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11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **SOUTHERN DISTRICT OF CALIFORNIA**

14  
 15  
 16 CRYSTAL RODRIGUEZ, on behalf of  
 17 herself, all others similarly situated, and the  
 18 general public,  
 19  
 20 **Plaintiff,**  
 21  
 22 v.  
 23 ALTER ECO AMERICAS INC.,  
 24  
 25 **Defendant.**

Case No: '23CV0053 L AGS

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF:**

**CAL. BUS. & PROF. CODE §§17200 *et seq.*;**

**CAL. BUS. & PROF. CODE §§17500 *et seq.*;**

**CAL. CIV. CODE §§ 1750 *et seq.*;**

**BREACH OF IMPLIED WARRANTIES ; and  
 UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Crystal Rodriguez, on behalf of herself, all others similarly situated, and the  
2 general public, by and through her undersigned counsel, hereby sues Alter Eco Americas Inc.  
3 (“Alter Eco”), and alleges the following upon her own knowledge, or where she lacks  
4 personal knowledge, upon information and belief, including the investigation of her counsel.

5 **INTRODUCTION**

6 1. Alter Eco markets and sells the Alter Organic Dark Chocolate Classic Blackout  
7 85% Cacao dark chocolate bar [hereafter the “Product”]. Alter Eco sells the Product  
8 throughout the United States, including in California.

9 2. A December 2022 report by Consumer Reports states that “[r]esearch has found  
10 that some dark chocolate bars contain cadmium and lead—two heavy metals linked to a host  
11 of health problems in children and adults,” in amounts such that “eating just an ounce a day  
12 would put an adult over a level that public health authorities and [Consumer Report’s]  
13 experts say may be harmful for at least one of those heavy metals.” Among those containing  
14 substantial levels of cadmium and lead is the Product, as pictured below.



23  
24 3. As shown above, the Alter Eco Product tested at 204% of California’s  
25 maximum allowable dose level (MADL) for cadmium and, while below California’s  
26 maximum allowable dose level for lead, as discussed in more detail below, there is no safe  
27 level of lead in food products.

1 4. Lead and cadmium are heavy metals and their presence in food, alone or  
2 combined, poses a serious safety risk to consumers because they can cause cancer and serious  
3 and often irreversible damage to brain development, liver, kidneys, bones, and other serious  
4 health problems. As Consumer Reports noted, “both cadmium and lead pose serious health  
5 risks” and, with respect to lead specifically, “no amount of it is considered safe.”

6 5. As described more fully below, consumers who purchased the Product were  
7 injured by Alter Eco’s acts and omissions concerning the presence of lead and cadmium. No  
8 reasonable consumer would know, or have reason to know, that the Product contains heavy  
9 metals, including lead and cadmium. Worse, as companies across the industry have adopted  
10 methods to limit heavy metals in their dark chocolate products, Alter Eco has stood idly by  
11 with a reckless disregard for its consumers’ health and well-being.

12 6. Plaintiff brings this action against Alter Eco on behalf of herself, similarly-  
13 situated Class Members, and the general public to enjoin Alter Eco from deceptively  
14 marketing the Product, and to recover compensation for injured Class Members.

15 **JURISDICTION & VENUE**

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

23 8. The Court has personal jurisdiction over Alter Eco as a result of Alter Eco’s  
24 substantial, continuous and systematic contacts with the State, and because Alter Eco has  
25 purposely availed itself of the benefits and privileges of conducting business activities within  
26 the State, including by marketing, distributing, and selling the Product in California. Alter  
27 Eco is also headquartered and has its principal place of business in California.

1 9. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §  
2 1391(b) and (c), because Alter Eco resides (*i.e.*, is subject to personal jurisdiction) in this  
3 district, and because a substantial part of the events or omissions giving rise to the claims  
4 occurred in this district.

5 **PARTIES**

6 10. Plaintiff Crystal Rodriguez is a resident of San Diego County, California.

7 11. Defendant Alter Eco is a Delaware corporation with its principal place of  
8 business in San Francisco, California.

9 **FACTS**

10 **I. Lead and Cadmium are Toxic and are Present in the Alter Eco Product at Unsafe**  
11 **Levels**

12 12. California recognizes that certain chemicals and elements are “known to the  
13 state to cause cancer or reproductive toxicity . . . if in the opinion of the state's qualified  
14 experts it has been clearly shown through scientifically valid testing according to generally  
15 accepted principles to cause cancer or reproductive toxicity.” *See* Cal. Health & Safety Code  
16 § 25249.8(b). Cadmium, in the amount found in the Product, is on the list of chemicals  
17 known to cause cancer and/or reproductive harm.

