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10 DANA WEISS AND ALL THOSE
11 SIMILARLY SITUATED

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

14 DANA WEISS, an individual, and all
15 others similarly situated,

16 Plaintiff,

17 vs.

18 TRADER JOE’S COMPANY, a
19 California Corporation; and DOES 1
20 through 10,

21 Defendants.
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Case No. 8:18-cv-01130-JLS-GJS

**SECOND AMENDED
COMPLAINT – CLASS ACTION**

[DEMAND FOR JURY TRIAL]

1 **INTRODUCTION**

2 1. Plaintiff Dana Weiss (“Plaintiff”) brings this action individually and on
3 behalf of a proposed class and subclass (“Class” or “Classes”), as more fully defined
4 below, of similarly situated persons nationwide or in California, seeking to redress the
5 pervasive pattern of fraudulent, deceptive, and false and otherwise improper
6 advertising, sales and marketing practices that the Defendants (as later defined) have
7 engaged in with regarded to their “alkaline” water (“Product” or “Trader Joe’s
8 Alkaline Water”). As more fully stated herein, Defendants’ schemes or artifices to
9 deceive and mislead Plaintiff and other members of the proposed Classes including
10 Plaintiff and other members of the proposed Classes, into purchasing, at a premium
11 price, tens of millions of dollars’ worth of water, which are distributed, marketed,
12 advertised, and or sold by Defendants.

13 2. Defendants have repeatedly violated the consumer protection statutes
14 referred to herein by making deceptive promotional claims about their alkaline water
15 products, claims that are false and misleading by competent, reliable scientific
16 evidence. Defendants have claimed that their water is “ionized to achieve the perfect
17 balance,” “refresh and hydrate” with hundreds of plus symbols superimposed on the
18 packaging, a universal sign of gaining health, when in reality the Product is no
19 different than drinking any bottled water or tap water. The make-up of Trader Joe’s
20 Alkaline Water does not provide any of the benefits that Defendants say it does.

21 3. Defendants prey on consumers by misleadingly claiming that the Product
22 is of alkalinity greater than 9.5+.

23 **JURISDICTION AND VENUE**

24 4. This Court has subject matter jurisdiction of this action pursuant to 28
25 U.S.C. § 1332(d)(2) and 28 U.S.C. § 1711, et. seq., the Class Action Fairness Act of
26 2005 because (i) there are 100 or more Class Members, (ii) upon information and
27 belief there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of

1 interest and costs, and (iii) there is minimal diversity because at least one plaintiff and
2 one defendant are citizens of different states.

3 5. For the subclass, the Court has original jurisdiction over CAFA and/or
4 supplemental jurisdiction under 28 U.S.C. § 1367.

5 6. Venue is proper in this district under 28 U.S.C. § 1391 because
6 Defendants continuously conduct business in this district and a substantial part of the
7 events giving rise to these claims occurred in the Central District of California;
8 Defendants and/or their agents are doing business in California; and/or Defendants are
9 otherwise subject to personal jurisdiction in this judicial district.

10 **PARTIES**

11 7. Plaintiff Dana Weiss is, and at all times mentioned herein, was a resident
12 of the State of California. Beginning on or about November of 2016, Plaintiff has
13 purchased the Alkaline Water. In initially deciding to purchase the Trader Joe
14 Alkaline water, Plaintiff relied on Trader Joe's claims that the Product was of a pH of
15 greater than 9.5, and that it was ionized to help her achieve perfect "balance." Plaintiff
16 thereafter purchased the Trader Joe Alkaline Water ("Product"). Plaintiff typically
17 purchased the Trader Joe's Alkaline Water at the Trader Joe's in Manhattan Beach,
18 Store No. 106. Ms. Weiss will be unable to rely on the Product's advertising or
19 labeling in the future based on its level of deception. Even though Ms. Weiss would
20 like to purchase the Product, she cannot purchase the Product in the future based on
21 the current labeling.

22 8. When purchasing the Product, Ms. Weiss was seeking a product that
23 would balance pH internally, and she relied on this contention. Ms. Weiss also
24 thought that the Product was greater than a pH of 9.5+.

25 9. The labeling of the Product, however, was misleading, and had the
26 capacity, tendency, and likelihood to confuse or confound Ms. Weiss and other
27

1 consumers acting reasonably (including the putative class), as described in detail
2 herein.

3 10. Ms. Weiss acted reasonably in relying on Trader Joe's Claims, which
4 Trader Joe's intentionally placed on the Product labels with the intent to induce
5 ordinary consumers into purchasing the Product.

6 11. The Product cost more than similar products without misleading labeling,
7 even the water shelved right next to the alkaline water at Trader Joe's, and would have
8 cost less absent the false and/or misleading claims.

9 12. If Trader Joe's was enjoined from making the claims, the market demand
10 and price for its Product would drop, as it has been artificially and fraudulently
11 inflated due to Trader Joe's use of deceptive labeling.

12 13. Ms. Weiss paid more for the Product, and would only have been willing
13 to pay less, or unwilling to purchase them at all, absent the misleading claims
14 complained of herein.

