made chemical or contaminant that could turn out to be potentially harmful. At the very least, avoiding the potential risk of future harm “is not, as a matter of law, an obviously unimportant consideration for a reasonable [tampon] purchaser.” *Moore*, 966 F.3d at 1021.

P&G’s responses don’t change this. It returns (at 61) to its argument that no reasonable consumer could care about “trace” organic fluorine. And here, too, courts in this Circuit have rejected the argument that “the mere presence” of a man-made substance “is not material to reasonable consumers” because materiality is a “factual issue[] not appropriate for resolution at this stage in the proceedings.” *In re Plum Baby Food Litig.*, 2022 WL 16640802, at *2 (N.D. Cal. Jan. 12, 2022); *In re Trader*

Joe's Co. Dark Chocolate Litig., 726 F. Supp. 3d 1150, 1168 (S.D. Cal. 2024) (quoting same). The vast majority of P&G's cited cases (at 61–62) don't suggest otherwise. Unlike here, the plaintiffs in those cases claimed consumers would be misled into believing a product was safe, but then didn't allege the presence or amount of a substance that would render the product unsafe. See *In re Hain Celestial Heavy Metals Baby Food Litig.*, 2024 WL 5239510, at *11 (E.D.N.Y. Dec. 27, 2024); *Hayden v. Bob's Red Mill Nat. Foods, Inc.*, 2024 WL 1643696, at *8 (N.D. Cal. Apr. 16, 2024); *Arroyo v. Chattem, Inc.*, 926 F. Supp. 2d 1070, 1079 (N.D. Cal. 2012).¹¹

But even if the level of organic fluorine were relevant at this stage, the plaintiffs here allege *above trace* amounts of it. ER-23; *supra* p. 13 n.5. P&G's repeated handwaving (at, *e.g.*, 37, 61) about the implications of “extreme” theories is therefore not only premature, it's misplaced.

CONCLUSION

For the foregoing reasons, the plaintiffs respectfully ask this Court to reverse the order of the district court dismissing the third amended complaint with prejudice.

Respectfully submitted,

s/ Hannah M. Kieschnick

¹¹ To the extent *Parks v. Ainsworth Pet Nutrition, LLC*, 377 F. Supp. 3d 241 (S.D.N.Y. 2019) (cited at Answering Br. 62), involved a similar theory to the one here, it's unpersuasive. *Park's* reasoning conflicts with the standards governing materiality at the pleading stage and the approach of courts in this Circuit considering allegations about even “trace” amounts of substances in consumer products. See, *e.g.*, *In re Plum Baby Food Litig.*, 2022 WL 16640802, at *2; see also *supra* p. 23, 23 n.9.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7,000 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

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