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

DIANA VARGAS, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,
a Washington corporation, and DOES 1 through
10,

Defendants.

CASE NO.: 37-2022-00003327-CU-BT-CTL

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATIONS OF THE UNFAIR
COMPETITION LAW;**
- 2. VIOLATIONS OF THE FALSE
ADVERTISING LAW**
- 3. VIOLATIONS OF THE
CONSUMERS LEGAL REMEDIES
ACT;**
- 4. UNJUST ENRICHMENT/QUASI
CONTRACT;**
- 5. NELIGENT
MISREPRESENTATION/OMISSION;**
- 6. BREACH OF
EXPRESSWARRANTY;**
- 7. BREACH OF IMPLIED
WARRANTY;**
- 8. STRICT PRODUCT LIABILITY -
FAILURE TO WARN; and**
- 9. STRICT PRODUCT LIABILITY -
MANUFACTURING DEFECT**

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff, Diana Vargas (“Plaintiff”), individually and on behalf of all others similarly situated throughout the State of California, file this Class Action Complaint (“CAC”) against Defendant Costco Wholesale Corporation (“Costco” or “Kirkland” or “Defendant”), and in support states the following:

NATURE OF THE ACTION

1. This is a class action lawsuit by Plaintiff, by and through her undersigned attorneys, against Defendant for its negligent, reckless, and/or intentional practice of failing to fully disclose the presence of cadmium (“Heavy Metals”), perchlorate, and/or other undesirable toxins or contaminants in their purchased Kirkland Organic Roasted Seaweed Snack (“Product”).

2. The Product is sold throughout the United States and does not conform to its packaging. Plaintiff seeks both injunctive and monetary relief on behalf of the proposed Classes (as defined herein), including restoring monies to the members of the proposed Classes. Plaintiff alleges the following based upon personal knowledge, as well as investigation by their counsel as to themselves, and as to all other matters, upon information and belief. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

3. Plaintiff, on behalf of herself and all others similarly situated, brings this Complaint for declaratory and/or injunctive relief and restitution under California Business & Professions Code §17200, *et. seq.*, §17500, *et. seq.*, California Civil Code §1750, *et. seq.*, and California common law.

4. This Complaint is brought as a class action pursuant to California Code of Civil Procedure §382. The restitution sought by Plaintiff and the putative class members exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

5. This Court has jurisdiction over Defendant because Defendant is authorized to and conducts business in and across this State of California, including with respect to the Products at issue; and Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court’s jurisdiction consistent with traditional notions of fair play and substantial justice.

7. Plaintiff resides in Oceanside, California, and at all times relevant hereto has been, a resident of the County of San Diego. Plaintiff has a membership with Defendant and is in privity with the company. In the last two years Plaintiff purchased the Product at Defendant's retail location in Vista, California, on 4-5 occasions. Plaintiff read and relied on the packaging prior to purchase. During that time, Plaintiff was unaware that Defendant's Product may be adulterated with cadmium. Plaintiff purchased Defendant's Product on the assumption that the labeling of these Products was accurate and that the products were unadulterated, safe and effective. Plaintiff would not have purchased Defendant's Products had she known there was a risk the products may contain Cadmium, a known human carcinogen. As a result, Plaintiff suffered injury in fact when she spent money to purchase a product she would not otherwise have purchased absent Defendant's misconduct, as alleged herein. Plaintiff would be willing to purchase Products in the future if she could be certain that they do not contain (or have a material risk of containing) cadmium or other heavy metals and/or contaminants.

9. The use of the term "defendants" or "Defendants" in any of the allegations in this Complaint, unless specifically alleged otherwise, is intended to include and charge, both jointly and severally, not only the Defendants identified in this Complaint, but also all Defendants designated as DOES 1 through 10, inclusive, as though the term "Defendants" was followed in each and every

instance throughout this Complaint with the phrase "and each of them jointly and severally, including all named Defendants and Defendants included herein and sued under the fictitious names of DOES 1 through 10, inclusive."

10. Plaintiff is informed and believes, and thereon alleges, that Defendants, at all times herein mentioned, were the partners, joint venturers, subsidiaries, successors in interest, managing agent, merged entities, agents, alter egos, part of a jointly owned, managed, and/or operated business enterprise, and/or employees of each other Defendant and in doing the acts, omissions, and things alleged herein were acting as such and within the scope of their authority as such agents and employees and with the permission and consent of all other Defendants. Plaintiff is informed and believes, and thereon alleges, that Defendants have, and always herein mentioned had, a joint economic and business interest, goal and purpose in the products that are the subject of this lawsuit.