15 14. For these reasons, the Product was worth less than what Ms. Weiss paid
16 for it, and may have been worth nothing at all.

17 15. Defendant Trader Joe's Company ("Trader Joe's") is a privately-held
18 corporation organized and existing under the laws of the State of California with its
19 principal place of business at 800 S. Shamrock Avenue, Monrovia, CA 91016. Trader
20 Joe's manufactured, marketed, distributed, and advertised and sold Trader Joe's
21 Alkaline water at all times relevant hereto. Trader Joe's sells hundreds of thousands
22 of bottles water per week in the United States. Its annual sales for the sale of the
23 product are in the millions.

24 16. Plaintiff is ignorant of the true identities and capacities of fictitiously
25 named defendants designated as Does 1-10, but will amend this complaint or any
26 subsequent pleading when their identities and capacities have been ascertained
27 according to proof. On information and belief, each and every Doe defendant is in

1 some manner responsible for the acts and conduct of the other defendants herein, and
2 each Doe was, and is, responsible for the injuries, damages, and harm incurred by
3 Plaintiff. Each reference in this complaint to “defendant,” “defendants,” or a
4 specifically named defendant, refers also to all of the named defendants and those
5 unknown parties sued under fictitious names.

6 17. Plaintiff is informed and believes and thereon alleges that, at all times
7 relevant hereto, all of the defendants together were members of a single
8 unincorporated association, with each member exercising control over the operations
9 of the association. Plaintiff is informed and believes and thereon alleges that, at all
10 times relevant hereto, each of the defendants was the agent, associate, employee
11 and/or representative of each of the remaining defendants, and in doing the things
12 hereinafter alleged, was acting within the authorized course and scope of this agency,
13 association and employment with the full knowledge and consent of the remaining
14 defendants. Plaintiff is further informed and believes and thereon alleges that each and
15 all of the acts herein alleged as to each defendant was authorized and directed by the
16 remaining defendants, who ratified, adopted, condoned and approved said acts with
17 full knowledge of the consequences thereof, and memorialized the authority of the
18 agent in a writing subscribed by the principal.

19 18. Plaintiff is informed and believes and thereon alleges that each of the
20 defendants herein agreed among each other to commit the unlawful acts (or acts by
21 unlawful means) described in this complaint. The desired effect of the conspiracy was
22 to defraud and otherwise deprive Plaintiff of her constitutionally protected rights to
23 property, and of her rights under other laws as set forth herein. Each of the defendants
24 herein committed an act in furtherance of the agreement. Injury was caused to the
25 Plaintiff by the defendants as a consequence.

26 19. Plaintiff observed and tested that the Product had a pH level of less than
27 9.5 one week after she purchased the Product in November of 2016.

1 20. The testing was performed at the Plaintiff’s residence. The Plaintiff also
2 tested tap water. The test results were Trader Joe’s Alkaline Water at 7.3 pH, and tap
3 water 7.1 pH.

4 21. The Plaintiff tested the Product using an appropriate device for
5 ascertaining the pH of liquid substances, a PH-02 “pen type pH meter” made by
6 manufacturer, Zacro. Plaintiff tested samples more than once.

7 22. Most of the reviewers who tested Trader Joe’s Product found it to be at a
8 pH of 6, which is acidic. [http://www.lifeionizers.com/blog/trader-joes-alkaline-water-](http://www.lifeionizers.com/blog/trader-joes-alkaline-water-fails-test-at-9-5-ph/)
9 [fails-test-at-9-5-ph/](http://www.lifeionizers.com/blog/trader-joes-alkaline-water-fails-test-at-9-5-ph/).

10 23. Plaintiff could not have tested the Product when it was bottled because
11 the water is bottled on private property that is not open to the public or available to
12 Plaintiff unless through discovery.

13 24. Plaintiff has requested, but has not received, discovery responsive to the
14 inquiry as to whether the Product lacked the 9.5+ representation on a class-wide basis.

15 25. Based on reviews surveyed in the public domain, articles, and her own
16 personal testing, Plaintiff asserts upon information and belief, that Trader Joe’s did not
17 meet this representation on a class-wide basis.

18 26. Plaintiff is unable to conduct the specific expert testing and prepare an
19 expert report on these contentions until she is granted access to the source of
20 production, and she receives the information requested in discovery. Then Plaintiff’s
21 expert can also test the degradation of alkaline water, which occurs over time, and
22 after the water is bottled. Degradation of pH ions is an accepted fact, such that the
23 longer the Product sits on the shelves, the more pH will be lost. Additional pH is lost
24 from the time the water is purchased to when it is consumed.

25 27. The Product contains labeling “exp:_____” with a date that on
26 information and belief, is uniformly two years after the date of purchase.

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1 28. The alleged alkalinity of 9.5+ degrades and diminishes such that it is
2 materially below 9.5 less than a year after purchase (the expiration) date.

3 29. The “9.5+” representation is implied to the consumer that such alkalinity
4 will last for a reasonable time through consumption, as there is no counter-inference
5 or designation on the bottle such as “good if used through [date].”

