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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT L. WARING, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

TRADER JOE’S COMPANY,

Defendant.

Case No. 3:23-cv-00402

CLASS ACTION

**COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY, AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Robert L. Waring (“Plaintiff”), individually and on behalf of himself and all others
2 similarly situated, bring this class action against Defendant Trader Joe’s Company (“Trader Joe’s” or
3 “Defendant”) and on the basis of personal knowledge, information and belief, and the investigation of
4 counsel, alleges as follows:

5 **INTRODUCTION**

6 1. This is a proposed class action on behalf of a nationwide and California class of
7 consumers seeking redress for Defendant’s deceptive practices associated with the advertising,
8 labeling and sale of its “The Dark Chocolates Lover’s Chocolate 85% Cacao” and Dark Chocolate
9 72% Cacao” bars (collectively “Dark Chocolates” or “Products”).

10 2. On December 15, 2022, Consumer Reports (“CR”), an independent, nonprofit
11 organization dedicated to protecting the rights and interests of consumers issued a report on the
12 presence of heavy metals in dark chocolates. Specifically, CR tested 28 dark chocolate bars for lead
13 and cadmium finding some contained excessive amounts of cadmium and lead—two heavy metals
14 linked to a host of health problems, such that “eating just an ounce a day would put an adult over a
15 level that public health authorities and CR’s experts say may be harmful.”¹

16 3. To determine the risk posed by these chocolates CR used California’s maximum
17 allowable dose level (“MADL”) for lead (0.5 micrograms) and cadmium (4.1mcg). While CR found
18 several dark chocolates to be well below the MADLs, others, including those at issue here, contained
19 excessive amounts of lead and/or cadmium.

20 4. Trader Joe’s Dark Chocolate 72% Cacao product contained lead at 192% of
21 California’s MADL, while its 85% cacao Dark Chocolate Lover’s bar contained lead at 127% and
22 cadmium at 229% of California’s MADL.

23 5. Dark chocolate is widely recognized as a healthful alternative to standard confections
24 having a relatively low sugar content, significant antioxidant qualities and numerous health benefits.
25 In contrast, lead and cadmium are known carcinogens, exposure to which is cumulative and can lead
26

27 ¹ Loria, K, Lead and Cadmium Could Be in Your Dark Chocolate, Consumer Reports, December 15,
28 2022, available at <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/> (hereinafter “CR Report”)(last visited on January 24, 2023)

1 to a variety of medical maladies such as cancer, kidney and liver damage and other serious health
2 problems. The presence of these carcinogens in the Products is a material fact to consumers who had
3 no reason to suspect their dark chocolates were laden with toxic heavy metals.

4 6. Throughout the applicable class period, Defendant falsely represented the nature of its
5 Dark Chocolates and as a result of this false and misleading labeling, was able to sell these Products
6 to tens of thousands of unsuspecting consumers throughout California and the United States, and to
7 profit thereby.

8 7. Plaintiff alleges Defendant's conduct is in breach of warranty, violates California's
9 Business and Professions Code § 17200, *et. seq.*, California's Business & Professions Code § 17500,
10 *et. seq.*, California Civil Code § 1750, *et seq.*, and is otherwise grounds for restitution on the basis of
11 quasi-contract/unjust enrichment.

12 **JURISDICTION AND VENUE**

13 8. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2). Jurisdiction exists as
14 Plaintiff Waring is a resident of Redwood City California, and Defendant Trader Joe's is a California
15 corporation with its principal place of business in Monrovia, California. The amount in controversy
16 exceeds \$5,000,000 for the Plaintiff and members of the Class collectively, exclusive of interest and
17 costs, by virtue of the combined purchase prices paid by Plaintiffs and members of the putative Class,
18 and the profits reaped by Defendant from its transactions with Plaintiffs and the Class, as a direct and
19 proximate result of the wrongful conduct alleged herein, and by virtue of the injunctive and equitable
20 relief sought. In addition, more than two-thirds of the members of the class reside in states other than
21 the state in which Trader Joe's is a citizen and in which this case is filed, and therefore any exceptions
22 to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

23 9. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391 because a
24 substantial portion of the underlying transactions and events complained of occurred and affected
25 persons and entities located in this judicial district, and Defendant has received substantial
26 compensation from such transactions and business activity in this judicial district.