18 13. The harmful effects of lead, in any amount, are well-documented, particularly  
19 on children. Exposure puts children at risk for lowered IQ, behavioral problems (such as  
20 attention deficit hyperactivity disorder (ADHD)), type 2 diabetes, and cancer, among other  
21 health issues. Heavy metals also pose risks to adults. Even modest amounts of heavy metals  
22 can increase the risk of cancer, cognitive and reproductive problems, and other adverse  
23 conditions. As such, it is important to limit exposure.

1 14. “No amount of lead is known to be safe.”<sup>1</sup> Exposure to lead may cause anemia,  
 2 weakness, and kidney and brain damage.<sup>2</sup> Lead affects almost every organ and system in the  
 3 body and accumulates over time, leading to severe health risks and toxicity, including  
 4 inhibiting neurological function, anemia, kidney damage, seizures, and in extreme cases,  
 5 coma and death.<sup>3</sup> Lead can also cross the fetal barrier during pregnancy, exposing the mother  
 6 and developing fetus to serious risks, including reduced growth and premature birth.<sup>4</sup> Lead  
 7 exposure is also harmful to adults as more than 90 percent of the total body burden of lead  
 8 is accumulated in the bones, where it is stored.<sup>5</sup> Lead in bones may be released into the  
 9 blood, re-exposing organ systems long after the original exposure.<sup>6</sup>

10 15. Cadmium, also a heavy metal, likewise poses a serious safety risk to consumers  
 11 because it can cause cancer and is a known teratogen, an agent which causes malformation  
 12 of an embryo. Exposure to cadmium can affect the kidneys, lungs and bones.<sup>7</sup> There may be  
 13 no safe level of exposure to a carcinogen, so all contact should be reduced to the lowest  
 14 possible level.<sup>8</sup> It is considered a class 1 carcinogen by the World Health Organization.<sup>9</sup>  
 15 Even at low exposure, cadmium can cause nausea, vomiting, diarrhea and abdominal pain.  
 16

17 <sup>1</sup> See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epalimits-can-still-impact-your-health>  
 18

19 <sup>2</sup> <https://www.cdc.gov/niosh/topics/lead/health.html>

20 <sup>3</sup> *Id.*

21 <sup>4</sup> See <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm>

22 <sup>5</sup> See State of New York Department of Health, “Lead Exposure in Adults: A Guide for  
 23 Health Care Providers,” available online at  
 24 <https://www.health.ny.gov/publications/2584.pdf>.

25 <sup>6</sup> *Id.*

26 <sup>7</sup> <https://www.betterhealth.vic.gov.au/health/healthyliving/cadmium>

27 <sup>8</sup> New Jersey Department of Health Fact Sheet (available online at  
 28 <https://www.nj.gov/health/eoh/rtkweb/documents/fs/0305.pdf>)

<sup>9</sup> <https://www.unep.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/lead-and-cadmium>

1 And, because cadmium builds up in the body, even at low dosage, repeated exposure can  
2 cause liver and kidney damage, anemia and loss of smell. According to the Centers for  
3 Disease Control, “exposure to low levels of cadmium in . . . food . . . over time may build up  
4 cadmium in the kidneys and cause kidney disease and fragile bones” and is indisputably  
5 “considered a cancer-causing agent.”<sup>10</sup>

6 16. It is undisputed that the Product contains lead and cadmium, and that Alter Eco  
7 has known as much for at least the last three years. In September 2019, Alter Eco (and several  
8 other manufacturers and distributors of dark chocolate products) received notice that at least  
9 some of its dark chocolate products contained excessive cadmium and lead, including by  
10 being provided with certificates of merit that independent experts confirmed the presence of  
11 heavy metals. However, Alter Eco failed to warn consumers that consuming the Product  
12 exposes consumers to those chemicals.

13 17. Moreover, in December 2022, Consumer Reports [“CR”], a consumer  
14 protection and advocacy organization dedicated to independent product testing, consumer-  
15 oriented research, and investigative journalism, tested 28 different dark chocolate bars for  
16 lead and cadmium. The results showed that the Alter Eco Product contained more than  
17 *double* the Maximum Allowable Dose Level [“MADL”] for cadmium, and about 0.25 mcg  
18 per ounce of lead. The MADL standards are set by the California Office of Environmental  
19 Health Hazard Assessment [“OEHHA”].