6 30. A reasonable consumer will believe that the Product will maintain its
7 alkalinity a reasonable time after it is sourced and manufactured through point of
8 purchase, and a reasonable amount of time thereafter for consumption.

9 31. A reasonable consumer will believe that the Product not expiring within
10 two years will mean the Product will maintain its alkalinity of 9.5+ for two years.

11 32. Plaintiff relied on this representation when she purchased the Product. In
12 actuality, the representation was false.

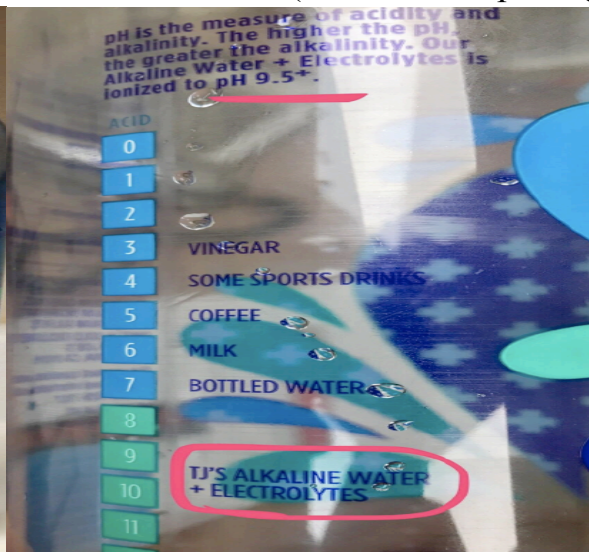
13 **TRADER JOE’S ALKALINE WATER**

14 33. Trader Joe’s falsely claims “pH 9.5+.” That particular statement was
15 made on the packaging of the Product in Figure No. 1 and Figure No. 2.

16 34. The scale on the back of the packaging including the “pH 9.5+”
17 representation is also false and misleading.

18 FIGURE NO. 1

FIGURE NO. 2 (other side of packaging)



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2 35. Defendants' product does not even maintain or have alkalinity
3 represented on the packaging of 9.5+ when bottled or sold. The Product is more
4 acidic than as represented.

5 36. Such deceptive conduct and practices mean that Defendants' advertising
6 and marketing is not just puffery, but is instead deceptive and is therefore, actionable.

7 37. Defendants take advantage of every marketing avenue the modern age
8 has opened to them in order to ensure that the false and deceptive marketing message
9 permeates the general consumer consciousness. Defendants use advertising, internet
10 marketing, and social media, as well as glossy print through the "Fearless Flyer." But
11 no matter which marketing avenue reaches a consumer, Defendants' drive home the
12 same false and deceptive claims of superior results from drinking alkaline branded
13 water through all the advertising mediums vis-à-vis normally sourced water.

14 38. As a result of the foregoing, Defendants' claims regarding Trader Joe's
15 Alkaline water are deceptive and misleading. Had Plaintiff and other members of the
16 proposed Classes been aware of the truth about Trader Joe's Alkaline Water, they
17 would not have purchased Trader Joe's Alkaline Water, and would not have paid a
18 premium price for the Trader Joe's Alkaline Water.

19 39. Indeed, Defendants were in a superior position to know and did know
20 that its claims and advertisements were deceptive and false and they failed to inform
21 consumers that their Trader Joe's Alkaline branded water cannot perform as
22 advertised and promised.

23 40. Instead, Defendants allow their deceptive and misleading marketing to
24 permeate the consumer advertising consciousness and perpetuate Defendants' false
25 claims and promises.

26 41. Defendants were also in a superior position to know about the alkalinity
27 of its water at the date of sourcing, distribution, purchase, and intended consumption.

1 42. Because of such deceptive practices and conduct, Defendants are able to
2 charge and get a substantial premium for their products over readily available and
3 much lower priced sources of water that provide the same or substantially the same
4 results. Thus, Defendants reap profits on products where consumers are induced to
5 pay an unwarranted, substantial premium.

6 43. All conditions precedent necessary for filing of this Complaint have been
7 satisfied and/or such conditions have been waived by the conduct of the Defendants.
8 Plaintiff has served a letter on the Defendants under Consumer Legal Rights Act prior
9 to commencing this action, which is attached to this FAC.

10 44. Trader Joe's represents on the packaging that it "dist. [distributes & sold
11 [sells]," and its agent sources the water, yet Trader Joe's and its agents impermissibly
12 do not maintain a report for the Product.

13 **CLASS ACTION ALLEGATIONS**

14 45. Plaintiff brings this action on behalf of herself and on behalf of a
15 Nationwide Class and California Subclass of other similarly situated persons pursuant
16 to Fed. R. Civ. Proc. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional
17 information obtained through further investigation and/or discovery, the foregoing
18 definition of the Classes may be expanded or narrowed. The proposed Classes are as
19 follows:

20 *UCL-Multistate Class:* All persons who, within the applicable
21 statute of limitations period, purchased Trader Joe Alkaline Water in
22 States with UCL or comparative consumer protection statutes, until the
date notice is disseminated.