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PARTIES

10. Plaintiff Robert Waring is a resident of Redwood City, California.

11. Mr. Waring regularly purchased and consumed Trader Joe’s 85% Cacao Dark Chocolate Lover’s bar for at least the past four years. He purchased the Dark Chocolate from Trader Joe’s locations in Menlo Park and San Carlos, California.

12. Mr. Waring does not consume, nor purchase chocolate bars with cacao below 80% and reasonably believes dark chocolate to be a healthy alternative to standard confections. Mr. Waring would avoid consuming foods containing known carcinogens such as lead and cadmium

13. Mr. Waring purchased the Dark Chocolates believing them to be safe, which he otherwise would not have, had he known they contained deleterious carcinogens.

14. Mr. Waring believed that Defendant lawfully marketed and sold the Products.

15. Mr. Waring would not have purchased the Products, or would have purchased the Products on different terms had he known the truth.

16. Mr. Waring was injured in fact and lost money as a result of Defendant’s improper conduct.

17. If Mr. Waring were to be sure that the lead and cadmium were removed from the Products or reduced to safe levels, he would be willing to purchase Trader Joe’s Dark Chocolates in the future.

18. Defendant Trader Joe’s Company is a grocery store chain, incorporated and headquartered in Monrovia, California with over 569 stores across the United States. Trader Joe’s sells numerous items under its own private label, including the Dark Chocolates at issue in this litigation.

FACTS

A. Lead & Cadmium Are Known Harmful Carcinogens

19. Lead and Cadmium are recognized human carcinogens that are known to cause cancer, reproductive harm, and a host of other medical maladies.

1 20. “There is no level of exposure to lead that is known to be without harmful effects.”²
2 Indeed, lead affects almost every organ and system in the body and accumulates over time, leading to
3 severe health risks and toxicity, including inhibiting neurological function, anemia, kidney damage,
4 seizures, and in extreme cases, coma and death.³ In pregnant women, exposure to high levels of lead
5 may cause a miscarriage. In men, it can cause damage to reproductive organs. Lead has been widely
6 recognized as the single most significant environmental health threat to children.⁴

7 21. The source of lead contamination in cocoa beans occurs during post-harvest handling
8 of wet cocoa beans, not through uptake by the cocoa tree. During the post-harvest handling of wet
9 cocoa beans, beans contact soil through direct contact with the ground or exposed surfaces (roadsides,
10 concrete patio, drying tables, plastic tarps, plastic bags, containers). Wet cocoa beans also contact soil
11 through the deposition of airborne soil (dust) during outdoor drying. The source of post-harvest lead
12 in cocoa beans is therefore the result of poor manufacturing practices – an entirely avoidable
13 phenomenon.

14 22. Similar to lead, cadmium builds up in the body over time and even at low dosages can
15 result in damage to the liver, kidney and heart and in severe cases may cause death.”⁵ As with lead,
16 children are even more susceptible to the effects of exposure to low doses of cadmium over time and
17 can result in an array of developmental and neurobehavioral problems.⁶
18
19

20 ² *Lead Poisoning*, World Health Organization, August 2022, available at <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health#:~:text=Once%20lead%20enters%20the%20body,pregnancy%2C%20thus%20exposing%20he%20fetus>. (last visited on January 24, 2022)

23 ³ Agency for Toxic Substances and Disease Registry, ToxFaq for Lead, available at <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=93&toxid=22>

24 ⁴ National Research Council, *Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations*. Washington, D.C.: National Academy Press, 1993, p. 1. Centers for Disease Control, *Preventing Lead Poisoning In Young Children*, October 1991.

