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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

CHRISTINA WEBB, on behalf of herself,  
all others similarly situated, and the  
general public,

Plaintiff,

v.

TRADER JOE'S COMPANY,

Defendant.

Case No: 37-2019-00035568-CU-BT-CTL

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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Christina Webb (“Plaintiff”), on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby brings this action against Trader Joe’s Company (“Defendant” or “Trader Joe’s”), and upon information and belief and investigation of counsel alleges as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(4)(A), the local controversy exception to federal jurisdiction under the Class Action Fairness Act of 2005 (CAFA) because greater than two-thirds of all members in the proposed Class are citizens of California; the Defendant is a citizen of California and Defendant’s conduct forms a significant basis for the claims asserted by the Class; the principal injuries resulting from Defendant’s conduct were incurred in California; and during the three-year period preceding the filing of this action, no other class action has been filed asserting the same or similar factual allegations against the Defendant on behalf of the same person. Additionally, the number of members of the proposed Class in the aggregate is more than 100 and the Defendant is not a State, State official, or other governmental entity against whom the Court may be foreclosed from ordering relief.

2. This Court has both general and specific personal jurisdiction over the Defendant.

3. The Court has personal jurisdiction over Defendant because Defendant is headquartered and has its principal place of business in California; Defendant’s Products are advertised, marketed, distributed and sold throughout the State of California; Defendant engaged in the wrongdoing alleged in this Complaint in the State of California; Defendant is authorized to do business in the State of California and engages in substantial activity within the State of California; Defendant has numerous stores throughout the State of California; and Defendant has sufficient minimum contacts with the State of California, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice.

4. Venue is proper in this Court pursuant to California Code of Civil Procedure sections 395 and 395.5 because Plaintiff purchased the Product within this judicial district

1 and suffered injuries due to Defendant's conduct within this judicial district. Defendant's  
 2 business practices and wrongful acts have occurred and continue to occur in this county,  
 3 and the adverse effects of Defendant's alleged wrongful conduct have harmed and will  
 4 continue to harm the residents of this county and the rest of the state.

## 5 **II. NATURE OF THE ACTION**

6 5. This is a consumer class action for violations of express and implied  
 7 warranties, negligent and intentional misrepresentations, fraudulent omissions, and  
 8 consumer protection laws, with a California class for violations of California consumer  
 9 protection laws.

10 6. Defendant manufactures, packages, distributes, advertises, markets, and sells  
 11 a variety of Trader Joe's branded raw poultry products, including, without limitation, the  
 12 Trader Joe's All Natural Boneless Chicken Breasts, Trader Joe's All Natural Chicken  
 13 Thighs, and Trader Joe's All Natural Chicken Wings (collectively, the "Products" or  
 14 "Chicken Products").

15 7. The labeling of the Products is false and misleading and the Products are thus  
 16 misbranded under consumer protection laws. Specifically, the Products claim to contain  
 17 only 5% retained water, when they actually contain unlawful amounts of excess Retained  
 18 Water,<sup>1</sup> far greater than that disclosed on the product labels. Some of the products were  
 19 found to contain as much as 16% excess Retained Water, for which California consumers  
 20 are unlawfully charged the per-pound price of poultry.

21 8. Defendant's conduct violates several California consumer protection laws  
 22 including the Consumers Legal Remedies Act ("CLRA"), Unfair Competition Law  
 23 ("UCL"), False Advertising Law ("FAL"), and Song-Beverly Act. Each of these state laws  
 24 either incorporate the requirements of the Federal Poultry Products Inspection Act  
 25 ("PPIA") by reference or impose by statute requirements identical to those of the PPIA.

26 9. The Products as labeled and sold are also in breach of express and implied

27 <sup>1</sup> The term "Retained Water" as used herein refers to water picked up by the chicken during  
 28 poultry processing that remains with the product at the time of packaging. *See*, 66 FR  
 1749; 9 CFR 381, 9 CFR 441. Retained Water may remain on or in the chicken or may  
 migrate into the product's packaging during post-packaging transport and storage.

1 warranties and constitute theft by false pretenses under California law.

2 10. Defendant packages, transports, distributes, and sells the Products packaged  
3 with excess Retained Water, and offers those products in commerce in California.  
4 Defendant mislabeled these Products because they contained more Retained Water at the  
5 time they were packaged at the processing facility than is disclosed on the labels. These  
6 products are economically adulterated and misbranded and are therefore illegal to sell.

7 11. Defendant receives and sells the adulterated and misbranded Products in the  
8 United States and California, violating federal and California laws, including the Song-  
9 Beverly Act and California's Unfair Competition Law, and breach implied warranties  
10 applicable to retail sellers of goods under California law.

11 12. Plaintiff purchased Trader Joe's chicken products from several Trader Joe's  
12 store locations in San Diego County, California. Those products contained excess  
13 Retained Water that was unlawfully included in the products' labeled net weight. Because  
14 Plaintiff paid the marked, per-pound price for excess Retained Water above that declared  
15 on the product labels, Plaintiff paid more for the products than the products were worth  
16 and was injured economically.

17 13. After sampling and analyzing Trader Joe's Chicken Products offered for sale  
18 at supermarkets in Northern California, it was found that Trader Joe's Chicken Products  
19 were routinely and consistently misbranded and economically adulterated with excess  
20 Retained Water far greater than that declared on the labels.

21 14. Plaintiff therefore brings this action on her own behalf and on behalf of all  
22 consumers who purchased such products during the Class Period.

23 15. Plaintiff, on her own behalf and on behalf of the Class defined herein, seeks  
24 an order compelling Defendant to, *inter alia*: (1) cease packaging, distributing, advertising  
25 and selling the Products in violation of U.S. FDA regulations, California consumer  
26 protection laws, and state common laws; (2) re-label or recall all existing deceptively  
27 packaged Products; (3) conduct a corrective advertising campaign to inform consumers  
28 about the deceptive practices; (4) award Plaintiff and other Class Members an appropriate  
measure of restitution, actual damages, statutory damages, and punitive damages; and (5)



1 pay all costs of suit including expenses, pre- and post-judgment interest, and reasonable  
2 attorney fees for this action.

### 3 **III. PARTIES**

4 16. Defendant Trader Joe's Company packages, labels, advertises, markets,  
5 distributes, and sells Trader Joe's branded uncooked retail poultry products in California  
6 and throughout the United States. Trader Joe's is a California corporation with its  
7 headquarters and principal place of business at 800 S. Shamrock Avenue in Monrovia,  
8 California. Trader Joe's is registered with the California Secretary of State under entity  
9 number C0353027.

10 17. Plaintiff Christina Webb ("Plaintiff") is a resident and citizen of San Diego  
11 County, California, who purchased the Product multiple times during the Class Period in  
12 San Diego County, California for personal and household consumption.

13 18. Plaintiff suffered economic injury as a result of Defendant's violations of  
14 California law. Plaintiff would like to continue to purchase the Products, intends to do so,  
15 and will do so when she can do so with the assurance that Defendant will package, label,  
16 and offer the Products for sale truthfully and in compliance with federal and California  
17 law.