23 *California Subclass:* All California persons who, within the applicable
24 statute of limitations period, purchased Trader Joe Alkaline Water until
25 the date notice is disseminated.

26 46. Excluded from the Classes are (1) Defendants, Defendants' subsidiaries,
27 affiliates, officers, agents, directors, assigns and successors, and any entity which

1 Defendants have a controlling interest; (2) the Judge to whom this case is assigned and
2 any member of the Judge’s immediate family; (3) anyone who purchased the Trader
3 Joe’s Alkaline Water branded bottled water for the purpose of resale; (4) anyone
4 asserting a claim for personal injury. Plaintiff reserves the right to modify the Class
5 and Subclass definitions as further investigation and/or discovery so warrant.

6 47. This action has been brought and may be properly maintained as a class
7 action pursuant to Fed. R. Civ. Proc. 23 and case law thereunder.

8 48. **Numerosity:** The members of the Classes are so numerous that joinder of
9 all members is impracticable. Plaintiff reasonably believes that the Classes are
10 comprised of tens of thousands of consumers throughout the United States.

11 49. **Commonality:** Common questions of law and fact exist as to all
12 members of the Classes. These common questions predominate over any questions
13 affecting only individual Class members. These common legal and factual questions
14 include, but are not limited to the following:

- 15 • whether Defendants’ claims regarding Trader Joe’s Alkaline Water
16 brand water are deceptive and misleading;
- 17 • whether Defendants engaged in false and misleading advertising;
- 18 • whether Defendants’ conduct as alleged herein violates the
19 California Consumer Legal Remedies Act and California’s unfair
20 competition law;
- 21 • whether Defendants’ conduct as alleged herein constitutes a breach
22 of warranty;
- 23 • whether Defendants’ conduct as alleged herein constitutes unjust
24 enrichment;
- 25 • whether Plaintiff and the class members have sustained monetary
26 loss and the proper measure of that loss; and
- 27 • whether Plaintiff and the Class members are entitled to declaratory

1 relief.

2 These and other questions of law and fact which are common to the members of
3 the Class and predominate over any questions affecting only individual members of
4 the Class.

5 50. **Typicality:** Plaintiff's claims are typical of the claims of the members of
6 the Classes, as all Class members are similarly affected by Defendants' wrongful
7 conduct. Plaintiff, like other members of the Classes, purchased the Trader Joe's
8 Alkaline branded water after exposure to the same material misrepresentations and/or
9 omissions appearing on the product packaging and on or in Defendants' marketing
10 and advertising, and received a product that was not represented. Plaintiff is
11 advancing the same claims and legal theories on behalf of herself and all absent
12 members of the Classes.

13 51. **Adequacy:** Plaintiff's claims are made in a representative capacity on
14 behalf of the other members of the Class. Plaintiff has no interests antagonistic to the
15 interests of the other members of the proposed Class and is subject to no unique
16 defenses.

17 52. Plaintiff is similarly situated in interest to all members of the proposed
18 Class and is committed to vigorous prosecution of this action and has retained
19 competent counsel experienced in the prosecution of class actions. Accordingly,
20 Plaintiff is an adequate representative of the proposed Class and will fairly and
21 adequately protect the interests of the Class.

22 53. This suit may be maintained as a class action under Fed. R. Civ. Pro.
23 23(b)(2) because Defendants have acted, and/or refused to act, on grounds generally
24 applicable to the Classes, thereby making appropriate final injunctive relief.
25 Specifically, injunctive relief is necessary and appropriate to require Defendants to: (i)
26 discontinue advertising, marketing, packaging and otherwise representing Trader Joe's
27 Alkaline branded water; and (ii) to correct any erroneous impression consumers may

1 have derived concerning the nature, characteristic, or qualities of the Trader Joe’s
2 Alkaline branded water, including without limitation, the placement of corrective
3 advertising and providing written notice to the public. Plaintiff

4 54. In addition, this suit may be maintained as a class action under Fed. R.
5 Civ. Pro. 23(b)(3) because a class action is superior to all other available methods for
6 the fair and efficient adjudication of this controversy since joinder of all members is
7 impracticable. The injury suffered by each individual class member is relatively small
8 in comparison to the burden and expense of individual prosecution of the complex and
9 extensive litigation necessitated by Defendants’ conduct. It would be virtually
10 impossible for members of the Classes individually to redress effectively the wrongs
11 done to them. Even if the members of the Classes could afford such litigation, the
12 court system could not. Individualized litigation presents a potential for inconsistent
13 or contradictory judgments. Individually litigation increases the delay and expense to
14 all parties, and to the court system, presented by the complex legal and factual issues
15 of the case. By contrast, the class action device presents no management difficulties,
16 and provides the benefits of single adjudication, economy of scale, and comprehensive
17 supervision by a single Court.