20 18. Notably, the lead is getting into the Alter Eco Product *after* harvesting. As  
21 Consumer Reports notes, “lead seems to get into cacao after beans are harvested. The  
22 researchers found that the metal was typically on the outer shell of the cocoa bean, not in the  
23 bean itself. Moreover, lead levels were low soon after beans were picked and removed from  
24 pods but increased as beans dried in the sun for days. During that time, lead-filled dust and  
25 dirt accumulated on the beans.” Thus, on information and belief, Alter Eco itself is  
26 responsible for lead being present in the Product.

27  
28 <sup>10</sup> <https://tinyurl.com/y4f2kku7>

1 **II. Reasonable Consumers Do Not Expect Heavy Metals in the Alter Eco Product;**  
2 **Alter Eco Nevertheless Failed to Disclose the Presence of Lead or Cadmium in**  
3 **the Product**

4 19. The global dark chocolate market has witnessed significant growth in recent  
5 years and is expected to continue growing into 2023.<sup>11</sup>

6 20. The growth of dark chocolate sales is premised, in part, on reasonable  
7 consumers' belief that dark chocolate is actually *healthier* than other food choices, and  
8 especially healthier than other confectionaries and milk chocolates. "The pervasive health  
9 and wellness trend continues to influence dark chocolate market, with manufacturers  
10 incorporating organic ingredients and natural sweeteners. The preference for dark chocolate  
11 over milk chocolates on accounts its health benefits continues to remain intact," especially  
12 as demand for healthy products, generally, increases.<sup>12</sup> Thus, the safety and health effects of  
13 the Product are material facts to reasonable consumers.

14 21. Given the negative effects of toxic lead and cadmium on human development,  
15 especially in embryos and children, and on adult health, the presence of toxic heavy metals  
16 in the Product is a material fact to reasonable consumers, including Plaintiff and members  
17 of the Class.

18 22. A food company like Alter Eco, that is dedicated to offering the "cleanest  
19 greenest chocolate" products and which prides itself on environmental improvement and  
20 human health, has earned significant public trust that its foods are safe and fit for regular  
21 consumption. Reasonable consumers believe that Alter Eco would not sell products that are  
22 unsafe.

23 23. Alter Eco knew that if the presence of toxic heavy metals in its Product was  
24 disclosed to Plaintiff and the Class members, they would be unwilling to purchase the  
25 Product or would pay less for them.

26  
27 <sup>11</sup> <https://www.persistencemarketresearch.com/market-research/dark-chocolate-market.asp>

28 <sup>12</sup> *Id.*

1           24. In light of Alter Eco’s knowledge that Plaintiff and the Class members would  
2 be unwilling to purchase the Product or would pay less for the Product if they knew that the  
3 Product contained toxic heavy metals, Alter Eco intentionally and knowingly concealed this  
4 fact from Plaintiff and the Class Members and did not disclose the presence of lead or  
5 cadmium on the label of the Product.

6           25. Alter Eco knew or should have known that Plaintiff and the Class members  
7 would rely upon the packaging of the Product and intended for them to do so but failed to  
8 disclose the presence of lead or cadmium.

9           26. Alter Eco knew or should have known that it owed consumers a duty of care to  
10 adequately test for lead, cadmium, and other heavy metals, particularly considering that it  
11 was provided notice of independent expert testing of the Product. Had Alter Eco done so, it  
12 would have known that its Product contained significant levels of lead and cadmium.  
13 Alternatively, Alter Eco *did* know that its Product contained significant levels of heavy  
14 metals and purposely hid that fact from consumers.

15           27. Additionally, Alter Eco knew or should have been aware that a reasonable  
16 consumer would consume the Product regularly, and possibly multiple Products daily,  
17 leading to repeated exposure to both lead and cadmium, which each independently  
18 accumulate in the body and its systems over time.

19           28. Alter Eco knew or should have known it could control the levels of lead and  
20 cadmium in the Product by properly monitoring for heavy metal presence, sourcing  
21 ingredients with less heavy metals, or none at all, adjusting its formulation to reduce or  
22 eliminate heavy metals, or improve its manufacturing process to eliminate introduction of  
23 lead caused by Alter Eco itself.

24           29. Prior to purchasing the Product, Plaintiff and the Class members were exposed  
25 to, saw, read, and understood the labels of the Product, and relied upon the same in  
26 purchasing the Product, but Alter Eco failed to disclose the presence of heavy metals.