### 18 **IV. FACTUAL ALLEGATIONS**

#### 19 **A. Defendant packages, labels, transports, receives, and sells poultry products** 20 **adulterated with excess Retained Water.**

21 19. California law requires Defendant to produce, package, label, transport, and  
22 offer in commerce poultry products that truthfully and accurately represent on the labels  
23 the amount of Retained Water in the products.

24 20. California law similarly requires Defendant to receive in commerce and sell  
25 only poultry products that are lawfully labeled, are not misbranded or economically  
26 adulterated, and that truthfully represent on the product labels the amount of Retained  
27 Water in the products.

28 21. Defendant, however, packages, labels, advertises, transports, and sells  
products with significant excess Retained Water, in packages that falsely advertise the

1 maximum amount of Retained Water in those products.

2 22. Poultry products are sold by weight. Excess Retained Water in the product  
3 unlawfully increases the price the consumer pays and decreases the value of the product,  
4 cheating the consumer.

5 23. The excess Retained Water concealed in the Products means that the  
6 consumer is unknowingly paying the per-pound price advertised for the poultry for  
7 significant quantities of Retained Water in excess of the labeled maximum.

8 24. Because of Defendant's deceptive and unlawful practices, consumers are  
9 cheated into paying more than they should for the Trader Joe's Chicken Products.

10 **B. Defendant packages the Products with unlawful excess Retained Water.**

11 25. Defendant packages the Products with unlawful excess Retained Water, and  
12 fails to truthfully disclose the amount of Retained Water in the Products at that time on  
13 the Product labels.

14 26. Poultry processors use a water-immersion process to chill chicken carcasses  
15 during processing. In this process, the poultry carcasses are immersed into a chilled water  
16 bath or "immersion chiller" until cooled to the proper temperature.

17 27. The poultry is then removed from the chiller and processing water that the  
18 product picks up in the chiller begins to drain off.

19 28. The processing of poultry in water-immersion chillers always results in some  
20 "carry-over" or retention of processing water when the product is removed from the  
21 chiller.

22 29. The product begins to give up the water picked up in the immersion process  
23 as soon as it is removed from the chiller. Any processing water picked up during  
24 immersion that remains with the product when it is packaged is Retained Water.

25 30. If allowed to drain and dry properly before packaging, the chicken will give  
26 up much of the water that was picked up in the chilling process and rapidly return to near  
27 (within 4% of) its pre-immersion net weight before being packaged.

28 31. During transportation and storage after packaging and prior to sale, some of  
the Retained Water in immersion-chilled products stays on or in the chicken while some

1 drains out of the chicken and into the Product packaging.

2 32. Poultry processors that use a water-immersion process can control the  
3 chilling, handling, and packaging process so as to minimize the amount of Retained Water  
4 in the product. Processors can control the amount of water that their products retain by  
5 adjusting process control variables such as drip time and drying time and methods before  
6 the products are packaged.

7 33. Retained Water is defined in Federal regulations and under California law as  
8 any processing water that remains with the product at the time of packaging.

9 34. If poultry processing results in any Retained Water in the products, the  
10 processor is required by identical California and Federal law requirements to label the  
11 products with the maximum percentage of Retained Water at the time of packaging.

12 35. Under the Federal PPIA regulations and parallel California law, it is unlawful  
13 to package, transport, receive, sell, or offer for sale or transport, any raw poultry products  
14 that retain water and do not accurately declare on the package the maximum percentage  
15 of Retained Water in the product.<sup>2</sup>

16 36. Defendant declares a maximum of 5% Retained Water in its Trader Joe's  
17 Chicken Products.

18 37. The Trader Joe's Chicken Products, however, include significantly more than  
19 the maximum percentage of Retained Water declared on the product labels, rendering all  
20 of those Products misbranded and economically adulterated and unlawful to sell, offer for  
21 sale, transport, or receive in commerce.

22 38. Defendant receives in commerce and sells the economically-adulterated  
23 products, violating federal and California law and profiting thereby at the expense of  
24 consumers.

25 39. Trader Joe's retail poultry packages currently sold in California were found  
26 to contain on average nearly 9% Retained Water, most of which is hidden from the

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27 <sup>2</sup> See, 7 CFR 2.18, 2.53. Sec. 441.10 Retained Water; 21 U.S.C. 451-470, 601-695; 7 U.S.C.  
28 450, 1901-1906. Poultry processors must also eliminate any Retained Water that is not an  
inevitable consequence of the process used to meet food safety requirements. *Id.*



1 consumer in superabsorbent pads underneath the product.

2 40. Some randomly sampled Trader Joe's Chicken Products contained as much  
3 as 16% Retained Water in the packages, and some varieties of the Products contained  
4 more than 9% Retained Water on average.

5 41. California currently uses the "dry tare" method of weighing poultry products.  
6 Under the "dry tare" procedure, the product net weight shown on the package includes  
7 fluids contained within the package.

8 42. In 2008, California switched from a "wet tare" method to the dry tare method  
9 for weighing poultry packages.

10 43. Prior to that time, published scientific and government reports found that the  
11 average pre-packaged poultry product contained less than 4% Retained Water.

12 44. Taking advantage of the dry-tare weighing method in California, however,  
13 Trader Joe's now includes in its Products on average not 5% Retained Water as claimed  
14 on the labels but nearly 9% of the product's marked weight in Retained Water – and some  
15 sampled Trader Joe's products contained as much as 16% Retained Water.

16 45. Testing was performed on several varieties of the Products. The marked net  
17 weight of the Products was routinely greater than the actual weight of the poultry in the  
18 package, and a large quantity of water was held in the package in an absorbent pad  
underneath the product.

19 46. For nearly every Trader Joe's Product package tested, Defendant's "Up to  
20 5% Retained Water" statement was false.

21 47. The water in these packages consisted almost entirely of Retained Water, as  
22 any purged naturally-occurring moisture from the chicken constituted only a negligible  
23 amount of the liquid in the packages.

24 48. Most of this water is concealed in a superabsorbent pad Trader Joe's inserts  
25 into its Product packages. Trader Joe's uses a special absorbent pad that allows Defendant  
26 to include large amounts of Retained Water in the Products in excess of the amount  
27 declared on the label and yet have that Retained Water remain undetectable by the  
28 consumer at the point of purchase.

1           49. Defendant uses these pads to conceal from the consumer how much excess  
2 Retained Water the packages contain.

3           50. In the absence of the superabsorbent pads that Defendant includes in the  
4 packages – or if the Products were accurately labeled – consumers could know the amount  
5 of Retained Water in the package and either accept or refuse to buy the product. But with  
6 the excess Retained Water concealed in an absorbent pad underneath the Products, and  
7 the Products falsely labeled, consumers have no way of knowing how much of their  
8 purchase is Retained Water.

9           51. The difference between the marked net weight and the actual lawful net  
10 weight of this poultry product was not a reasonable variation from the stated weight.

11           52. The products were mislabeled and adulterated with excessive Retained Water  
12 when packaged, and the use of superabsorbent pads hidden in the packages to conceal the  
13 excessive Retained Water was an additional deceptive trade practice.