18 **COUNT I**

19 **Breach of Express Warranty**

20 **(Asserted on Behalf of Nationwide Class and California Subclass against all**
21 **Named Defendants and DOES 1-10)**

22 55. Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 56. Plaintiff, and each member of the Class, formed a contract with
25 Defendants at they time they purchased Defendants’ Trader Joe’s Alkaline Water
26 bottled water. The terms of that contract include the promises and affirmations of fact
27 made by Defendants on the labels of Defendants’ alkaline water and through the

1 advertising and marketing campaign, as alleged above, specifically the “pH 9.5+.”
2 The Trader Joe’s Alkaline branded water labeling and advertising constitute express
3 warranties, are part of the basis of the bargain, and are part of a standardized contract
4 between Plaintiff and the members of the Classes, on the one hand, and Defendants,
5 on the other.

6 57. Alternatively, privity was established between Defendants and Plaintiff
7 and Class Members because Defendants, and/or their agents, were substantially, if not
8 completely responsible for directly promoting and marketing Defendants’ Trader
9 Joe’s Alkaline branded water to Plaintiff and Class Members and Plaintiff and Class
10 Members were directly promoted to and marketed to by Defendants prior to
11 purchasing Defendants’ Trader Joe’s Alkaline branded water, resulting in the purchase
12 of Defendants’ Trader Joe’s Alkaline branded water by Plaintiff and the Class
13 members. By virtue of this direct promotion and marketing to Plaintiff and Class
14 Members, Defendants directly made an express warranty of the Trader Joe’s Alkaline
15 Water brand water’s attributes and benefits to Plaintiff and the Class Members.

16 58. All conditions precedent to Defendant’s liability under the warranty have
17 been performed by Plaintiff and the Classes.

18 59. Defendant breached the terms of the express warranty by not providing a
19 product that provided the characteristics promised. The statements made by
20 Defendants that warranted Defendants’ claims of the Trader Joe’s Alkaline Water
21 having a superior nature of pH of 9.5+, attributes and benefits were not “puffery” or
22 mere opinion – they were statements affirmations of specific benefits and superior
23 performance over alternative and lower priced sources of water, allegedly based on
24 scientific study.

25 60. Specifically, Trader Joe’s falsely claims “pH 9.5+” even though the
26 actual pH at the time of purchase and consumption was far less on the pH scale for
27 Plaintiff. Plaintiff has pled the particulars of her testing, and her review of the support

1 for these contentions in the factual section, which are incorporated herein.

2 61. Plaintiff's reliance was reasonable in that "pH 9.5+" is a warranty that
3 the water will at a pH of 9.5 or greater when it is reasonably consumed within
4 consumer expectations."

5 62. Defendant breached the various warranties made in the on-label and off-
6 label representations by not providing a product of "pH of 9.5+" at the time of
7 consumption.

8 63. The breaches of the warranty proximately caused Plaintiff's injury.

9 64. As a result of Defendants' breaches of warranty, Plaintiff and the Classes
10 have been damaged and injured in the amount of the purchase price of Defendants'
11 Trader Joe's Alkaline branded water they purchased, and have suffered other damages
12 to be determined by proof at trial.

13 **COUNT II**

14 **Unjust Enrichment**

15 **(Asserted on Behalf of Nationwide Class and California Subclass against all**
16 **Named Defendants and DOES 1-10)**

17 65. Plaintiff incorporates by reference all of the above paragraphs of this

18 66. Complaint as though fully stated herein.

19 67. This claim is asserted in the alternative on behalf of Plaintiff and Class
20 members to the extent that any contracts do not govern the entirety of the subject
21 matter of the dispute with Defendants.

22 68. Plaintiff and Class members conferred a tangible economic benefit upon
23 Defendants by purchasing the Trader Joe's Alkaline branded water. Plaintiff and
24 Class members would have expected remuneration from Defendants at the time this
25 benefit was conferred had they known that the Trader Joe's Alkaline branded water did
26 not perform as promised.

27 69. As a direct and proximate result of Defendants' misconduct as set forth

1 above, Defendants have been unjustly enriched at the expense of Plaintiff and the
2 Class members.

3 70. It would be inequitable for Defendants to retain profits, benefits and other
4 compensation obtained by its wrongful conduct in marketing and selling of the Trader
5 Joe's Alkaline Water.

6 71. Plaintiff, on behalf of herself and Class members, seeks restitution from
7 Defendants, and an order of this Court disgorging all profits, benefits and other
8 compensation obtained by Defendants from their wrongful conduct.

9 **COUNT III**

10 **Violations of Consumer Legal Remedies Act and Various Consumer Protection**
11 **Acts of Other States**

12 **(Asserted on Behalf of Nationwide Class and California Subclass against all**
13 **Named Defendants and DOES 1-10)**

14 72. Plaintiff incorporates by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.