1 30. As a result of Alter Eco’s concealment of the fact that the Product contained  
2 toxic heavy metals, including lead and cadmium, Plaintiff and the Class members reasonably  
3 believed the Product were free from substances that would negatively affect children’s  
4 development as well as their own health.

5 31. Plaintiff and the Class members purchased the Alter Eco Product in reliance  
6 upon Alter Eco’s labels that contained omissions.

7 32. Had Plaintiff and the Class members known that the Product contained toxic  
8 heavy metals, rendering them unsafe for consumption, they would not have been willing to  
9 purchase the Product or would have paid less for them.

10 33. Therefore, as a direct and proximate result of Alter Eco’s omissions concerning  
11 the Product, Plaintiff and the Class Members purchased the Product and paid more than they  
12 were worth.

13 34. Plaintiff and the Class members were harmed in the form of the monies they  
14 paid for the Product which they would not otherwise have paid had they known the truth  
15 about the Product. Since the presence of toxic heavy metals, including lead and cadmium, in  
16 the Product renders them unsafe for human consumption, the Product that Plaintiff and the  
17 Class members purchased are worthless, or at a minimum are worth less than Plaintiff and  
18 the Class paid for them.

19 **III. The Product’s Labeling Violates California and Federal Food Labeling Law**

20 35. The Product’s labeling violates California Health and Safety Code §§ 109875,  
21 *et. seq.* (the “Sherman Law”), which has expressly adopted the federal food labeling  
22 requirements as its own. *See, e.g., id.* § 110100; *id.* § 110670 (“Any food is misbranded if  
23 its labeling does not conform with the requirements for nutrition labeling as set forth in  
24 Section 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the regulation adopted pursuant  
25 thereto.”). Specifically, Alter Eco “fail[ed] to reveal facts that are material in light of other  
26 representations made or suggested by the statement[s], word[s], design[s], device[s], or any  
27 combination thereof,” in violation of 21 C.F.R. § 1.21(a)(1). Such facts include the  
28

1 detrimental health consequences of consuming the Product given that they contain lead and  
2 cadmium, which is unsafe in any amount. In addition, such facts include the detrimental  
3 health consequences of consuming the Product, including inhibiting neurological function,  
4 anemia, kidney damage, seizures, and in extreme cases, coma and death, which are all  
5 material to a consumer choosing a food product.

6 **IV. Plaintiff's Purchase, Reliance, And Injury**

7 36. Ms. Rodriguez regularly purchased the Alter Eco Product during the Class  
8 Period, often making her purchases from Whole Foods and Sprouts stores in San Diego,  
9 including at least the Whole Foods at 8825 Villa La Jolla San Diego, California and Sprouts  
10 locations at 3015 Clairemont Dr. and 3358 Governor Dr., in San Diego, California.

11 37. When purchasing the Product, Plaintiff was seeking a chocolate bar she  
12 believed to be healthier than other confectionaries, by virtue of its higher cocoa (and thus  
13 lesser sugar) content. Moreover, Plaintiff would have avoided any food she knew contained  
14 toxic ingredients, especially heavy metals like lead and cadmium. She would also have  
15 avoided purchasing any food she knew could increase her risk of inhibited neurological  
16 function, anemia, kidney damage, seizures, coma, or death.

17 38. Plaintiff acted reasonably in purchasing the Product, whose label did not  
18 disclose the presence of lead or cadmium, or the attendant health risks in consuming the  
19 Product.

20 39. By omitting that its Product contains lead or cadmium, Alter Eco was able to  
21 gain a greater share of the snack market, specifically the confectionary and dark chocolate  
22 market, than it would have otherwise and to increase the size of the market.

23 40. Plaintiff paid more for the Product, and would only have been willing to pay  
24 less, or unwilling to purchase it at all, absent Alter Eco's omissions regarding the lead and  
25 cadmium content described herein.

1 41. Plaintiff would not have purchased the Product if she had known that it was  
2 misbranded pursuant to California and FDA regulations, or that it contained toxic lead or  
3 cadmium in the amounts found in the Product.

4 42. For these reasons, the Product was worth less than what Plaintiff and the Class  
5 Members paid.

6 43. Plaintiff and the Class lost money as a result of Alter Eco's omissions and unfair  
7 practices in that they did not receive what they paid for when purchasing the Product.