INTRODUCTION

Seaweed Snacks Have Risen in Popularity Due to Purported Health Benefits

11. Edible seaweed, also called sea vegetables, are aquatic plants known as algae (either red algae, green algae, or brown algae) that grow in the ocean. Seaweed contains amino acids called glutamates which have a salty, rich, savory taste known as umami.

12. Most often associated with Japanese cuisine, marine algae have been harvested for thousands of years for culinary and medicinal purposes in China, Korea, and other countries with significant coastlines. Seaweed is now a regular ingredient in smoothies and dried seaweed snacks are a popular alternative to chips.

13. Such popularity is particularly driven by the purported health benefits of the Product which include:

- **Improved Thyroid Function.** Seaweed is an excellent source of iodine, a vital trace mineral that plays a critical role in thyroid health. The body doesn't make iodine on its own, so you need to get it from food sources or supplements. Your thyroid plays a crucial role in your overall health, and iodine plays a vital role in its ability to function properly.¹

¹ <https://www.webmd.com/diet/health-benefits-seaweed#1> (Last viewed 1/19/2022).

- 1 • **Improved Gut Health.** "Seaweed contains both soluble and insoluble fiber, making
2 seaweed a great prebiotic source to support gut health," explains dietitian Chelsea
3 Gloeckner, MS, RD." These fibers include particular sugars called sulfated
4 polysaccharides, which have been shown to increase the growth of 'good' gut bacteria and
5 also increase the production of short-chain fatty acids (SCFA), which provide support and
6 nourishment to the GI tract cell lining," adds dietitian Rachel Fine MS, RD, CSSD, CDN.²
- 7 • **Supports Strong Immunity.** The underwater wonder contains many immune-boosting
8 minerals and vitamins. "Seaweed is a source of a potent antioxidants, including alginate and
9 fucoxanthin," says Fine. "There is promising research showing potential anti-inflammatory
10 benefits that may relate to reducing the risk of diabetes and obesity. Thanks to iodine and
11 an amino acid called tyrosine, the "grass" of the sea also benefits the thyroid and may help
12 prevent thyroid disease. Seaweed also contains polyphenols, "which can support anti-cancer
13 processes in the body," adds functional medicine expert Dr. Elroy Vojdani, MD.³
- 14 • **Improved Cardiovascular Health.** Some studies show that seaweed intake may help to
15 reduce blood pressure. It may also help to reduce LDL cholesterol and total cholesterol
16 levels.⁴
- 17 • **Improved Brain Health.** Omega-3 fatty acids, EPA, and DHA found in seaweed are great
18 cognitive health, which can include improved memory and performance. Some
19 populations also rely on the food for brain development in children.⁵

20 **Defendant Manufactures, Distributes and Markets a Roasted Seaweed Snack Product Under its**
21 **Kirkland Signature Brand**

22 14. "Kirkland Signature" is Costco's private label. It is sold by Costco at their website and
23 warehouses, and is trademarked by the company. Many Kirkland Signature products are produced by the
24 same manufacturers as their respective name brands.

26 ² <https://www.elle.com/beauty/health-fitness/news/a26568/seaweed-snacks-healthy/> (last viewed 1/9/2022)

27 ³ <https://www.elle.com/beauty/health-fitness/news/a26568/seaweed-snacks-healthy/> (last viewed 1/9/2022)

28 ⁴ <https://www.webmd.com/diet/health-benefits-seaweed#1>

⁵ <https://www.elle.com/beauty/health-fitness/news/a26568/seaweed-snacks-healthy/>

1 15. Defendant promotes its Kirkland brand in a manner such that consumers understand it to
2 be “synonymous with higher quality and exceptional value.”⁶

3 16. One item in the Kirkland Signature product line is the Kirkland Organic Roasted Seaweed
4 Snack (defined as “Product” above).

5 17. Defendant packages, markets, advertises, manufactures and/or distributes, and sells their
6 Product at their retail stores throughout the United States, including in the State of California.

7 **Independent Third-Party Lab Testing Has Revealed the Presence of Heavy Metal Contaminants in**
8 **the Product**

9 18. In 2021, ConsumerLabs.com tested dried seaweed and roasted seaweed snacks to determine
10 their iodine content and whether they contained heavy metal contaminants.

11 19. The testing revealed a single serving contained 6mcg of cadmium.

12 20. Cadmium is a natural element in the earth's crust. It is usually found as a mineral combined
13 with other elements such as oxygen (cadmium oxide), chlorine (cadmium chloride), or sulfur (cadmium
14 sulfate, cadmium sulfide)⁷.

15 21. Cadmium is a non-essential toxic heavy metal, an environmental toxicant, and toxic at a low
16 concentration, and it has no known beneficial role in the human body. Its exposure induces various health
17 impairments including hostile reproductive health.