14           53. Under the Federal PPIA and California law imposing identical requirements,  
15 poultry product sellers must disclose on the product label the maximum percentage of  
16 Retained Water in the product. This disclosure enables the consumer to compare products  
17 and make informed purchasing decisions.

18           54. Under both the PPIA and California law, a processor's failure to minimize  
19 the amount of Retained Water carried over from the chilling process or failure to  
20 accurately label the amount of Retained Water in the product results in the product  
21 becoming economically adulterated.

22           55. It is illegal to package, possess, transport, offer in commerce, or sell an  
23 economically adulterated product in California.

24           56. A product is misbranded if its labeling is false or misleading in any particular.

25           57. A product is also misbranded if its container is filled so as to be misleading.

26           58. A product is also misbranded if the product label does not accurately reflect  
27 the package contents in net weight.

28           59. These California laws impose identical packaging and labeling requirements  
to the applicable federal regulations under the PPIA.

60. The Trader Joe's Products described herein violate both the federal and California laws and are economically adulterated and misbranded.

61. Trader Joe's is liable as a seller of the adulterated Products for receiving and offering misbranded products in commerce, and is also liable for express and implied warranties applicable to product sellers for its role as a retailer of the Products.

**C. Trader Joe's products tested had unlawful excess Retained Water.**

62. A San Francisco food testing laboratory tested several Trader Joe's chicken products, including chicken wings, chicken breasts, and chicken thighs.

63. The samples were collected using a standardized sampling protocol to eliminate any potential sampler bias in selecting packages for analysis, and analyzed for Retained Water consistent with applicable Federal and state regulations, guidelines, and procedures including the PPIA and associated regulations and guidelines.

64. The marked net weight of the Products was routinely greater than the actual weight of the poultry in the package, and a large quantity of water was held in the package in an absorbent pad underneath the product.

65. The chart below shows the results of the testing performed on the Products.

Sample ID	% Moisture	Stated Net Weight Lbs	Net weight Found Lbs	Retained Water Stated	Actual Retained Water Found
Natural Boneless Skinless Chicken Thighs	72.63	1.31	1.19	5%	9.16%
Natural Boneless Skinless Chicken Thighs	72.99	1.37	1.26	5%	8.0%
Natural Boneless Skinless Chicken Thighs	71.19	1.63	1.45	5%	11.04%
Natural Boneless Skinless Chicken Thighs	71.92	1.92	1.74	5%	9.38%
Natural Boneless Skinless Chicken Thighs	70.83	1.89	1.70	5%	10.05%
Natural Chicken Wings	71.80	1.54	1.41	5%	8.44%

Natural Chicken Wings	75.63	1.69	1.41	5%	16.57%
Natural Chicken Wings	67.31	1.61	1.53	5%	4.9%
Natural Chicken Wings	70.69	1.66	1.55	5%	6.6%
Natural Chicken Wings	69.30	1.68	1.58	5%	5.9%
Natural Boneless Chicken Breast	75.15	1.73	1.60	5%	7.51%
Natural Boneless Chicken Breast	74.39	1.75	1.63	5%	6.85%
Natural Boneless Chicken Breast	72.65	1.59	1.43	5%	10.06%
Natural Boneless Chicken Breast	72.86	1.74	1.54	5%	11.49%

66. The results of the testing, conducted during June 2019, revealed that sampled Trader Joe's Products in San Francisco contained, on average, 9% Retained Water.

67. This result met all statistical tests for significance.

68. In this sampling round, fourteen (14) individual samples of Trader Joe's Products were purchased from various Trader Joe's stores in the San Francisco area.

69. The product samples were all observed to include cut-up poultry, packaging materials including a plastic foam tray and flexible plastic film over-wrap, a large absorbent pad in the plastic tray underneath the poultry, and Retained Water.

70. Each Product sample was transported to the analytical food laboratory and weighed as purchased on a calibrated, legal-for-trade scale in accordance with applicable Federal and state regulations, guidelines, and procedures. The product was then unwrapped and the contents and packaging weighed separately and the actual weight of poultry, packaging, and Retained Water was derived and recorded.

71. Retained Water comprised nearly 9% or more of the Products' weight on average at the time the Products were packaged and labeled at the processing facility.

72. This was almost twice the "maximum of 5% retained water" declared on the package labels.

73. This analysis demonstrated conclusively that the Products routinely

1 contained unlawful excess Retained Water at the time the Products were packaged and  
2 that Defendant systematically and unlawfully misrepresents the percentage of Retained  
3 Water in the Trader Joe's Chicken Products.

4 74. The poultry meat in these samples was found to range from 75.63% moisture  
5 down to 67.31% moisture; the average among these Products was 72.09% moisture.

6 75. Poultry products contain naturally-occurring moisture, and packaged raw  
7 chicken may also release a small amount of the chicken's naturally-occurring moisture  
8 during transportation and storage.

9 76. This release of naturally-occurring moisture is referred to as "purge."

10 77. Uncooked chickens, like the Products at issue here, contain on average 66%  
11 naturally-occurring moisture.<sup>3</sup> This naturally-occurring moisture is principally bound to  
12 muscle tissue and does not readily purge from uncooked chicken.

13 78. The sampled Products contained on average not 66% moisture but instead  
14 over 72% moisture, indicating that the Products had lost no net naturally-occurring  
15 moisture to purge and in fact had absorbed Retained Water into the Product tissue.

16 79. The Products were also analyzed for absorbed moisture, as a second method  
17 to check on the Retained Water calculation. Representative samples of the chicken were  
18 weighed, oven dried, and weighed again.

19 80. The average moisture in these samples significantly exceeded the average  
20 naturally-occurring moisture in un-immersed chicken. This indicated that the Products, at  
21 the time of purchase and analysis, still contained absorbed Retained Water as well as the  
22 Retained Water that migrated into the Product packaging.

23 81. Based on the analytical results, during the packaging, storage, and  
24 transportation of the Products much but not all of the Retained Water migrated into the  
25 Products' packaging. At the time of purchase, the majority of the Retained Water in the  
26 Products was located in the absorbent pad in the package.

27 <sup>3</sup> United States Department of Agriculture, *Water in Meat and Poultry*;  
28 [https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/water-in-meat-and-poultry/ct\\_index](https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/water-in-meat-and-poultry/ct_index);  
last visited May 4, 2018.



1        82. The moisture analysis conducted as a check on sampled Trader Joe's  
2 products showed that the Products contained Retained Water still absorbed in the chicken  
3 tissue at the time of purchase in addition to the Retained Water observed in the packages.  
4 Water loss from the Products into the packaging was almost exclusively Retained Water.  
5 The net amount of purged naturally-occurring moisture from the Products was *de minimis*  
6 and did not affect either the calculation of Retained Water or the conclusion that the  
7 Products contained unlawful amounts of excess Retained Water.

8        83. The Trader Joe's Products' average of 9% or more Retained Water uniformly  
9 exceeded the labeled maximum of 5% Retained Water declared on the product labels,  
10 across multiple sampling rounds, diverse products, and different store locations, with  
11 individual Product packages containing as much as 16% Retained Water.