8 44. Plaintiff still wishes to purchase snack foods, including dark chocolate, and  
9 continues to see Alter Eco dark chocolate products at the stores she regularly shops. She  
10 would purchase Alter Eco dark chocolate bars in the future if, because of an injunction  
11 requiring Alter Eco to disclose lead or cadmium when present, she could be assured by the  
12 absence of a disclosure that the Product no longer contained lead or cadmium. But unless  
13 Alter Eco is enjoined in the manner Plaintiff requests, she may not be able to reasonably  
14 determine whether the lead or cadmium in the Product has been addressed, or whether Alter  
15 Eco is continuing to omit its presence.

16 45. Plaintiff's substantive right to a marketplace free of fraud, where she is entitled  
17 to rely with confidence on representations such as those made by Alter Eco, continues to be  
18 violated every time Plaintiff is exposed to the Product's labels.

19 46. Plaintiff's legal remedies are inadequate to prevent these future injuries.

20 **CLASS ACTION ALLEGATIONS**

21 47. While reserving the right to redefine or amend the class definition prior to or as  
22 part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23,  
23 Plaintiff seeks to represent a class of all persons in the United States, or alternatively in  
24 California, who, at any time from four years preceding the date of the filing of this Complaint  
25 to the time a class is notified (the "Class Period"), purchased, for personal or household use,  
26 and not for resale or distribution, the Alter Eco Product (the "Class").  
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1 48. The members in the proposed Class are so numerous that individual joinder of  
2 all members is impracticable, and the disposition of the claims of all Class Members in a  
3 single action will provide substantial benefits to the parties and Court.

4 49. Questions of law and fact common to Plaintiff and the Class include:

- 5 a. whether the omissions on the Product labels with respect to lead content  
6 is material, or likely to be material, to a reasonable consumer;
- 7 b. whether the omissions on the Product labels with respect to cadmium  
8 content is material, or likely to be material, to a reasonable consumer;
- 9 c. whether the omissions regarding lead content was reasonably likely to  
10 deceive a reasonable consumer;
- 11 d. whether the omissions regarding cadmium content was reasonably likely  
12 to deceive a reasonable consumer;
- 13 e. whether Alter Eco's conduct violates public policy;
- 14 f. whether Alter Eco's conduct violates state or federal food statutes or  
15 regulations;
- 16 g. whether Alter Eco made and breached warranties;
- 17 h. the proper amount of damages, including punitive damages;
- 18 i. the proper amount of restitution;
- 19 j. the proper scope of injunctive relief; and
- 20 k. the proper amount of attorneys' fees.

21 50. These common questions of law and fact predominate over questions that affect  
22 only individual Class Members.

23 51. Plaintiff's claims are typical of Class Members' claims because they are based  
24 on the same underlying facts, events, and circumstances relating to Alter Eco's conduct.  
25 Specifically, all Class Members, including Plaintiff, were subjected to the same misleading  
26 and deceptive conduct when they purchased the Product and suffered economic injury  
27 because the Product is misrepresented. Absent Alter Eco's business practice of deceptively  
28

1 and unlawfully labeling the Product by omitting material information regarding its toxic lead  
2 and cadmium content, Plaintiff and Class Members would not have purchased the Product  
3 or would have paid less for it.

4 52. Plaintiff will fairly and adequately represent and protect the interests of the  
5 Class, has no interests incompatible with the interests of the Class, and has retained counsel  
6 competent and experienced in class action litigation, and specifically in litigation involving  
7 the false and misleading advertising of foods and beverages.

8 53. Class treatment is superior to other options for resolution of the controversy  
9 because the relief sought for each Class Member is small, such that, absent representative  
10 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

11 54. Alter Eco has acted on grounds applicable to the Class, thereby making  
12 appropriate final injunctive and declaratory relief concerning the Class as a whole.

13 55. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.  
14 23(a), 23(b)(2), and 23(b)(3).

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **Violations of the Unfair Competition Law**

18 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

19 56. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
20 as if set forth fully herein.

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

23 58. Under California Business & Professions Code §17200, any business act or  
24 practice that is likely to deceive members of the public constitutes a fraudulent business act  
25 or practice.

26 59. The acts, omissions, misrepresentations, practices, and non-disclosures of as  
27 alleged herein constitute business acts and practices.

1 **Fraudulent**

2 60. A statement or practice is fraudulent under the UCL if it is likely to deceive a  
3 significant portion of the public, applying an objective reasonable consumer test.

4 61. As set forth herein, Alter Eco’s omissions regarding the toxic lead and cadmium  
5 content of the Product is likely to deceive reasonable consumers and the public.