18 22. Long-term exposure to lower levels of cadmium in air, food, or water leads to a buildup of
19 cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile
20 bones.⁸

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23 ⁶ <https://investor.costco.com/static-files/0878117f-7f3f-4a77-a9a5-c11a2534e94d>

24 ⁷ <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15#:~:text=The%20FDA%20has%20determined%20that%20the%20cadmium%20concentration,an%208-hour%20workday%2C%2040-hour%20workweek.%20Top%20of%20Page> (last viewed 1/10/2022)

25 ⁸ <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15#:~:text=The%20FDA%20has%20determined%20that%20the%20cadmium%20concentration,an%208-hour%20workday%2C%2040-hour%20workweek.%20Top%20of%20Page>

23. Cadmium, like lead, “displays a troubling ability to cause harm at low levels of exposure.”⁹ The U.S. Department of Health and Human Services has determined that cadmium and cadmium compounds are known human carcinogens and the EPA has likewise determined that cadmium is a probable human carcinogen.¹⁰ Compounding such concerns is the fact that cadmium has a prolonged half-life as it “sequesters in [human] tissue.”¹¹

24. The EPA has set a maximum contaminant level for cadmium in drinking water of 5 ppb, 40 C.F.R. § 141.62; the FDA has set a maximum level in bottled water to 5 ppb; and the WHO set a maximum cadmium level in drinking water to 3 ppb. Ex. 1 at 29.

25. The FDA has acknowledged that exposure to heavy metals including cadmium are “likely to have the most significant impact on public health” and has prioritized them in connection with its heavy metals workgroup looking to reduce the risks associated with human consumption of heavy metals.¹²

26. The Department of Health and Human Services (DHHS) has determined that cadmium and cadmium compounds are known human carcinogens¹³.

27. At all times during the Class Period, Defendant knew or should have known the Products included undisclosed cadmium and were not sufficiently tested for the presence and material risk of cadmium.

28. Defendant’s Products included undisclosed levels of cadmium due to Defendant’s failure to monitor for their presence in the ingredients and finished products. Defendant was aware of this risk and failed to disclose it to Plaintiff and the Class despite having a duty to disclose.

⁹ HBBF Report at 14.

¹⁰ Agency for Toxic Substances and Disease Registry, *Public Health Statement for Cadmium*, available at <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=46&toxid=15> (last accessed Sept. 3, 2021)

¹¹ Genuis S.J., Schwalfenberg G., Siy A.-K.J., Rodushkin I. (2012) *Toxic Element Contamination of Natural Health Products and Pharmaceutical Preparations*, PLOS ONE 7(11): e49676, available at <https://doi.org/10.1371/journal.pone.0049676> (last accessed Sept. 3, 2021).

¹² <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food> (last viewed 1/11/2022.)

¹³ <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15#:~:text=The%20FDA%20has%20determined%20that%20the%20cadmium%20concentration,an%208-hour%20workday%2C%2040-hour%20workweek.%20Top%20of%20Page> (last viewed 1/10/2022)

29. Defendant knew or should have known that cadmium poses health risks.

30. Defendant knew or should have known that it owed consumers a duty of care to prevent, or at the very least, minimize the presence of cadmium in the Products to the extent reasonably possible.

31. Defendant knew or should have known it owed consumers a duty of care to adequately test for cadmium in the Products.

32. Defendant knew consumers purchased the Products based on the reasonable expectation that Defendant manufactured the Products to the highest standards. Based on this expectation, Defendant knew or should have known consumers reasonably inferred that Defendant would hold the Products to the highest standards for preventing the inclusion of heavy metals including cadmium in the Products, which would include testing the Products' ingredients and finished products for heavy metals.

The Products Are Deceptively Labeled

33. Reasonable consumers, like plaintiff, trust manufacturers like Defendant to sell food that is healthy, nutritious and free from harmful toxins, contaminants and chemicals

34. Consumers lack the scientific knowledge necessary to determine whether the Defendant's Products do in fact contain Cadmium, and/or other undesirable toxins or contaminants, or to ascertain the true nature of the ingredients and quality of the Products. Reasonable consumers therefore must and do rely on Defendant to properly and fully disclose what their products contain. This is especially true for a product's contents like cadmium that are material to a reasonable consumer's purchasing decisions.

35. Defendant engaged in a long-term advertising campaign that fails to disclose the presence of heavy metals such as cadmium.