26 ⁵ Victoria State Government, Department of Health, available at <https://www.betterhealth.vic.gov.au/health/healthyliving/cadmium>

28 ⁶ Agency for Toxic Substances and Disease Registry, Cadmium ToxFaqs, available at <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15>

1 23. Food is the primary source of cadmium exposure among the general population as a
2 consequence of the bio-concentration of cadmium from soil.⁷ Cadmium enters the environments
3 through natural and various anthropogenic sources, however, the accumulation of cadmium in the
4 soil-plant environment mainly through anthropogenic activities such as application of phosphate
5 fertilizers, waste water, sewage sludge and manures. *Id.* Soil is the principal source of cadmium in
6 cocoa beans, which occurs through direct uptake of phytoavailable cadmium by the cocoa tree during
7 the pre-harvest stage. The origin of cadmium in these cocoa-growing soils is a mixture of natural and
8 anthropogenic sources and is country and farm-specific. Cadmium levels in such soils are well known.
9 For example, Trader Joe’s Dark Chocolate Lover’s Chocolate 85% Cacao is sourced from Latin
10 American which is known to have significantly higher cadmium concentrations than cacao grown in
11 other parts of the world.

12 24. Responsible manufacturers are aware of cadmium levels in the soils where cocoa is
13 sourced and to ensure the safety of their product could either avoid such regions all together or blend
14 high cadmium content cocoa beans with beans with lower cadmium content to ensure that products do
15 not exceed reasonable safety parameters.

16 25. Critically, responsible manufacturers have the ability to limit exposure to cadmium and
17 lead. As Consumer Reports noted, five of the 28 chocolate bars tested were below the MADL for both
18 cadmium and lead, proving that “it’s possible for companies to make products with lower amounts of
19 heavy metals—and for consumers to find safer products that they enjoy.”⁸

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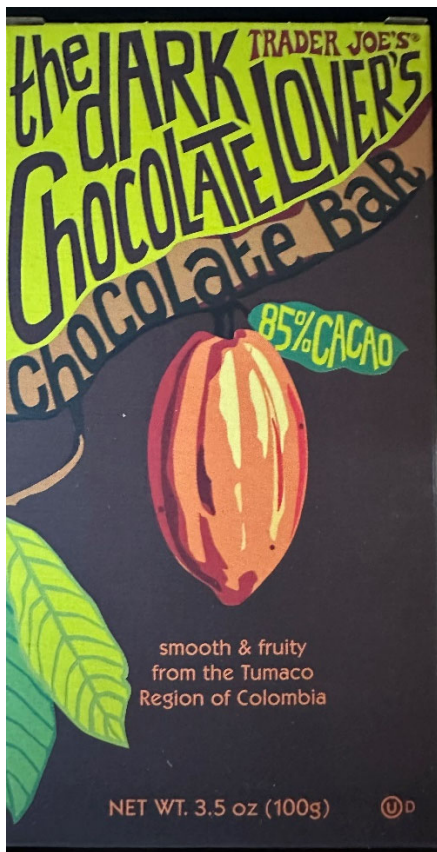
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26 ⁷ Chunhabundit R. Cadmium Exposure and Potential Health Risk from Foods in Contaminated Area,
27 Thailand. *Toxicol Res.* 2016 Jan; NIH, National Library of Medicine., National Center for
28 Biotechnology Information; available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4780235/>

⁸ CR Report.

B. Trader Joe's Chocolates Contain Excessive Amounts of Lead and Cadmium



26. It is undisputed that the Trader Joe Products contain excessive amounts of lead and cadmium—a fact that Trader Joe's has known since at least 2014 when it was put on notice of this fact and provided with substantiating analytical tests demonstrating the presence of these carcinogens. Since then, however, Trader Joe's has systematically failed mitigate lead and cadmium levels in its Dark Chocolates and failed to warn consumers that consuming its Products exposes them to unsafe levels of these carcinogens.