6 **Unlawful**

7 62. As set forth herein, Alter Eco’s omissions are “unlawful” under the UCL in that  
8 they violate at least the following laws:

- 9 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 10 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 11 • The Song-Beverly Act, Cal. Civ. Code, §§ 1790 *et seq.*;
- 12 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- 13 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety  
14 Code §§ 110100 *et seq.*

15 63. By violating these laws, Defendant has engaged in unlawful business acts and  
16 practices, which constitute unfair competition within the meaning of Business & Professions  
17 Code § 17200.

18 **Unfair**

19 64. Alter Eco’s conduct with respect to the labeling, advertising, and sale of the  
20 Product was unfair because Alter Eco’s conduct was immoral, unethical, unscrupulous, or  
21 substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh  
22 the gravity of the harm to its victims.

23 65. Alter Eco’s conduct with respect to the labeling, advertising, and sale of the  
24 Product was also unfair because it violates public policy as declared by specific  
25 constitutional, statutory or regulatory provisions, including but not necessarily limited to the  
26 False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, the Song  
27 Beverly Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

1           66. Alter Eco’s conduct with respect to the labeling, advertising, and sale of the  
2 Product was and is also unfair because the consumer injury was substantial, not outweighed  
3 by benefits to consumers or competition, and not one consumers themselves could  
4 reasonably have avoided. Specifically, the increase in profits obtained by Alter Eco through  
5 the misleading labeling does not outweigh the harm to Class Members who were deceived  
6 into purchasing the Product unaware that it contains toxic lead or cadmium and is of the type  
7 that can increase the risk of poor health. Consumers could not have reasonably avoided the  
8 harm because this would have required that they conduct their own research into the lead  
9 and/or cadmium content of the Product, which could only feasibly be revealed by laboratory  
10 testing, which is not a reasonable expectation. Further, the harm could have easily been  
11 avoided by Alter Eco as it would have cost them only minimally to place a warning on the  
12 label that the Product contain toxic lead and cadmium. Alternatively, Alter Eco could have  
13 done more to ensure heavy metals, including lead and cadmium, were not in the Product.

14           67. Alter Eco profited from the sale of the falsely, deceptively, and unlawfully  
15 advertised the Alter Eco Product to unwary consumers.

16           68. Plaintiff and Class Members are likely to continue to be damaged by Alter Eco’s  
17 deceptive trade practices, because Alter Eco continues to disseminate misleading  
18 information. Thus, injunctive relief enjoining Alter Eco’s deceptive practices is proper.

19           69. Alter Eco’s conduct caused and continues to cause substantial injury to Plaintiff  
20 and other Class Members. Plaintiff has suffered injury in fact as a result of Alter Eco’s  
21 unlawful conduct.

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

25           71. Plaintiff and the Class also seek an order for the restitution of all monies from  
26 the sale of the Product, which were unjustly acquired through acts of unlawful competition.  
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1 72. Because Plaintiff’s claims under the “unfair” prong of the UCL sweep more  
2 broadly than their claims under the FAL, CLRA, or UCL’s “fraudulent” prong, Plaintiff’s  
3 legal remedies are inadequate to fully compensate Plaintiff for all of Alter Eco’s challenged  
4 behavior.

5 **SECOND CAUSE OF ACTION**

6 **Violations of the False Advertising Law**

7 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

8 73. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
9 as if set forth fully herein.

10 74. California’s False Advertising Law prohibits any statement in connection with  
11 the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

12 75. As set forth herein, the Plaintiff purchased a Product based on the label, which  
13 constituted advertising and which omitted the presence of toxic lead and cadmium in the  
14 Product.

15 76. Plaintiff and the Class Members paid money for the Alter Eco Product.  
16 However, they did not obtain the full value or any value of the Product due to Alter Eco’s  
17 omissions regarding the nature of the Product. Accordingly, Plaintiff and the Class Members  
18 suffered an injury in fact and lost money or property as a direct result of Alter Eco’s  
19 omissions.

20 77. Alter Eco’s conduct is ongoing and continuing, such that prospective injunctive  
21 relief is necessary, especially given Plaintiff’s desire to purchase the Product in the future  
22 and hope to rely on Alter Eco’s marketing and packaging.

23 78. Plaintiff and members of the Class are entitled to injunctive and equitable relief,  
24 and restitution in the amount they spent on the Product.