12        84. Trader Joe's Chicken Products systematically contain excess Retained Water  
13 when packaged and labeled at the processing facility, far in excess of the labeled  
14 maximum percentages, rendering those products misbranded, economically adulterated,  
15 and illegal to sell in California and the United States.

16        85. Defendant declares 5% as the maximum Retained Water in its raw chicken  
17 Products. This amount therefore may be presumed to represent the maximum amount of  
18 Retained Water that is an unavoidable result of Defendant's processing.<sup>4</sup> The far greater  
19 percentages of Retained Water found in those Products exceed the maximum amount of  
20 Retained Water that is an unavoidable result of processing.

21        86. Defendant is capable of producing safe raw poultry products with a  
22 maximum of 5% Retained Water as declared on the Product labels. Defendant has  
23 produced such chicken products with less than 5% Retained Water. Trader Joe's'  
24 competitors currently produce similar poultry products with less than 5% Retained Water.  
25 And Trader Joe's currently produces some raw chicken products with less than 5%  
26 Retained Water.

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27 <sup>4</sup> Although rare, some Trader Joe's product samples did show Retained Water within the  
28 declared, lawful range.

1        87. There is no lawful justification for Defendant's practice of misrepresenting  
2 the amount of Retained Water in the Products.

3        88. Defendant's practice of misrepresenting the amount of Retained Water in the  
4 Trader Joe's Chicken Products and including unlawfully large amounts of Retained Water  
5 in those products causes consumers to pay more for economically adulterated and  
6 misbranded products.

7        89. Plaintiff and the Class members who purchased the Products during the Class  
8 period paid the advertised per-pound price for Products with Retained Water far in excess  
9 of the maximum percentage declared on the Product labels.

10       90. Plaintiff and the Class Members were injured economically as a direct and  
11 proximate result of Defendant's actions.

12       91. Every Class Member is therefore entitled to damages as compensation and in  
13 restitution for having paid the per-pound product price for retained water far in excess of  
14 the maximum percentage declared and warranted on the product labels.

15       **D. Defendant's Retained Water labeling did not comply with the federal PPIA at**  
16       **the time the Products were packaged in Defendant's facilities.**

17       92. Trader Joe's Chicken Products' Retained Water statements are false.

18       93. Laboratory testing and statistical analysis showed Defendant's labeling of  
19 maximum Retained Water percentages in its Products ignores significant quantities of  
20 processing water retained in the Products from processing.

21       94. The Product labels are therefore false and in violation of the federal PPIA as  
22 well as California law.

23       95. The Products are falsely labeled at the time the Products are packaged in  
24 Defendant's facility because they do not accurately disclose the amount of water included  
25 in the Products as Retained Water from processing.

26       **E. Plaintiff's purchases contained unlawful excess Retained Water.**

27       96. Plaintiff purchased the Products on a monthly basis from Trader Joe's  
28 locations in San Diego County, California during the Class Period defined herein.

      97. These products contained Retained Water far in excess of the maximum

1 percentages stated on the labels.

2 98. Plaintiff first discovered Defendant's unlawful acts described herein in June  
3 2019, when she learned that the Products contain more retained water than that disclosed  
4 on the Product labels.

5 99. Plaintiff was deceived by and relied upon the Product's deceptive labeling,  
6 and specifically the representation that the Products contained a maximum of 5% Retained  
7 Water. Plaintiff purchased the Products believing they only contained a maximum of 5%  
8 Retained Water, based on the Products' deceptive labeling.

9 100. Defendant, but not Plaintiff or the Class, knew that this labeling was in  
10 violation of state and federal law.

11 101. Because Plaintiff reasonably assumed the Products to contain a maximum of  
12 5% Retained Water, based on the Product label's representation of that fact, when it  
13 actually contained significantly more Retained Water, she did not receive the benefit of her  
14 purchases.

15 102. Because the Retained Water was hidden in superabsorbent pads underneath  
16 the poultry, Plaintiff, like the rest of the Class Members, had no way of knowing that these  
17 packages contained excess Retained Water until after they had purchased them.

18 103. The Product was worth less than what Plaintiff paid for it and Class members  
19 would not have paid as much as they have for the Products absent Defendant's  
20 misrepresentations.

## 21 **V. CLASS MEMBERS' INJURIES**

22 104. As a result of Defendant's actions, the Class and its members sustained  
23 economic injuries.

24 105. Because Class members intended to purchase poultry products that complied  
25 with Federal and California law and that did not include Retained Water in excess of the  
26 labeled maximum percentage, each was injured in the amount of the difference in value  
27 between the product as labeled and the product as delivered.

28 106. This amount is to be proven at trial via collected data, expert testimony,  
and/or other admissible evidence.

## VI. RELIANCE AND INJURY

107. When selecting poultry products for purchase, Plaintiff and the Class were seeking properly packaged and labeled food products that complied with applicable Federal and state laws and regulations and did not misrepresent the amount of Retained Water.

108. Defendant offered the Trader Joe's Products as lawful products that did not misrepresent the amount of Retained Water in the Products or contain unlawful excess Retained Water.

109. The Products were unsatisfactory to Plaintiff and to the Class members for the reasons described herein, because they included excess Retained Water, had false and misleading labels that misrepresented the maximum amount of Retained Water, did not conform to the representations of fact on the labels, and violated Federal regulations and identical California law.

110. Plaintiff and the Class lost money as a result of Defendant's conduct because they purchased products that contained Retained Water in excess of the declared maximum Retained Water and were falsely labeled. Had Defendant not violated the law, Plaintiff and the Class would not have been injured.

111. The products that Plaintiff and the Class bought were worth less than the labeled prices that Class Members paid for those products.

112. Plaintiff and the Class members lost money as a result of Defendant's unlawful behavior. Each altered his or her position to their detriment and suffered loss in an amount equal to the difference in value between a lawful, accurately-labeled product and an inaccurately-labeled product that included Retained Water in excess of the labeled maximum percentage.

## VII. DELAYED DISCOVERY

113. Class members are all consumers who exercised reasonable diligence in their selection of poultry products.

114. Nevertheless, they would not have been able to discover Defendant's deceptive practices, if at all, until long after the date they first purchased the products because Defendant deliberately used superabsorbent pads hidden underneath the poultry to

1 conceal the excess Retained Water.

2 115. This practice was known to Defendant but was not known to the Class.

3 116. Class members are therefore entitled to the doctrines of delayed discovery and  
4 tolling of the statute of limitations.

5 **VIII. CLASS ACTION ALLEGATIONS**

6 117. Plaintiff brings this action on behalf of herself and all others similarly situated  
7 (the "Class") pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

8 118. The nationwide Class is defined as follows:

9 All U.S. citizens who purchased the Product in their respective state of  
10 citizenship on or after January 1, 2012 and until the Class is certified, for  
11 personal use and not for resale, excluding Defendant and Defendant's officers,  
12 directors, employees, agents and affiliates, and the Court and its staff.

13 119. The California sub-Class is defined as follows:

14 All California citizens who purchased the Product in California on or after  
15 January 1, 2012 and until the Class is certified, for personal use and not for  
16 resale, excluding Defendant and Defendant's officers, directors, employees,  
17 agents and affiliates, and the Court and its staff.