27. The same was confirmed in December 2022, by Consumer Reports which tested 28 different dark chocolate bars for lead and cadmium. The results revealed that Trader Joe's Dark Chocolate Lover's Bar 85% cacao was 27% and 129% in excess of MALDs established for lead and cadmium, respectively, and Trader Joe's 72% Cacao Dark Chocolate was 92% in excess of the MALD established for lead.

1 28. Based on its findings, CR launched a consumer petition to send the following message
2 to Trader Joe's and other dark chocolate manufacturers whose products contained dangerous levels of
3 lead and cadmium. To date, the petition has been reportedly signed by nearly 55,000 concerned
4 consumers.

5 Consumer Reports' testing has found concerning levels of both lead and cadmium
6 in some of your dark chocolate bars – putting our families' health at risk. Consistent exposure to these heavy metals can lead to a variety of health issues
7 including impacts to brain development, kidney damage, reproductive issues and nervous system problems. We call on your company to commit to reducing levels
8 of lead and cadmium in your dark chocolate, and to publicly communicate progress so we know your company is taking action. We want to enjoy your dark
9 chocolate without dangerous heavy metals!⁹

10 **C. Reasonable Consumers Do Not Expect Lead And Cadmium In Their Dark
11 Chocolate**

12 29. In 2021 the market for dark chocolate was valued at \$56 billion and is projected to
13 reach \$114 billion by 2030.¹⁰

14 30. The popularity of dark chocolate has been on the rise in recent years, due to its health
15 benefits which include being densely packed with antioxidants, which can help protect against heart
16 disease and stroke, and flavonoids, which have been shown to lower blood pressure and improve blood
17 flow to the brain.¹¹ Cocoa beans are one of the best-known sources of dietary polyphenols, containing
18 more phenolic antioxidants than most foods inducing positive effects on blood pressure, insulin
19 resistance, and vascular function.¹²

22 ⁹ https://action.consumerreports.org/20221215_heavymetalschocolate_em. Last visited January 24, 2023

23 ¹⁰ Verified Market Research, available at <https://www.verifiedmarketresearch.com/product/global-dark-chocolate-market/> (last visited January 24, 2022).

25 ¹¹ *Dark Chocolate*, Harvard School of Public Health, available at <https://www.hsph.harvard.edu/nutritionsource/food-features/dark-chocolate/> (last visited January 24, 2023); <https://nunuchocolates.com/the-dark-chocolate-industry-growing-popularity-and-projected-sales/#:~:text=The%20chocolate%20industry,billion%20by%202022>

27 ¹² Samanta S, Sarkar T, Chakraborty R, Rebezov M, Shariati MA, Thiruvengadam M, Rengasamy KRR. Dark chocolate: An overview of its biological activity, processing, and fortification approaches. *Curr Res Food Sci.* 2022 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9589144/>

1 31. In contrast, milk chocolate is much higher in sugar content and devoid of dark
2 chocolates' healthful attributes. Indeed, the growth of dark chocolate sales is driven by its popularity
3 among health-conscious consumers and increasing awareness regarding potential health benefits
4 associated with its consumption. At bottom, the health attributes of dark chocolate and their positive
5 effects on well-being are material to reasonable consumers. By extension, the deleterious effects of
6 consuming known carcinogens such as lead and cadmium are equally material to reasonable
7 consumers.

8 32. Food manufacturers such as Trader Joe's hold a position of public trust such that
9 Consumers reasonably believe that they would not sell products that are contaminated with unsafe
10 levels of heavy metals.

11 33. Trader Joe's knew or should have known that Plaintiff and the Class members would
12 rely upon the packaging of the Products and intended for them to do so but failed to disclose the
13 presence of lead or cadmium.