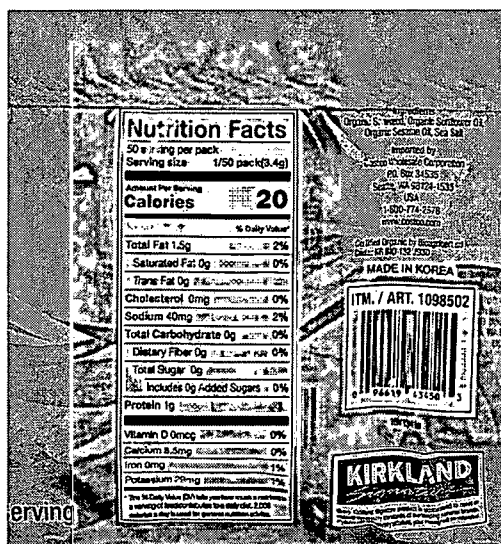
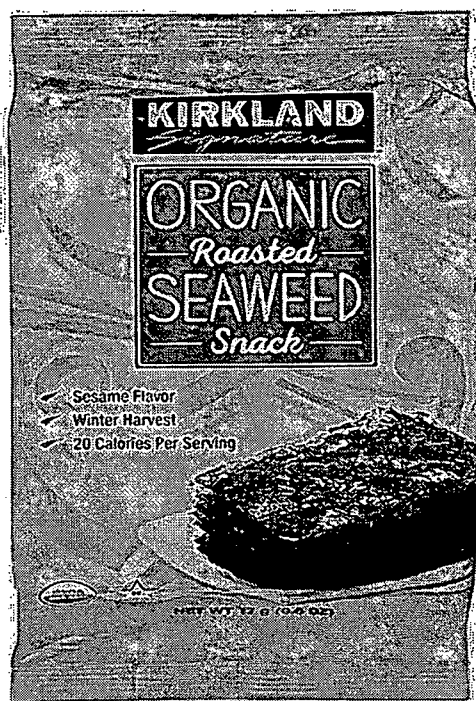
36. Defendant's packaging emphasizes that the Products' are organic, and made with superior ingredients to justify a premium price and induce reasonable consumers to believe in the quality and safety of their products for consumption.

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37. Based on the impression given by the packaging, no reasonable consumer could expect or understand that the Products contained cadmium.

38. Yet, the Product does contain dangerous heavy metals such as cadmium. Defendants fail to disclose to consumers that the Products contain (or have a material risk of containing) cadmium

1 and/or other undesirable toxins or contaminants. Nowhere on the Products' packaging is it disclosed
2 that they contain (or have a material risk of containing) Heavy Metals and/or other undesirable toxins
3 or contaminants (hereinafter collectively referred to as "Omissions").

4 39. Based on the Omissions, no reasonable consumer had any reason to know or expect that
5 the Products contained cadmium and/or other undesirable toxins or contaminants. Furthermore,
6 reasonable consumers would consider the mere presence (or risk) of cadmium, heavy metals and/or
7 other undesirable toxins or contaminants a material fact when considering whether to purchase the
8 Product.

9 40. Based on Defendant's decision to wholly omit mention of the presence of cadmium,
10 heavy metal and/or other undesirable toxins or contaminants in the Products, and to instead advertise,
11 package, and market their Products as healthy, nutritious, and organic, claims which were bolstered by
12 images of the seaweed snack on the packaging, they had a duty to ensure that these statements and the
13 message portrayed by the packaging's imagery were true and not misleading. As such, Defendant knew
14 or should have known the Products included nondisclosed cadmium, and/or other undesirable toxins
15 or contaminants and that over time, these toxins can accumulate to their detriment.

16 41. As a result of the material Omissions, a cadmium, heavy metals and/or other undesirable
17 toxins or contaminants in the Products without conducting his or her own scientific tests (which are
18 time consuming and expensive) or reviewing third-party scientific testing of these products.

19 42. Defendant knows that their customers trust the quality of their products and expect the
20 Product to be free of cadmium, heavy metals, and/or other undesirable toxins or contaminants. They
21 also know their consumers seek out and wish to purchase a product that possess "high quality"
22 ingredients free of toxins, contaminants, or chemicals, and that these consumers will pay more for
23 products they believe possess these qualities.

24 43. Defendant knew consumers would find the Omissions material. The Omissions are
25 deceptive, misleading, unfair, and/or false because the Product contain undisclosed levels of cadmium,
26 heavy metals, and/or other undesirable toxins or contaminants.

1 44. The Omissions allowed Defendant to capitalize on, and reap enormous profits from,
2 reasonable consumers who paid a premium price for the Product that omitted material information as
3 to the foods' true quality and value. Defendant continues to wrongfully induce consumers to purchase
4 their Products.

5 45. The Omissions were intended to and did, in fact, cause consumers like Plaintiffs and
6 the members of the Class, to purchase products they would not have if the true quality and ingredients
7 were disclosed or for which they would not have paid a premium price.