18 120. The proposed Class meets all criteria for a class action, including numerosity,  
19 typicality, superiority, and adequacy of representation.

20 121. The proposed Class representative satisfies adequacy of representation.  
21 Plaintiff will fairly and adequately protect the interests of the Class, has no interests that  
22 are incompatible with the interests of the Class, and has retained counsel competent and  
23 experienced in class litigation.

24 122. The Product is offered for sale at over 100 Trader Joe's locations in the  
25 United States; the Class numbers at a minimum in the tens of thousands. This action has  
26 been brought and may properly be maintained as a class action against Defendant. While  
27 the exact number and identities of other Class Members are unknown to Plaintiff at this  
28 time, Plaintiff is informed and believes that there are hundreds of thousands of Members  
in the Class. The Members of the Class are so numerous that joinder of all Members is



1 impracticable and the disposition of their claims in a class action rather than in individual  
2 actions will benefit Class members, the parties, and the courts.

3 123. The proposed Class satisfies typicality. Plaintiff's claims are typical of and  
4 are not antagonistic to the claims of other Class members. Plaintiff and the Class members  
5 all purchased the Product, were deceived by the unlawful labeling, and lost money as a  
6 result, purchasing a Product that was illegal to sell in California and the United States.

7 124. Class adjudication is superior to other options for the resolution of the  
8 controversy. The relief sought for each Class member is small. Class action litigation is  
9 the only feasible way for Class members to seek relief for Defendant's unlawful acts.

10 125. Defendant has acted on grounds applicable to the Class, thereby making final  
11 injunctive relief or declaratory relief appropriate concerning the Class as a whole.

12 126. There is a well-defined community of interest in questions of law and fact  
13 common to the Class, and these predominate over any individual questions affecting  
14 individual Class members in this action.

15 127. Questions of law and fact common to Plaintiff and the Class include:

- 16 a. Whether the Products contained unlawful amounts of Retained  
17 Water in excess of the maximum percentage of Retained Water  
18 declared on the labels;
- 19 b. Whether the Products were legal to sell as packaged and labeled;
- 20 c. Whether Defendant's conduct constitutes a violation of the  
21 Consumers Legal Remedies Act;
- 22 d. Whether Defendant's conduct constitutes a violation of the False  
23 Advertising Law;
- 24 e. Whether Defendant's conduct constitutes a violation of the  
25 unlawful prong of California's Unfair Competition Law;
- 26 f. Whether Defendant's conduct constitutes a violation of the unfair  
27 prong of California's Unfair Competition Law;
- 28 g. Whether Defendant's conduct was immoral, unethical,  
unscrupulous, or substantially injurious to consumers;

- h. Whether the slight utility Defendant realized as a result of its conduct outweighs the gravity of the harm the conduct causes to consumers;
  - i. Whether Defendant's conduct violates public policy as declared by specific constitutional, statutory, or regulatory provisions;
  - j. Whether the Products failed to conform to representations of fact on the Product labels;
  - k. Whether the Products breached express warranties or implied warranties or both;
  - l. Whether the injury to the consumers and to competition from Defendant's practices is substantial;
  - m. Whether the injury to the consumers and to competition from Defendant's practices is one the consumers themselves could reasonably have avoided;
  - n. Whether the Class is entitled to actual damages, restitution, punitive damages, attorney fees and costs, and an injunction;
  - o. Whether the statute of limitations should be tolled on behalf of the Class;
  - p. Whether members of the Class are entitled to restitution and, if so, the correct measure of restitution;
  - q. Whether members of the Class are entitled to an injunction and, if so, its terms;
  - r. Whether members of the Class are entitled to statutory damages or punitive damages; and
  - s. Whether members of the Class are entitled to any further relief.
128. Class treatment is therefore appropriate under Federal Rule of Civil Procedure

23.

1 **IX. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

4 **CAL. CIV. CODE §§ 1750, *et seq.***

5 129. Plaintiff alleges and incorporates here by reference every allegation of fact  
6 described in this Complaint as if fully set forth herein.

7 130. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*  
8 (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and unconscionable  
9 commercial practices in connection with the sale of any goods or services to consumers.

10 131. Plaintiff and the Class are “consumers” as defined by Cal. Civ. Code §  
11 1761(d). The Products are a “good” as defined by Cal. Civ. Code § 1761.

12 132. Defendant’s failure to label the Product in compliance with federal and state  
13 labeling regulations, was an unfair, deceptive, unlawful, and unconscionable commercial  
14 practice.

15 133. Defendant’s conduct violates the CLRA, including but not limited to, the  
16 following provisions:

17 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which  
18 they do not have.

19 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade  
20 if they are of another.

21 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

22 § 1770(a)(16): representing the subject of a transaction has been supplied in  
23 accordance with a previous representation when it has not.

24 134. Defendant advertised and represented the Products as containing less  
25 Retained Water than the Products actually did.

26 135. The CLRA imposes the same requirement here as the PPIA, which requires  
27 poultry products that include Retained Water to display a truthful statement of the  
28 maximum percentage of Retained Water on the front label.

136. Defendant placed the false and misleading declarations of Retained Water on

1 the Product packages, which all Class members were exposed to at the point of purchase.

2 137. Plaintiff and the Class suffered injury in fact and lost money or property as a  
3 result of Defendant's unlawful acts, and will continue to do so in the future.

4 138. Had Plaintiff and the Class been aware of Defendant's unlawful  
5 representations, they would not have purchased the misbranded Products or would only  
6 have been willing to pay less for those Products than they did.

7 139. Defendant's unlawful acts allowed Defendant to sell the Products for a higher  
8 price and at a higher profit margin than it otherwise would have.

9 140. As a result of Defendant's conduct, Plaintiff and the Class sustained the  
10 injuries, losses, and damages more fully described above.

11 141. Plaintiff therefore seeks an order enjoining Defendant from continuing to  
12 falsely advertise, market, offer for sale, and sell the Products as labeled.

13 142. Plaintiff will also seek by amendment of this Complaint an order for the  
14 disgorgement and restitution as provided in the CLRA of all excess revenue received by  
15 Defendant from the sale of misbranded and economically adulterated Products described  
16 herein, as well as any other damages allowable by law under the CLRA, no less than thirty  
17 days after Plaintiff has provided Defendant the required CLRA notice.

## 18 **SECOND CAUSE OF ACTION**

### 19 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

#### 20 **(UNLAWFUL PRONG)**

#### 21 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

22 143. Plaintiff re-alleges and incorporates by reference here each and every  
23 allegation of fact contained elsewhere in the Complaint as if fully set forth herein.

24 144. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair or fraudulent  
25 business act or practice."

26 145. Defendant's practices as described herein were at all times during the Class  
27 Period and continue to be in violation of California's Unfair Competition Law.

28 146. The UCL unlawful prong borrows violations of other laws and statutes and  
designates those violations also to constitute violations of California law.

1           147. Under California Health and Safety Code § 110390 *et seq.*, it is unlawful for  
2 any person to disseminate any false advertisement of any food, drug, device, or cosmetic.  
3 An advertisement is false if it is false or misleading in any particular.