14 34. Trader Joe's knew that if the presence of toxic heavy metals in its Products were
15 disclosed, Plaintiff and the Class members would be unwilling to purchase the Products or pay less
16 for them. As a result, Defendant intentionally and knowingly concealed this fact from Plaintiff and the
17 Class members.

18 35. Moreover, Trader Joe's knew or should have known that consumers would consume
19 the Products regularly thereby leading to continual and cumulative exposure to dangerous carcinogens.

20 36. Trader Joe's has been aware since at least 2014, that its Dark Chocolate Products
21 contained excessive amounts of lead and cadmium yet failed to mitigate this issue by, among other
22 things: (a) properly testing and monitoring for the presence and levels of heavy metals in their dark
23 chocolates; (b) sourcing ingredients from farms and regions that are less impacted by environmental
24 pollutants; and/or (c) blending their Products using multiple sources to reduce the levels of heavy
25 metals.

26 37. Moreover, such mitigation efforts are reasonable in light of the fact other chocolate
27 manufacturers have been able to produce dark chocolate with significantly less cadmium and lead than
28 Defendant's Products.

- 1 c. Whether Defendant participated in and pursued the common course of conduct
- 2 complained of herein;
- 3 d. Whether Defendant has been unjustly enriched as a result of its unlawful
- 4 business practices;
- 5 e. Whether Defendant’s actions violate the Unfair Competition Law, Cal. Bus. &
- 6 Prof. Code §§17200, *et seq.* (the “UCL”);
- 7 f. Whether Defendant’s actions violate the False Advertising Law, Cal. Bus. &
- 8 Prof. Code §§17500, *et seq.* (the “FAL”);
- 9 g. Whether Defendant’s actions violate the Consumers Legal Remedies Act, Cal.
- 10 Civ. Code §§1750, *et seq.* (the “CLRA”);
- 11 h. Whether Defendant should be enjoined from continuing the above-described
- 12 practices;
- 13 i. Whether Plaintiffs and members of the Class are entitled to declaratory relief;
- 14 and
- 15 j. Whether Defendant should be required to make restitution, disgorge profits,
- 16 reimburse losses, and pay damages as a result of the above-described practices.

17 57. Plaintiff’s claims are typical of the claims of the Class, in that Plaintiff is a consumer
18 who purchased Defendant’s Products. Plaintiff is no different in any relevant respect from any other
19 Class member who purchased the Products, and the relief sought is common to the Class.

20 58. Plaintiff is an adequate representative of the Class because his interests do not conflict
21 with the interests of the members of the Class he seeks to represent, and he has retained counsel
22 competent and experienced in conducting complex class action litigation. Plaintiff and his counsel will
23 adequately protect the interests of the Class.

24 59. A class action is superior to other available means for the fair and efficient adjudication
25 of this dispute. The damages suffered by each individual Class member likely will be relatively small,
26 especially given the relatively small cost of the Products at issue and the burden and expense of
27 individual prosecution of the complex litigation necessitated by Defendant’s conduct. Thus, it would
28 be virtually impossible for members of the Class individually to effectively redress the wrongs done

1 to them. Moreover, even if members of the Class could afford individual actions, it would still not be
2 preferable to class-wide litigation. Individualized actions present the potential for inconsistent or
3 contradictory judgments. By contrast, a class action presents far fewer management difficulties and
4 provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a
5 single court.

6 60. In the alternative, the Class may be certified because Defendant has acted or refused to
7 act on grounds generally applicable to the Class, thereby making appropriate preliminary and final
8 equitable relief with respect to each Class.

9 61. The requirements for maintaining a class action pursuant to Rule 23(b)(2) are also met,
10 as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making
11 appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a
12 whole.

13 **CLAIMS FOR RELIEF**

14 **FIRST CAUSE OF ACTION**
15 **(Breach of Implied Warranty**

16 **Cal. Com. Code §2314; Song-Beverly Act, Cal. Civ. Code §§ 1790, *et seq.*)**

17 62. Plaintiff incorporates each and every allegation contained in the paragraphs above as if
18 restated herein.