8 **CLRA Exhaustion**

9 46. Pursuant to § 1782 of the CLRA, Plaintiff has provided pre-suit notice to Defendant of
10 the particular violations of § 1770 of the CLRA and demanded that Defendant rectify the problems
11 associated with the actions detailed herein, which Defendant has thus far failed to do. Plaintiff intends
12 to amend her complaint to add a claim for damages under the CLRA after full exhaustion.

13 **CLASS ALLEGATIONS**

14 47. Plaintiff brings this action under California Code of Civil Procedure §382 as a class
15 action and seeks certification of the following class against Defendant for violations of state laws and
16 federal laws (the "Classes"):

17 **Nationwide Class**

18 All consumers who purchased the Product in the United States between
19 January 26, 2018, household or business use, and not for resale and the
20 dates of judgment in this action.

21 **California Class**

22 All consumers who purchased the Product in the State of California
23 between January 26, 2018, household or business use, and not for resale
24 and the dates of judgment in this action.

25 Excluded from the Classes are individuals who allege personal bodily
26 injury resulting from the use of Product(s). Also excluded from this Class
27 are Defendant, any parent companies, subsidiaries, and/or affiliates,
28 officers, directors, legal representatives, employees, co-conspirators, all
governmental entities, and any judge, justice or judicial officer presiding
over this matter.

1 48. The members of the Class are so numerous that joinder of all members of the Class is
2 impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of
3 purchasers of the Products who have been damaged by Defendant's conduct as alleged herein. The
4 precise number of Class members is unknown to Plaintiff at this time.

5 49. Plaintiff's claims are typical to those of all class members because members of the class
6 are similarly injured through Defendant's uniform misconduct described above and were subject to
7 Defendant's deceptive packaging that accompanied each and every Product. Plaintiff is advancing the
8 same claims and legal theories on behalf of himself and all members of the Class.

9 50. Plaintiff's claims raise questions of law and fact common to all members of the Class,
10 and they predominate over any questions affecting only individual Class members. The claims of
11 Plaintiff and all prospective Class members involve the same alleged defect. These common legal and
12 factual questions include the following:

- 13 (a) whether Defendant's Products contained cadmium;
- 14 (b) whether Defendant's omissions are true, or are misleading, or objectively
15 reasonably likely to deceive.
- 16 (c) whether the alleged conduct constitutes violations of the laws asserted;
- 17 (d) whether Defendant's alleged conduct violates public policy;
- 18 (e) whether Defendant engaged in false or misleading advertising;
- 19 (f) whether Plaintiff and the Class members are entitled to damages and/or
20 restitution and the proper measure of that loss; and
- 21 (g) whether an injunction is necessary to prevent Defendant from continuing to
22 market and sell defective and adulterated Products that contain cadmium, a
23 known human carcinogen.

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25 51. Plaintiff and their counsel will fairly and adequately protect and represent the interests
26 of each member of the class. Plaintiff has retained counsel experienced in complex litigation and class
27 actions. Plaintiff's counsel has successfully litigated other class action cases similar to that here and
28

1 have the resources and abilities to fully litigate and protect the interests of the class. Plaintiff intends to
2 prosecute this claim vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class,
3 nor is Plaintiff subject to any unique defenses.

4 52. A class action is superior to the other available methods for a fair and efficient
5 adjudication of this controversy. The damages or other financial detriment suffered by Plaintiff and
6 individual Class members are relatively small compared to the burden and expense that would be
7 entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible
8 for Plaintiff and Class members, on an individual basis, to obtain effective redress for the wrongs done
9 to them. Further, it is desirable to concentrate the litigation of the Class members' claims in one forum,
10 as it will conserve party and judicial resources and facilitate the consistency of adjudications. Plaintiff
11 knows of no difficulty that would be encountered in the management of this case that would preclude
12 its maintenance as a class action.

13 53. The Class also may be certified because Defendant has acted or refused to act on
14 grounds applicable to the Class, thereby making appropriate final declaratory and/or injunctive relief
15 with respect to the members of the Class as a whole.

16 54. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of
17 the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendant
18 from engaging in the acts described above, and requiring Defendant to provide full restitution in the
19 form of a refund of the full purchase price of the Products to Plaintiffs and Class members.

20 55. Unless a Class is certified, Defendant will retain monies received as a result of their
21 conduct that were taken from Plaintiff and the Class members. Unless a Class-wide injunction is issued,
22 Defendant will continue to commit the violations alleged, and the members of the Class and the general
23 public will continue to be misled.