25 79. Here, equitable relief is appropriate because Plaintiff may lack an adequate  
26 remedy at law if, for instance, damages resulting from her purchase of the Product is  
27 determined to be an amount less than the premium price of the Product. Without  
28



1 compensation for the full premium price of the Product, Plaintiff would be left without the  
2 parity in purchasing power to which they are entitled.

3 80. Injunctive relief is also appropriate, and indeed necessary, to require Alter Eco  
4 to provide full and accurate disclosures regarding the Product so that Plaintiff and Class  
5 members can reasonably rely on the Product's packaging as well as those of Alter Eco's  
6 competitors who may then have an incentive to follow Alter Eco's deceptive practices,  
7 further misleading consumers.

8 81. Restitution and/or injunctive relief may also be more certain, prompt, and  
9 efficient than other legal remedies requested herein. The return of the full price or full  
10 premium price, and an injunction requiring either (1) adequate disclosures of the existence  
11 of toxic lead and cadmium in the Product or (2) the removal of lead and cadmium from the  
12 Product, will ensure that Plaintiff and other Class Members are in the same place they would  
13 have been in had Alter Eco's wrongful conduct not occurred, *i.e.*, in the position to make an  
14 informed decision about the purchase of the Product absent omissions.

15 82. Because the Court has broad discretion to award restitution under the FAL and  
16 could, when assessing restitution under the FAL, apply a standard different than that applied  
17 to assessing damages under the CLRA or commercial code (for Plaintiff's breach of warranty  
18 claims), and restitution is not limited to returning to Plaintiff and class members monies in  
19 which they have an interest, but more broadly serves to deter the offender and others from  
20 future violations, the legal remedies available under the CLRA and commercial code are  
21 more limited than the equitable remedies available under the FAL, and are therefore  
22 inadequate.

23 **THIRD CAUSE OF ACTION**

24 **Violations of the Consumers Legal Remedies Act**

25 **Cal. Civ. Code §§ 1750 *et seq.***

26 83. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
27 as if set forth fully herein.

1 84. The CLRA prohibits deceptive practices in connection with the conduct of a  
2 business that provides goods, property, or services primarily for personal, family, or  
3 household purposes.

4 85. Alter Eco's false and misleading labeling and other policies, acts, and practices  
5 were designed to, and did, induce the purchase and use of the Alter Eco Product for personal,  
6 family, or household purposes by Plaintiff and Class Members, and violated and continue to  
7 violate the following sections of the CLRA:

- 8 a. § 1770(a)(5): representing that goods have characteristics, uses, or  
9 benefits which they do not have;
- 10 b. § 1770(a)(7): representing that goods are of a particular standard, quality,  
11 or grade if they are of another;
- 12 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised;  
13 and

14 86. Alter Eco profited from the sale of the falsely, deceptively, and unlawfully  
15 advertised Product to unwary consumers.

16 87. Alter Eco's wrongful business practices constituted, and constitute, a  
17 continuing course of conduct in violation of the CLRA.

18 88. Plaintiff and the Class have suffered harm and seek only injunctive relief and  
19 restitution, at this time.

20 89. In compliance with Cal. Civ. Code § 1780(d), an affidavit of venue is filed  
21 concurrently herewith.

22 **FOURTH CAUSE OF ACTION**

23 **Breach of Implied Warranty Under the Song-Beverly Act**

24 **Cal. Civ. Code §§ 1790 *et seq.***

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

1           91. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790, *et*  
2 *seq.*, every sale of consumer goods in this State is accompanied by both a manufacturer’s  
3 and retail seller’s implied warranty that the goods are merchantable, as defined in that Act.  
4 In addition, every sale of consumer goods in this State is accompanied by both a  
5 manufacturer’s and retail seller’s implied warranty of fitness when the manufacturer or  
6 retailer has reason to know that the goods as represented have a particular purpose and that  
7 the buyer is relying on the manufacturer’s or retailer’s skill or judgment to furnish suitable  
8 goods consistent with that represented purpose.

9           92. The Product is a “consumer good” within the meaning of Cal. Civ. Code §  
10 1791(a).

11           93. Plaintiff and the Class Members who purchased one or more of the Alter Eco  
12 Product are “retail buyers” within the meaning of Cal. Civ. Code § 1791.

13           94. Alter Eco is in the business of manufacturing, assembling, producing and/or  
14 selling the Product to retail buyers, and therefore is a “manufacturer” and “seller” within the  
15 meaning of Cal. Civ. Code § 1791.