4           148. It is also unlawful for any person to manufacture, sell, deliver, hold, or offer  
5 for sale any food . . . that is falsely advertised, Cal. Health and Saf. Code § 110390, and  
6 to advertise for sale any food . . . that is adulterated or misbranded, Cal. Health and Saf.  
7 Code § 10398.

8           149. It is also unlawful for any person to receive in commerce any food . . . that  
9 is falsely advertised or to deliver or proffer for delivery any such food . . . . Cal. Health  
10 and Saf. Code §110400.

11           150. These requirements are not different from or in addition to those of the  
12 Federal PPIA, which requires poultry products that include Retained Water to display a  
13 truthful statement of the maximum percentage of Retained Water on the front label.

14           151. Defendant violated one or more of these provisions of California and Federal  
15 law and therefore also violated California's UCL.

16           152. Defendant placed the false and misleading declarations of Retained Water on  
17 the Product packages, which all Class members were exposed to at the point of purchase.

18           153. Defendant received in commerce and offered for sale Products that had false  
19 and misleading declarations of maximum Retained Water on the Product packages. Those  
20 Products were therefore misbranded and violated California's Health and Safety Code,  
*supra*, as well as the Federal PPIA regulations.

21           154. Defendant also received in commerce, sold, delivered, held, and offered for  
22 sale foods that were that were adulterated or misbranded in violation of California's Song-  
23 Beverly Act, violating California law which identically mirrors requirements of the  
24 Federal PPIA.

25           155. Defendant also therefore violated California's Unfair Competition Act as  
26 well, because the Products it sold violated the Song-Beverly Act.

27           156. Defendant's practices are therefore unlawful as defined in Section 17200.

28           157. Defendant's conduct is further unlawful because it violates California's



1 Sherman Law, Cal. Health & Safety Code § 109875 *et seq.*, and in particular, § 110585 *et*  
2 *seq.*, which govern food adulteration.

3 158. Under Section 110585(d), a food is adulterated if any substance has been  
4 added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce  
5 its quality or strength or make it appear better or of greater value than it is.

6 159. This requirement of California's Sherman law is identical to the requirements  
7 of the Federal PPIA.

8 160. It is unlawful for any person to manufacture, sell, deliver, hold, or offer for  
9 sale any food that is adulterated. Cal. Health & Safety Code § 110620.

10 161. It is unlawful for any person to adulterate any food. Cal. Health & Safety  
11 Code §110625.

12 162. It is unlawful for any person to receive in commerce any food product that is  
13 adulterated or to deliver or proffer for delivery any such food. Cal. Health & Safety Code  
14 §110630.

15 163. Defendant violated one or more of these provisions of California law, among  
16 others.

17 164. Further, California's Business & Professions Code § 12606, states,

18 (a) No container wherein commodities are packed shall . . . be otherwise so  
19 constructed or filled, wholly or partially, as to facilitate the perpetration of  
20 deception or fraud.

21 (b) No container shall be made, formed, or filled as to be misleading.

22 165. This California state-law requirement is identical to that of the PPIA, which  
23 prohibits the use of any container for a poultry product that is "made, formed, or filled as  
24 to be misleading[.]"

25 166. Defendant offers for sale in commerce in California and the United States  
26 Products in packages filled and labeled so as to be misleading.

27 167. Further, under Federal regulations, borrowed and incorporated into the UCL,  
28 poultry washing, chilling, and draining practices and procedures must be such as will

1 minimize water absorption and retention at time of packaging,<sup>5</sup> and a processor's failure  
2 to minimize the amount of water carried over from the chilling process results in the  
3 product becoming adulterated.<sup>6</sup> As both these regulations are borrowed and incorporated  
4 by reference into the UCL, Defendant Trader Joe's has violated the UCL accordingly.

5 168. Further, California's Penal Code § 532 makes it a crime in California to  
6 acquire money or property through false pretenses.

7 169. Defendant's misrepresentation of the percentage of Retained Water in the  
8 Products, which induced Plaintiff and the Class Members to purchase those Products and  
9 pay the marked price per pound for excess Retained Water, also constituted theft by false  
10 pretenses.

11 170. Defendant's conduct also therefore is unlawful under the UCL as that  
12 conduct violated California's Penal Code § 532.

13 171. All of these California laws constituting predicate violations under the UCL  
14 impose requirements identical to those of the Federal PPIA.

15 172. Plaintiff and the Class suffered injury in fact and lost money or property as a  
16 result of Defendant's unlawful acts.

17 173. Had Plaintiff and the Class been aware of Defendant's unlawful practices,  
18 they would not have purchased the improperly packaged, misbranded and economically  
19 adulterated Products or would only have been willing to pay less for those Products than  
20 they did.

21 174. Defendant's unlawful acts allowed Defendant to sell the Products for a higher  
22 price and at a higher profit margin than it would have otherwise.

23 175. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order  
24 enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or  
25 fraudulent acts and practices.

26 176. Plaintiff also seeks an order for the disgorgement and restitution of all excess  
27 revenue received by Defendant from the sale of unlawful adulterated and misbranded

28 <sup>5</sup> California Unfair Competition Law, incorporating as predicate 9 CFR 381.66 (d)(1).

<sup>6</sup> California Unfair Competition Law, incorporating as predicate 66 Fed. Reg. 6 at 1751.

1 Products as described herein.

2 **THIRD CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
4 **(UNFAIR PRONG)**

5 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

6 177. Plaintiff re-alleges and incorporates by reference each and every allegation  
7 of fact contained elsewhere in the Complaint as if fully set forth herein.

8 178. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent  
9 business act or practice.

10 179. Defendant’s practices as described herein are “unfair” within the meaning of  
11 the California Unfair Competition Law because that conduct is unethical as well as  
12 unlawful, and substantially injurious to consumers, and the utility of the conduct to  
13 Defendant does not outweigh the gravity of the economic harm and potential harm.

14 180. While Defendant’s decision to package and to sell poultry products with  
15 Retained Water in excess of that declared on the labels may have some utility to Defendant  
16 in that it allows Defendant to realize higher profit margins than if it sold lawful products  
17 accurately labeled, this utility is small and far outweighed by the gravity of the serious  
18 risk of harm Defendant inflicts on consumers and the market by the practice.

19 181. Defendant’s conduct also injures competing manufacturers and sellers that  
20 do not engage in the same unlawful, unfair, and unethical behavior.

21 182. Defendant realizes greater profits and competes unfairly in the marketplace  
22 thereby.

23 183. Moreover, Defendant’s practices violate public policy expressed by specific  
24 regulatory provisions, including Federal PPIA labeling regulations.

25 184. The policy of the State of California with respect to false advertising of foods  
26 is expressed in California Health and Safety Code § 12601. That provision states, “This  
27 chapter is designed to protect purchasers of any commodity within its provisions against  
28 deception or misrepresentation. Packages and their labels should enable consumers to  
obtain accurate information as to the quantity of the contents and should facilitate value

1 comparisons.”

2 185. Defendant’s practices as alleged herein not only violate the PPIA and specific  
3 analogous California laws with identical requirements, they also prevent consumers from  
4 obtaining accurate information as to the contents of the Products and do not facilitate value  
5 comparisons.