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FIRST CAUSE OF ACTION

**(Violations of the Unfair Competition Law (the “UCL”), Cal. Bus. & Prof. Code §
17200, *Et Seq.* Against Defendant on Behalf of the California Class)**

56. Plaintiff incorporates by references and re-alleges each and every allegation contained above, as though fully set forth herein.

57. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising....” Cal. Bus. & Prof. Code § 17200.

Fraudulent Acts and Practices

58. Any business act or practice that is likely to deceive members of the public constitutes a fraudulent business act or practice under the UCL. Similarly, any advertising that is deceptive, untrue or misleading constitutes a fraudulent business act or practice under the UCL.

59. Defendant has engaged, and continues to engage, in conduct that is likely to deceive members of the public. This conduct includes representing in their labels that their Products contain only the ingredients listed in the label, which is untrue, and failing to make any mention that the Products are adulterated with cadmium, a known human carcinogen.

60. Similarly, Defendant has engaged, and continues to engage, in deceptive, untrue, and misleading advertising by “promising” to consumers, among other things that the ingredients are “organic when in fact the Products may contain a known (but undisclosed) human carcinogen (i.e. cadmium).

61. By committing the acts alleged above, Defendant has engaged in fraudulent business acts and practices, which constitute unfair competition within the meaning of Business & Professions Code §17200.

Unlawful Acts and Practices

62. As alleged herein, Defendant’s failure to disclose the presence (or risk of presence) of cadmium and/or other undesirable toxins or contaminants in the Products violate at least the following laws:

- The CLRA, California Business & Professions Code §§1750, et seq.; and
- The False Advertising Law, California Business & Professions Code §§17500, et. seq.

Unfair Acts and Practices

63. Any business practice that offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers constitutes an “unfair” practice under the UCL.

64. Defendant’s conduct with respect to the packaging and sale of the Products is unfair because Defendant’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to their victims.

65. Defendant’s conduct with respect to the packaging and sale of the Products is also unfair because it violates public policy as declared by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the False Advertising Law.

66. Defendant’s conduct with respect to the packaging and sale of the Products is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one that consumers, themselves, can reasonably avoid.

67. Defendant was obligated to disclose the presence of cadmium, and/or other undesirable toxins or contaminants in the Products because:

- (a) Defendant had exclusive knowledge of the presence of cadmium and/or other undesirable toxins or contaminants in the Products that were not known or reasonably accessible to Plaintiff and the Class;
- (b) Defendant actively concealed the presence of cadmium and/or other undesirable toxins or contaminants from Plaintiff and the Class; and
- (c) Defendant made partial statements on the Product’s packaging that gave a misleading impression to reasonable consumers without further information because the presence of cadmium and/or other undesirable toxins or contaminants had not been disclosed.

68. The Omissions were contrary to the representations Defendant made on the Product's packaging.

69. Plaintiff and the Class relied upon the Products' packaging provided to them by Defendant when making their purchasing decisions. Had Plaintiff and the Class known Defendants failed to disclose the presence of cadmium and/or other undesirable toxins or contaminants from their packaging, they would not have purchased the Products.

70. By committing the acts described above, Defendant has engaged in unfair business acts and practices which constitute unfair competition within the meaning of the UCL.

71. In accordance with California Business & Professions Code §17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through fraudulent or unlawful acts and practices and to commence a corrective advertising campaign. Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is necessary.

72. On behalf of themselves and the Class, Plaintiff also seeks an order for the restitution of all monies from the sale of the Products, which were unjustly acquired through acts of fraudulent, unfair, or unlawful competition. In addition, because there is a risk the Products contain cadmium, a known human carcinogen, the measure of restitution should be rescission and full refund insofar as the Product products and their associated labels are worthless. But for Defendant's misrepresentations and omissions, Plaintiff would have paid nothing for Products that have a risk of containing a known human carcinogen (i.e. cadmium). Indeed, there is no discernible "market" for a snack product that may be adulterated with a known human carcinogen. As a result, the Products are rendered valueless.

SECOND CAUSE OF ACTION

(Violations of California's False Advertising Law, California Business & Professions Code §§17500, Et. Seq., Against Defendant on Behalf of the California Class)

73. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

74. California's False Advertising Law prohibits any statement or omission in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

75. As set forth herein, Defendant's failure to disclose the presence (or risk of presence) of cadmium and/or other undesirable toxins or contaminants in the Product is likely to deceive the public.

76. Defendant knew that the Products contained undisclosed levels of cadmium and/or other undesirable toxins or contaminants, which are potentially dangerous substances. Defendant had a duty to disclose the presence of cadmium and/or other undesirable toxins or contaminants and by omitting their presence, misled consumers.