16 73. This is a claim for relief under the Consumer Legal Remedies Act, as
17 well as the various Consumer Protection Acts of the jurisdiction in which Class
18 Members are present and purchased Trader Joe's Alkaline Water, including but not
19 limited to:

- 20 a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et.*
21 *seq.*;
- 22 b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak.
23 Code § 45.50.471, *et. seq.*;
- 24 c. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et.*
25 *seq.*;
- 26 d. Colorado Consumer Protection Act, Colo Rev. Stat § 6-1-101, *et.*
27 *seq.*;

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- e. Connecticut Unfair Trade Practices Act, Conn. Gen Stat § 42-110a, *et. seq.*;
- f. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et. seq.*;
- g. District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et. seq.*;
- h. Florida Deceptive and Unfair Trade Practices, Act *Florida Statutes* § 501.201, *et. seq.*;
- i. Georgia Fair Business Practices Act, §10-1-390 *et. seq.*;
- j. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et. seq.* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statute § 481A-1, *et. seq.*;
- k. Idaho Consumer Protection Act, Idaho Code § 48-601, *et. seq.*;
- l. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et. seq.*;
- m. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et. seq.*;
- n. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et. seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et. seq.*;
- o. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et. seq.*;
- p. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et. seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et. seq.*;
- q. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen Laws ch. 93A;

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- r. Michigan Consumer Protection Act, §§ 445.901, *et. seq.*;
- s. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et. seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn Stat. § 325D.43, *et. seq.*;
- t. Mississippi Consumer Protection Act, Miss. Code An.. §§ 75-24-1, *et. seq.*;
- u. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et. seq.*;
- v. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14-101, *et. seq.*;
- w. Nebraska Consumer Protection Act, neb. Rev. Stat. § 59 1601 *et. seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et. seq.*;
- x. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et. seq.*;
- y. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et. seq.*;
- z. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et. seq.*;
- aa. New Mexico Unfair Practices Act, N.M. Sta. Ann. §§ 57 12 1, *et. seq.*;
- bb. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349 and 350 *et. seq.*
- cc. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et. seq.*;
- dd. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code §§ 109;

- 1 ee. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et. seq.*;
- 2 ff. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) &
- 3 (g);
- 4 gg. Rhode Island Unfair Trade Practices and Consumer Protection Act,
- 5 R.I. Gen. Laws § 6-13.1-1 *et. seq.*;
- 6 hh. South Carolina Unfair Trade Practices Act, S.C. Code Law § 39-5-
- 7 10, *et. seq.*;
- 8 ii. South Dakota’s Deceptive Trade Practices and Consumer
- 9 Protection Law, S.D. Codified Laws §§ 37 24 1, *et. seq.*;
- 10 jj. Tennessee Consumer Protection ct, Tenn. Code Ann. § 47-18-101
- 11 *et. seq.*;
- 12 kk. Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9, § 2451, *et.*
- 13 *seq.*;
- 14 ll. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86/0101,
- 15 *et. seq.*;
- 16 mm. West Virginia Consumer Credit and Protection Act, West Virginia
- 17 Code § 46A-6-101, *et. seq.*;
- 18 nn. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et.*
- 19 *seq.*

20 (“Consumer Protection Acts”).

21 74. The Defendants’ acts and omissions as well as their failure to use
22 reasonable care in this matter as alleged in this FAC, including but no limited to, the
23 knowing misrepresentation or failure to disclose the source, affiliation, origin,
24 characteristics, ingredients, standards and quality of Trader Joe’s Alkaline Water
25 constitute violation of the provision of the CLRA and the various Consumer
26 Protection Acts.

27 75. The Defendants’ unconscionable, unfair, and deceptive acts and practices

1 set forth in this Complaint are likely and reasonably foreseeable to mislead Plaintiff
2 and members of the Class and Subclass acting reasonably in their reliance on
3 defendant's acts and practices, and to their detriment.

4 76. The Defendants engaged in the unconscionable, unfair, and deceptive
5 acts or practices set forth in this Complaint in the conduct of trade or commerce.

6 77. The Defendants' misrepresentations or omissions as set forth in this
7 Complaint are material in that they relate to matters which are important to consumers
8 or are likely to affect the purchasing decisions or conduct of consumers, including
9 Plaintiff and Class Members regarding Defendants' products.

10 78. The Defendants' business practice, in its advertising, marketing,
11 packaging, labeling, and sales of its Trader Joe's Alkaline Water as unique and
12 superior products justifying substantially higher prices over alternative sources of
13 water, such as normal bottled water, is an unconscionable, unfair, and deceptive act or
14 practice, in violation of the CLRA (and other Consumer Protection Acts), in that it (1)
15 offends established public policy, (2) is immoral, unethical, oppressive, or
16 unscrupulous, and/or (3) is substantially injurious and caused actual damages to
17 consumers, including Plaintiff and Class Members who purchased Defendants' Trader
18 Joe's Alkaline Water because of Defendants' representations and conduct.

19 79. Plaintiff and Class Members have suffered actual damages as a result of
20 Defendants' violation of the CLRA and the various Consumer Protection Acts and are
21 entitled to relief.

22 80. As a direct and proximate cause of Defendants' violations of the CLRA
23 and the various Consumer Protection Acts, Plaintiff and Class Members have incurred
24 harm and damages as described herein are entitled to recover for those damages,
25 including but not limited to, actual damages, costs, attorneys' fees, and injunctive
26 relief, pursuant to California law, and the various Consumer Protection Acts.