6 186. Further, Defendant’s practices are unfair because they violate public policy  
7 as declared by specific constitutional, statutory, or regulatory provisions, including those  
8 embodied in the California Health & Safety Code and identical regulations under the  
9 Federal PPIA.

10 187. Further, Defendant’s practices are unfair because the injury to consumers  
11 from its practices is substantial, not outweighed by benefits to consumers or competition,  
12 and not one that consumers themselves could reasonably have avoided or should be  
13 obligated to avoid.

14 188. Plaintiff therefore seeks an order for the disgorgement and restitution of all  
15 excess revenue received by Defendant from the unlawful sale of poultry products as  
16 described herein.

#### 17 **FOURTH CAUSE OF ACTION**

#### 18 **VIOLATION OF THE FALSE ADVERTISING LAW**

#### 19 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

20 189. Plaintiff re-alleges and incorporates by reference each and every allegation  
21 of fact contained elsewhere in the Complaint as if fully set forth herein.

22 190. Cal. Bus. & Prof. Code § 17500 states that it shall be a violation “to make or  
23 disseminate or cause to be made or disseminated before the public in this state” any  
24 statement concerning real or personal property . . . “or concerning any circumstance or  
25 matter of fact” connected with the disposition thereof “which is untrue or misleading, and  
26 which is known, or which by the exercise of reasonable care should be known, to be untrue  
or misleading . . . .”

27 191. Defendant’s statements regarding the percentage of Retained Water in the  
28 Products were both untrue and misleading and by the exercise of reasonable care should

1 have been known to be so.

2 192. This requirement under California law is identical to that imposed by the  
3 Federal PPIA.

4 193. Defendant violated Cal. Bus. & Prof. Code § 17500, California's False  
5 Advertising Law, by advertising and selling the Products with untrue statements.

6 194. Defendant violated California law by placing false statements on the Product  
7 labels.

8 195. Plaintiff and the Class suffered injury in fact and lost money or property as a  
9 result of Defendant's unlawful acts.

10 196. Had Plaintiff been aware of Defendant's unlawful tactics, she would not have  
11 purchased the improperly packaged and misbranded Products or would only have been  
12 willing to pay less for those Products than she did.

13 197. Defendant's unlawful acts allowed Defendant to sell the Products for a higher  
14 price and at a higher profit margin than it otherwise would have.

15 198. Plaintiff therefore seeks an order enjoining Defendant from continuing this  
16 unlawful conduct, and an order for the disgorgement and restitution of all excess revenue  
17 received by Defendant from the unlawful sale of the Products in California as described  
18 herein.

19 **FIFTH CAUSE OF ACTION**

20 **BREACH OF EXPRESS WARRANTIES**

21 **CAL. COMM. CODE § 2313**

22 199. Plaintiff re-alleges and incorporates by reference each and every allegation  
23 of fact contained elsewhere in the Complaint as if fully set forth herein.

24 200. Defendant expressly warranted that each Product included Retained Water  
25 less than or equal to the maximum percentage of Retained Water declared on the label.

26 201. This California requirement is identical to that of the PPIA, which imposes a  
27 duty to accurately declare on Product labels the maximum percentage of Retained Water.

28 202. The Products distributed in commerce by Defendant and sold to Class  
members violated this express warranty. The Products contained far more Retained Water



1 than Defendant warranted.

2 203. Defendant is therefore liable to the Class members in an amount equal to the  
3 difference in value between the product as it was represented – free of Retained Water in  
4 excess of the declared percentage – and the product as it was provided, packaged with  
5 excess Retained Water constituting unlawful economic adulteration.

6 204. Plaintiff therefore seeks on behalf of the Class an order that the Products  
7 breached express warranties and an order for the disgorgement and restitution of all excess  
8 revenue received by Defendant from Class members during the Class Period.

### 9 **SIXTH CAUSE OF ACTION**

#### 10 **BREACH OF IMPLIED WARRANTIES**

#### 11 **CAL. COMM. CODE § 2314**

12 205. Plaintiff re-alleges and incorporates by reference each and every allegation  
13 of fact contained elsewhere in the Complaint as if fully set forth herein.

14 206. The sale of the Products and representations of fact on the Product labels  
15 created implied warranties under California law that the Products were suitable for a  
16 particular purpose, specifically that they could lawfully be sold and pass without objection  
17 in the trade.

18 207. The distribution in commerce and sale of the Products in California creates  
19 an implied warranty under California law that the Products are accurately labeled and legal  
20 to sell in California. Cal. Comm. Code § 2314.

21 208. Defendant breached this implied warranty under California law.

22 209. Defendant is a merchant with respect to the Products and goods of that kind.

23 210. Defendant is a “seller” of the Products under California law.

24 211. California law imposes requirements on these sellers of poultry products  
25 identical to the requirements of the PPIA, which imposes a duty to accurately declare on  
26 poultry product labels the maximum percentage of Retained Water and only to distribute  
27 and offer in commerce poultry products that conform to the label.

28 212. Defendant violated its obligations to Plaintiff under California’s Song-  
Beverly Act and Cal. Comm. Code § 2314 because Defendant breached the Products’

1 implied warranties of merchantability that arose by operation of California law.

2 213. Each Product's front label misleadingly claims a lower maximum retained-  
3 water percentage than the Products actually include.

4 214. As alleged above, at the time of purchase, Defendant had reason to know by  
5 virtue of its experience and expertise in the trade that Plaintiff, as well as members of the  
6 Class, intended to purchase lawful poultry products that were accurately labeled.

7 215. This became part of the basis of the bargain between the parties.

8 216. Defendant's actions had an influence thereby on consumers' decisions in  
9 purchasing the Products. Plaintiff and Class Members justifiably relied on Defendant's  
10 representations when purchasing the Products.

11 217. Defendant offered the Products in commerce in California and the United  
12 States, and then sold the goods to Plaintiff and other Class Members in California and the  
13 United States based on the implied warranties.

14 218. At the time of purchase, Defendant knew or had reason to know that Plaintiff  
15 and Class members were relying on Defendant's skill and judgment to furnish a Product  
16 that was lawful for sale and was suitable for this particular purpose, and justifiably relied  
17 on Defendant's skill and judgment.

18 219. The Products were not lawful products to sell or offer for sale.

19 220. Plaintiff purchased the Products believing they had the qualities Plaintiff  
20 sought, based on the Defendant's representations, but the Products were actually  
21 unsatisfactory to Plaintiff for the reasons described herein.

22 221. The Products were not merchantable in California, as they were not of the  
23 same quality as other products in the category generally acceptable in the trade as each  
24 contained unlawful excess Retained Water. *See* Cal. Comm. Code § 2314(1).

25 222. The Products would not pass without objection in the trade when packaged  
26 with the existing labels, because the Products were misbranded and illegal to sell in  
27 California. Cal. Comm. Code § 2314(2)(a).

28 223. The Products also were not acceptable commercially and breached their  
implied warranties because they were not adequately packaged and labeled as required

1 under California law. Cal. Comm. Code § 2314(2)(e).

2 224. The Products also were not acceptable commercially and breached their  
3 implied warranties because they did not conform to the promises or affirmations of fact  
4 made on the container or label, Cal. Comm. Code § 2314(2)(f), and other grounds as set  
5 forth in the Commercial Code, section 2314(2).