77. Defendant knew, or reasonably should have known, that these omissions were misleading.

78. Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is necessary, especially given Plaintiff's desire to purchase these products in the future if she can be assured that, so long as the Products are as advertised: healthy, nutritious, organic, and safe for consumption, and do not contain cadmium, heavy metals, and/or other undesirable toxins or contaminants.

79. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Products.

THIRD CAUSE OF ACTION

(Violations of the Consumers Legal Remedies Act (the “CLRA”), Cal. Bus. & Prof. Code § 1750, *et seq.* Against Defendant on Behalf of the California Class)

80. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

81. Defendant has employed or committed methods, acts, or practices declared unlawful by Cal. Civ. Code §1770 in connection with the products by representing that the Product's ingredient do not contain cadmium.

82. In particular, Defendant's failure to list cadmium as an ingredient in the products and representations regarding the safety and nature of the ingredients in the products violates California Civil Code § 1770(a), under the following subdivisions:

(5) by representing that the products have characteristics, uses and/or benefits which they do not;

(7) by representing that the products were of a particular standard, quality, or grade which they are not;

(9) by advertising the products with intent not to sell them as advertised; and

(16) by representing that the products have been supplied in accordance with previous representations when they have not.

83. Pursuant to § 1780(a) of the CLRA, Plaintiff seeks injunctive relief in the form of an order enjoining the above-described wrongful acts and practices of Defendant including, but not limited to, an order enjoining Defendant from distributing such false advertising and misrepresentations. Plaintiff, the members of the California Class, and the public at large shall be irreparably harmed if such an order is not granted.

84. On January 22, 2022, Plaintiff provided notice to Defendant pursuant to California Civil Code §1782 for violations of the CLRA on behalf of themselves and similarly situated individuals.

85. Plaintiff is not presently seeking monetary damages under the CLRA. Plaintiff reserves the right to amend this Complaint to include a request for damages under the CLRA after complying with *Civil Code* 1782(a).

FOURTH CAUSE OF ACTION

(Unjust Enrichment/Quasi Contract - Against Defendant on Behalf of the Classes)

86. Plaintiff incorporates by references and re-alleges each and every allegation contained above, as though fully set forth herein.

87. Plaintiff and members of the class conferred upon Defendant non-gratuitous payments for Products that they would not have due to Defendant's deceptive labeling, advertising, and marketing. Defendant accepted or retained the non-gratuitous benefits conferred by them with knowledge and awareness that, as a result of Defendant's deception, the Plaintiff and members of the class were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendant and reasonable consumers would have expected.

1 88. Defendant has been unjustly enriched in retaining the revenues derived from purchases
2 of the Products by the Plaintiff and members of the Class, which retention under these circumstances is
3 unjust and inequitable because the Products contain cadmium.

4 89. Retaining the non-gratuitous benefits conferred upon Defendant by the Plaintiff and
5 members of the Class under these circumstances made Defendant's retention of the non-gratuitous
6 benefits unjust and inequitable. Thus, Defendant must pay restitution to the Plaintiff and Class for their
7 unjust enrichment, as ordered by the Court.

8 **FIFTH CAUSE OF ACTION**

9 **(Negligent Misrepresentation/Omission - Against Defendant on Behalf of the Classes)**

10 90. Plaintiff incorporates by references and re-alleges each and every allegation contained
11 above, as though fully set forth herein.

12 91. In making representations of fact to Plaintiff and the Class members about the Products,
13 Defendant failed to fulfill its duty to disclose that the products contained cadmium.

14 92. Additionally, Defendant made false representations regarding the quality and safety of
15 the products and their ingredients as detailed above.

16 93. Such failure to disclose on the part of Defendant amounts to negligent omission and the
17 representations regarding the product amount to negligent misrepresentation.

18 94. Plaintiff and the other members of the Class reasonably relied upon such representations
19 and omissions to their detriment.

20 95. By reason thereof, Plaintiff and the other Class members have suffered damages in an
21 amount to be proven at trial.

22 **SIXTH CAUSE OF ACTION**

23 **(Breach of Express Warranty - Against Defendant on Behalf of the Classes)**

24 96. Plaintiff incorporates by references and re-alleges each and every allegation contained
25 above, as though fully set forth herein.

26 97. Defendant through its packaging, and written and media advertisement, expressly
27 warranted that the Products were safe and fit for the purposes intended, that they were of merchantable
28

1 quality, and that they did not pose dangerous health risks.

2 98. Plaintiff and the Class read and relied on these express warranties provided by Defendant
3 in the packaging and written advertisements.

4 99. Defendant breached its express warranties because the Products are defective and not
5 reasonably safe for their intended use.