27

COUNT IV

(Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et. seq.*)
(Asserted on Behalf of Nationwide Class and California Subclass against all Named
Defendants and DOES 1-10)

81. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

82. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

83. The acts, omissions, misrepresentations, practices, and non-disclosures of Trader Joe’s as alleged herein constitute business acts and practices.

84. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test. As set forth herein, Trader Joe’s claims relating to The Alkaline Water Product is likely to deceive reasonable consumers and the public.

Unlawful

85. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et. seq.*;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et. seq.*;
- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et. seq.*, and specifically § 343(a) (prohibiting food labeling that is “false or misleading in any particular”); and
- The California Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety Code §§ 109875 *et. seq.*

Unfair

1 86. Trader Joe’s conduct with respect to the labeling, advertising, and sale of
2 the Alkaline Water Product is unfair because Trader Joe’s conduct was immoral,
3 unethical, unscrupulous, or substantially injurious to consumers and the utility of its
4 conduct, if any, does not outweigh the gravity of the harm to its victims.

5 87. Trader Joe’s conduct with respect to the labeling, advertising, and sale of
6 the Alkaline Water Products was also unfair because it violated public policy as
7 declared by specific constitutional, statutory or regulatory provisions, including but
8 not limited to the False Advertising Law.

9 88. Trader Joe’s conduct with respect to the labeling, advertising, and sale of
10 the Alkaline Water Products was also unfair because the consumer injury was
11 substantial, not outweighed by benefits to consumers or competition, and not one
12 consumers themselves could reasonably have avoided.

13 89. Trader Joe’s conduct was unfair and unreasonable in that it has known
14 that scientifically, the claims made are affirmatively false, and impossible to produce
15 the represented result both in pH number, and in represented benefits.

16 90. Trader Joe’s profited from its sale of the falsely, deceptively, and
17 unlawfully advertised Alkaline Water Products to unwary consumers.

18 91. Plaintiff and Class Members are likely to be damaged by Trader Joe’s
19 continued deceptive trade practices, as Trader Joe’s continues to falsely advertise and
20 sell the Alkaline Water Products. Thus, injunctive relief enjoining this deceptive
21 practice is proper.

22 92. Trader Joe’s conduct caused and continues to cause substantial injury to
23 plaintiff and the other Class Members, who have suffered injury in fact as a result of
24 Trader Joe’s unlawful conduct.

25 93. In accordance with Bus. & Prof. Code § 17203, Plaintiff, on behalf of
26 herself, the Class, and the general public, seeks an order enjoining Trader Joe’s from
27

1 continuing to conduct business through unlawful, unfair, and/or fraudulent acts and
2 practices, and to commence a corrective advertising campaign.

3 94. Plaintiff, on behalf of herself and the Class also seeks an order for
4 disgorgement and restitution of all monies from the sale of the Alkaline Water
5 Products, which were unjustly acquired through acts of unlawful competition.

6 **COUNT V**

7 (Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et. seq.*)

8 (Asserted on Behalf of Nationwide Class and California Subclass against all Named
9 Defendants and DOES 1-10)

10
11 95. Plaintiff realleges and incorporates the allegations elsewhere in the
12 Complaint as if set forth in full herein.

13 96. Under the FAL, “[i]t is unlawful for any person, firm, corporation or
14 association, or any employee thereof with intent directly or indirectly to dispose of
15 real or personal property or to perform services” to disseminate any statement “which
16 is untrue or misleading, and which is known, or which by the exercise of reasonable
17 care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

18 97. As alleged herein, the advertisements, labeling, policies, acts, and
19 practices of Trader Joe’s relating to the Product misled consumers acting reasonably
20 as to whether the Product provided alkalinity of “9.5+,” even though the “Alkaline
21 water” is significantly more expensive.

22 98. Plaintiff suffered injury in fact as a result of Trader Joe’s actions as set
23 forth herein because Plaintiff purchased the Product in reliance on Trader Joe’s false
24 and misleading marketing claims that the Product was a pH of 9.5+.

25 99. Trader Joe’s business practices as alleged herein constitute unfair,
26 deceptive, untrue, and misleading advertising pursuant to the FAL because Trader
27

1 Joe's has advertised the Product in a manner that is untrue and misleading, which
2 Trader Joe's knew or reasonably should have known.

3 100. Trader Joe's profited from its sales of the falsely and deceptively
4 advertised Alkaline Water Products to unwary consumers.

5 101. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff and the
6 Class are entitled to injunctive and equitable relief, restitution, and an order for the
7 disgorgement of the funds by which Trader Joe's was unjustly enriched.

8 **COUNT VI**

9 (Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314)
10 (Asserted on Behalf of Nationwide Class and California Subclass against all Named
11 Defendants and DOES 1-10)

12 102. Plaintiff realleges and incorporates the allegations elsewhere in the
13 Complaint as if set forth in full herein.