6 225. These California requirements are the same as those imposed by the PPIA.

7 226. Under the Song-Beverly Act as codified in the California Commercial Code,  
8 the implied warranty of fitness for a particular purpose arises from the sale of goods by a  
9 “seller.” *See* Cal. Com. Code § 2315.

10 227. A “seller” is “a person who sells or contracts to sell goods.” *Id.* § 2103. The  
11 Song-Beverly Act makes the implied warranty of fitness applicable to retailers and  
12 distributors as well as to manufacturers. Cal. Civ. Code §§ 1791.1.

13 228. The Song-Beverly Act defines a “retailer” as one who “engages in the  
14 business of selling or leasing consumer goods to retail buyers.” *Id.* § 1791(1).

15 229. California’s Song-Beverly Act imposes requirements on sellers of the  
16 Products equivalent to those imposed by the PPIA in this regard.

17 230. Under the Song-Beverly Act as well, the implied warranty of merchantability  
18 requires that consumer goods such as the Products conform to the promises or affirmations  
19 of fact made on the container or label, are adequately contained, packaged, and labeled,  
20 and will pass without objection in the trade under the contract description. Cal. Civ. Code  
§ 1791.1

21 231. By offering the Products for sale and distributing the Products in California,  
22 Defendant warranted that the Products were not misbranded and were legal to sell in  
23 California. Because the Products were misbranded in several regards and were therefore  
24 illegal to sell or offer for sale in California, Defendant breached this warranty as well.

25 232. As a result of this breach, Plaintiff and other Class Members did not receive  
26 goods as impliedly warranted by Defendant. As an actual and proximate result of this  
27 breach of warranty, Plaintiff and other Class Members have been damaged in amounts to  
28 be determined at trial.

233. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.

## **SEVENTH CAUSE OF ACTION**

### **THEFT BY FALSE PRETENSES**

#### **CAL. CIV. CODE §496(a)**

234. Plaintiff re-alleges and incorporates by reference each and every allegation of fact contained elsewhere in the Complaint as if fully set forth herein.

235. Defendant induced Plaintiff and the Class members to part with money in exchange for the Products that was in excess of the actual value of those Products.

236. Defendant did so, in part, by adulterating the Products and by falsely advertising the Products as described herein.

237. California's Penal Code § 532 makes it a crime in California to acquire money or property through false pretenses.

238. Defendant's label declaration and advertising of the maximum percentage of Retained Water in the Products, which induced Plaintiff and the Class Members to purchase those Products and pay the marked price per pound for excess included Retained Water, also constituted theft by false pretenses.

239. California Civil Code §496(c) enables a California plaintiff to bring a civil action to recover actual and statutory damages for alleged violations of Penal Code § 532.

240. Defendant induced Plaintiff and the Class to part with money through the false pretense of labeling, advertising, offering and selling the Products as if they contained less Retained Water than those Products actually did.

241. Defendant is therefore liable to Plaintiff and to the Class for the actual damages as determined at trial and statutory damages under §496.

## **EIGHTH CAUSE OF ACTION**

### **UNJUST ENRICHMENT/MONEY HAD AND RECEIVED**

242. Plaintiff re-alleges and incorporates by reference each and every allegation of fact contained elsewhere in the Complaint as if fully set forth herein.

1        243. Plaintiff and the Class allege that Defendant owes them money for the  
2 unlawful or deceptive conduct described herein.

3        244. Defendant, by packaging, labeling, and selling the Products with Retained  
4 Water in excess of the labeled maximum percentage Retained Water, received additional  
5 money from Plaintiff and the Class that was intended to be used for the benefit of Plaintiff  
6 and the Class – specifically, that money was intended to be used to purchase the quantity  
7 of Product, which was sold by weight, as was represented on the Product package labels  
8 without unlawful excess Retained Water included in the Products at the time of packaging.

9        245. That money was not used for the benefit of Plaintiff and the Class, and  
10 Defendant has not given the money back, either to the Plaintiff or to the other Class  
11 members.

12        246. The additional money was paid by mistake, where an undue advantage was  
13 taken of the Plaintiff's lack of knowledge of the deception, whereby money was exacted  
14 to which the Defendant had no legal right.

15        247. Defendant is therefore indebted to Plaintiff and the Class in a sum certain,  
16 specifically the difference between the amount that Plaintiff and the Class paid for the  
17 Products purchased during the Class period and the Products' actual value had the  
18 Products conformed to their label declarations of Retained Water.

19        248. The retail price actually paid for all the Products during the Class period is  
20 consideration for which Defendant failed to tender the full amount of lawful Product.

21        249. The Defendant is therefore indebted to the Plaintiff and the Class in a sum  
22 certain for the additional money had and received by the Defendant for the use of the  
23 Plaintiff and the Class, which the Defendant in equity and good conscience should not  
24 retain.

25        250. Defendant actually received this money as described herein. Defendant  
26 acquired additional and excess profits from the sale of the Products to Plaintiff and the  
27 Class in commerce in California.

28        251. Defendant is therefore liable to Plaintiff and the Class in the amount of unjust  
enrichment or money had and received to be determined at trial.



**X. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and on behalf of all others similarly situated and the general public, prays for judgment against Defendant as follows:

- A. An order declaring that conduct complained of herein violates the Consumers Legal Remedies Act;
- B. An order declaring that conduct complained of herein violates the Unfair Competition Law;
- C. An order declaring that conduct complained of herein violates the False Advertising Law;
- D. An order declaring that conduct complained of herein breached Defendant's express warranties to California consumers;
- E. An order declaring that conduct complained of herein breached Defendant's implied warranties to California consumers;
- F. An order declaring that the conduct complained of herein is compensable under California Penal Code Section 496;
- G. An order declaring that the conduct complained of herein caused Defendant to be unjustly enriched and that Defendant improperly had and received monies in excess of the lawful labeled prices of the Products;
- H. An order enjoining Defendant's unlawful, unfair, and unconscionable practices;
- I. An order confirming that the class action described herein is properly maintainable as defined above, appointing Plaintiff and her undersigned counsel to represent the Class and Subclass, and requiring Defendant to bear the cost of class notice;
- J. An order declaring that the conduct complained of herein violated California law during the effective Class Period, including delayed discovery and tolling as appropriate;
- K. An order requiring Defendant to pay restitution to all Class members so that they may be restored the money which Defendant acquired by means of any

unlawful, unfair, deceptive, unconscionable, or negligent acts;

L. An order requiring Defendant to disgorge to the Class any benefits received from the Class and any unjust enrichment realized as a result of Defendant's improper conduct;

M. An order awarding to the Class any and all direct and consequential actual damages, punitive damages, statutory damages, and costs and reasonable attorneys' fees, including pre-judgment and post-judgment interest, arising from all injuries described herein compensable by such damages; and

N. Such other and further relief as this Court may deem just, equitable, or proper.

**XI. JURY DEMAND**

Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek a jury trial for claims sounding in equity.

DATED: July 10, 2019

Respectfully Submitted,



Ronald A. Marron

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