16           95. Alter Eco impliedly warranted to retail buyers that the Product was  
17 merchantable in that it (a) would pass without objection in the trade or industry under the  
18 contract description, and (b) was fit for the ordinary purposes for which the Product is used.  
19 For a consumer good to be “merchantable” under the Act, it must satisfy both of these  
20 elements. Alter Eco breached these implied warranties because the Product was unsafe in  
21 that it contained toxic lead and cadmium. Therefore, the Product would not pass without  
22 objection in the trade or industry and was not fit for the ordinary purpose for which it is used,  
23 which is consumption by consumers, including children.

24           96. Plaintiff and the Class purchased the Product in reliance upon Alter Eco’s skill  
25 and judgment in properly packaging and labeling the Product.

26           97. The Product was not altered by Plaintiff or other Class Members.  
27  
28

1 98. Alter Eco knew that the Product would be purchased and used without  
2 additional testing by Plaintiff and the Class.

3 99. As a direct and proximate cause of Alter Eco's breach of the implied warranty,  
4 Plaintiff and the Class have been injured and harmed because they would not have purchased  
5 the Product or would have paid less for the Product if they knew the truth about the Product,  
6 namely, that it contained toxic lead and cadmium.

7 **FIFTH CAUSE OF ACTION**

8 **Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314**

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

11 101. As set forth herein, Alter Eco manufactured and sold the Product, and prior to  
12 the time the Product were purchased by Plaintiff and other Class Members, impliedly  
13 warranted that the Product was of merchantable quality and fit for its ordinary use,  
14 consumption by consumers, including children.

15 102. Alter Eco is a merchant with respect to the goods of this kind which were sold  
16 to Plaintiff and the Class, and there were, in the sale to Plaintiff and the Class, implied  
17 warranties that those goods were merchantable.

18 103. Alter Eco impliedly warranted to retail buyers that the Product was  
19 merchantable in that it (a) would pass without objection in the trade or industry under the  
20 contract description, and (b) was fit for the ordinary purposes for which the Product is used.  
21 Defendant breached this implied warranty because the Product was unsafe in that it contained  
22 toxic lead and cadmium. Therefore, the Product would not pass without objection in the trade  
23 or industry and was not fit for the ordinary purpose for which it is used, which is consumption  
24 by consumers, including children.

25 104. Alter Eco was on notice of this breach as it was aware of the lead and cadmium  
26 in the Product, including based on receiving notice in at least 2019.

1 105. As a direct and proximate cause of Defendant's breach of the implied warranty,  
2 Plaintiff and the Class members have been injured and harmed because they would not have  
3 purchased the Product or would have paid less for it if they knew the truth about the Product,  
4 namely, that it contained lead and cadmium.

5 106. As a result, Plaintiff seeks actual damages, including, without limitation,  
6 expectation damages.

7 **SIXTH CAUSE OF ACTION**

8 **Unjust Enrichment**

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

11 108. Alter Eco's financial benefits resulting from its unlawful and inequitable  
12 conduct are economically traceable to Plaintiff's and Class Members' purchases of the  
13 Product, and the economic benefits conferred on Alter Eco are a direct and proximate result  
14 of its unlawful and inequitable conduct.

15 109. It would be inequitable, unconscionable, and unjust for Alter Eco to be  
16 permitted to retain these economic benefits because the benefits were procured as a direct  
17 and proximate result of its wrongful conduct.

18 110. As a result, Plaintiff and Class Members are entitled to equitable relief including  
19 restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits  
20 which may have been obtained by Alter Eco as a result of such business practices.

21 **PRAYER FOR RELIEF**

22 111. Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the  
23 general public, prays for judgment against Alter Eco as to each and every cause of action,  
24 and the following remedies:

- 25 a. An Order declaring this action to be a proper class action, appointing  
26 Plaintiff as Class Representative, and appointing Plaintiff's undersigned counsel as  
27 Class Counsel;

- b. An Order requiring Alter Eco to bear the cost of Class Notice;
- c. An Order compelling Alter Eco to destroy all misleading and deceptive advertising materials and product labels, and to recall all offending Products;
- d. An Order requiring Alter Eco to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;
- e. An Order requiring Alter Eco 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, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;
- f. An Order requiring Alter Eco to pay compensatory damages and punitive damages as permitted by law;
- g. An award of attorneys' fees and costs; and
- h. Any other and further relief that Court deems necessary, just, or proper.

**JURY DEMAND**

112. Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 11, 2023

/s/ Trevor Flynn

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