14 103. Trader Joe's, through its acts set forth herein, in the sale, marketing, and
15 promotion of the Alkaline Water Product, made representations to Plaintiff and the
16 Class that, among other things, the Product has alkalinity of 9+.

17 104. As pled above, Trader Joe's represents its water is "alkaline water," when
18 this is false in that water highly charged with electrolysis is not considered in science
19 to be "alkaline water." Thus, this representation is affirmatively false in the
20 alternative in that the implication is that the water is balanced by electrolysis when
21 this is false.

22 105. Next, Trader Joe's falsely claims "pH 9.5+" even though the actual pH at
23 the time of purchase and consumption was far less on the pH scale for Plaintiff.
24 Plaintiff has pled the particulars of her testing, and her review of the support for these
25 contentions in the factual section, which are incorporated herein.

26 106. The exact terms of the warranty are "pH +9.5."

27 107. Plaintiff and Class Members relied on these representations by

1 Defendants in purchasing Trader Joe’s Alkaline branded water instead of less
2 expensive, but equally or more effective water.

3 108. Plaintiff’s reliance was reasonable in that “pH 9.5+” is a warranty that
4 the water will at a pH of 9.5 or greater when it is reasonably consumed within
5 consumer expectations.”

6 109. Defendant breached the various warranties made in the on-label and off-
7 label representations by: (a) not providing a product of “pH of 9.5+”.

8 110. The breaches of the warranty proximately caused Plaintiff’s injury.

9 111. Trader Joe’s is a merchant with respect to the goods of this kind which
10 were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other
11 consumers, an implied warranty that those goods were merchantable.

12 112. However, Trader Joe’s breached that implied warranty in that the does
13 not create the perfect balance, and does not create any health benefit, as set forth in
14 detail herein.

15 113. As an actual and proximate result of Trader Joe’s conduct, Plaintiff and
16 the Class did not receive goods as impliedly warranted by Trader Joe’s to be
17 merchantable in that they did not conform to promises and affirmations made on the
18 container or label of the goods, in violation of Cal. Com. Code § 2314(2)(f).

19 114. Plaintiff notified Trader Joe’s of the breach prior to filing, but Trader
20 Joe’s failed to rectify the breach.

21 115. As a result, plaintiff seeks, on behalf of herself and other Class Members,
22 actual damages arising as a result of Trader Joe’s breaches of implied warranty.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of herself and all members of the Classes
25 defined herein, prays for judgment as follows:

- 26 a. Certification of the Class under Federal Rule of Civil Procedure 23 and
27 appointment of Plaintiff as representative of the Classes and her counsel

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- as Class counsel;
- b. A temporary, preliminary and/or permanent order for injunctive relief requiring Defendants to: (i) discontinue advertising, marketing, packaging and otherwise representing Trader Joe’s Alkaline branded water as having a property through a certain date that it does not have; (ii) undertake an immediate public information campaign to inform members of the proposed Classes as to the prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of Trader Joe’s Alkaline branded water, including without limitation, the placement of corrective advertising and providing written notice to the public;
- c. An order requiring imposition of a constructive trust and/or disgorgement of Defendants’ ill-gotten gains and to pay restitution to Plaintiff and all members of the Classes and to restore to the Plaintiff and members of the Classes all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statute or regulations, or constituting unfair competition or false advertising;
- d. Distribution of any moneys recovered on behalf of members of the Classes via fluid recovery or *cy pres* recovery where necessary and as applicable, to prevent Defendants from retaining the benefits of their wrongful conduct;
- e. Compensatory and other damages for economic and non-economic damages identified herein, including all damages allowed by governing statutes;
- f. Statutory pre-judgment and post-judgment interest on any amounts;
- g. Reasonable attorneys’ fees as may be allowable under applicable law;

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- h. Costs of this suit; and
- i. Such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: December 11, 2018

By: /s/ Blake J. Lindemann

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JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: March 20, 2019

By: /s/ Blake J. Lindemann

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PROOF OF SERVICE

1
2 I, the undersigned, declare: I am employed in the County of Los Angeles, State
3 of California. I am over the age of 18 and not a party to the within action; my business
4 address is 433 N. Camden Drive, 4th Floor, Beverly Hills, CA 90210.

5 On March 20, 2019, I served the foregoing document as follows:

6 **SECOND AMENDED COMPLAINT – CLASS ACTION**

7
8 [X] by electronically filing the foregoing with the Clerk of the Court using the
9 CM/ECF system which will send notification of such electronic filing to counsel of
record for all parties by operation of the Court’s CM/ECF System.

10 [] by U.S. Mail in the ordinary course of business to the non-CM/ECF
11 participants indicated on the attached Manual Notice List. I am readily familiar with
12 the Firm’s practice for the collection and processing of correspondence for mailing
13 with the Postal Service and that the correspondence would be deposited with same
that same day in the ordinary course of business.

14 I declare under penalty of perjury under the laws of the United States of
15 America and the State of California that the above is true and correct. Executed on
16 March 20, 2019, at Beverly Hills, California.

17 By: /s/ Nataly Grande
18 Nataly Grande