6 100. Defendant knew or should have known that the Products did not conform to their express
7 warranties and representations and that, in fact, the products are not safe and pose serious health risks
8 because they contain cadmium.

9 101. Plaintiff and the Class have suffered harm on account of Defendant's breach of its express
10 warranty regarding the fitness for use and safety of the Products and are entitled to damages to be
11 determined at trial.

12 **SEVENTH CAUSE OF ACTION**

13 **(Breach of Implied Warranty - Against Defendant on Behalf of the Class)**

14 102. Plaintiff incorporates by references and re-alleges each and every allegation contained
15 above, as though fully set forth herein.

16 103. Because the Products contained cadmium, they were not of the same quality as those
17 generally acceptable in the trade and were not fit for the ordinary purposes for which such products are
18 used.

19 104. As alleged the products were not adequately labeled and did not disclose that they contain
20 cadmium.

21 105. The products did not measure up to the promises or facts stated in the sales literature and
22 communications by and from Defendant.

23 106. Defendant impliedly warranted that the Products were merchantable, fit and safe for
24 ordinary use.

25 107. Defendant further impliedly warranted that the Products were fit for the particular
26 purposes for which it was intended and sold.

1 108. Contrary to these implied warranties, the Products were defective, unmerchantable, and
2 unfit for their ordinary use when sold, and unfit for the particular purpose for which they were sold.

3 **EIGHTH CAUSE OF ACTION**

4 **(Strict Product Liability – Failure to Warn - Against Defendant on Behalf of the Class)**

5 109. Plaintiff incorporates by reference and re-alleges each and every allegation contained
6 above, as though fully set forth herein.

7 110. Defendant knew or should have known that their products contained cadmium which is
8 a known carcinogen.

9 111. Defendant had a duty to warn Plaintiff and the Class about the dangers of the presence
10 of cadmium in Defendant's Products.

11 112. Defendant knew that the risk of exposure to cadmium from use of its products was not
12 readily recognizable to an ordinary consumer and that consumers would not inspect the product for
13 cadmium content.

14 113. Defendant did not warn Plaintiff and the Class that the Products contained cadmium.

15 114. Plaintiff and the Class were injured by the use of the Products in a manner promoted by
16 Defendant, and in a manner that was reasonably foreseeable by Defendant because cadmium is a known
17 carcinogen that is absorbed through the skin.

18 115. Plaintiff and the Class were justified in their reliance on Defendant's advertising of the
19 product for use as sunscreen.

20 116. Plaintiffs and the Class are therefore entitled to damages in an amount to be proven at
21 trial.

22 **NINTH CAUSE OF ACTION**

23 **(Strict Product Liability – Manufacturing Defect –**
24 **Against Defendant on Behalf of the Class)**

25 117. Plaintiff incorporates by references and re-alleges each and every allegation contained
26 above, as though fully set forth herein.

118. The Products contained a manufacturing defect when they left the possession of Defendant. They differ from Defendant's intended result because they contain cadmium.

119. Plaintiff used the products in a way that was reasonably foreseeable to Defendant.

120. As a result of the defects in the manufacture of the products, Plaintiff and the Class suffered injuries from exposure to cadmium.

121. Accordingly, Plaintiff seeks damages to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment against the Defendant as to each and every count, including:

- A. An order declaring this action to be a proper class action, appointing Plaintiff and their counsel to represent the Class, and requiring Defendant to bear the costs of class notice;
- B. An order enjoining Defendant from selling the Products;
- C. An order enjoining Defendant from suggesting or implying that they are safe and effective for human application;
- D. An order requiring Defendant to engage in a corrective advertising campaign and engage in any further necessary affirmative injunctive relief, such as recalling existing Product products;
- E. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendant from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;
- F. An order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the Unfair Competition Law or other California law, plus pre- and post-judgment interest thereon;
- G. An order requiring Defendant to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

- 1 H. An order requiring Defendant to pay all actual and statutory damages permitted under
2 the counts alleged herein;
3 I. An order awarding attorneys' fees and costs to Plaintiffs and the Class; and
4 J. An order providing for all other such equitable relief as may be just and proper.
5

6 DATED: January 26, 2022

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP

7
8 By: 

9 Kiley L. Grombacher

Marcus J. Bradley

10 Sahag Majarian, II

Garen Majarian

11 *Attorneys for Plaintiff and the Putative Class*

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury on all issues so triable.
14

15 DATED: January 26, 2022

BRADLEYGROMBACHER, LLP
MAJARIAN LAW GROUP

16
17
18 By: 

19 Kiley L. Grombacher

Marcus J. Bradley

20 Sahag Majarian, II

Garen Majarian

21 *Attorneys for Plaintiff and the Putative Class*
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