19 63. The Products are a consumer goods within the meaning of Cal. Civ. Code § 1791(a).

20 64. Plaintiff and the Class Members who purchased one or more of the Trader Joe's
21 Products are retail buyers within the meaning of Cal. Civ. Code § 1791.

22 65. Trader Joe's is the manufacturer and seller with respect to the Products of this kind
23 which were sold to Plaintiff and the Class, and contained implied warranties.

24 66. Trader Joe's impliedly warranted to consumers that the Products were merchantable
25 such that they: (a) would pass without objection in the trade or industry under the contract description,
26 and (b) were fit for the ordinary purposes for which the Products are used.

27 67. Trader Joe's breached this implied warranty because the Products were unsafe in that
28 they contained lead and cadmium, known carcinogens. As such, the Products would not pass without

1 objection in the trade or industry and were not fit for the ordinary purpose for which they are used (i.e.
2 consumption by consumers).

3 68. Trader Joe’s was on notice of this breach as it was made aware of the levels of lead and
4 cadmium in its Products as early as 2014.

5 69. As a direct and proximate cause of Defendant’s breach of the implied warranty,
6 Plaintiff and the Class members have been injured and harmed because they would not have purchased
7 the Products or would have paid less for them had they known they were laden with lead and cadmium.

8 70. Plaintiff seeks actual damages, including, without limitation, expectation damages.

9 **SECOND CAUSE OF ACTION**
10 **(“Unlawful” Business Practices in Violation of**
11 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

12 71. Plaintiff incorporates each and every allegation contained in the paragraphs above as if
13 restated herein.

14 72. The UCL defines unfair business competition to include any “unlawful, unfair or
15 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
16 Bus. Prof. Code §17200.

17 73. A business act or practice is “unlawful” if it violates any established state or federal
18 law.

19 74. Defendant’s acts, omissions, misrepresentations, practices, and/or non-disclosures
20 concerning the Products alleged herein, constitute “unlawful” business acts and practices in that they
21 violate:

- 22 a. the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.* and its
23 implementing regulations, including, at least, the following sections:
 - 24 i. 21 U.S.C. §343(a), which deems food misbranded when its labeling
25 contains a statement that is false or misleading in any particular;
 - 26 ii. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as to
27 create an erroneous impression about the presence or absence of
28 ingredient(s) or component(s) therein;

1 78. The UCL defines unfair business competition to include any “unlawful, unfair or
2 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
3 Bus. Prof. Code § 17200.

4 79. A business act or practice is “unfair” under the Unfair Competition Law if the reasons,
5 justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the
6 alleged victims.

7 80. Defendant has violated, and continues to violate, the “unfair” prong of the UCL through
8 its material omissions and misleading description of the Products. The gravity of the harm to members
9 of the Class resulting from such unfair acts and practices outweighs any conceivable reasons,
10 justifications, or motives of Defendant for engaging in such deceptive acts and practices. By
11 committing the acts and practices alleged above, Defendant had engaged, and continued to engage, in
12 unfair business practices within the meaning of California Business and Professions Code
13 §§17200, *et seq.*

14 81. Through its unfair acts and practices, Defendant obtained, and continued to unfairly
15 obtain, money from members of the Class. As such, Plaintiff has been injured and requests that this
16 Court cause Defendant to restore this money to Plaintiff and the members of the Class, to disgorge the
17 profits Defendant had made on its Products, and to enjoin Defendant from continuing to violate the
18 Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be
19 irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

20 82. Trader Joe’s conduct caused and continues to cause substantial injury to Plaintiff and
21 other Class Members. Plaintiff has suffered injury in fact as a result of Trader Joe’s unlawful conduct.

22 83. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Trader Joe’s
23 from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices

24 **FOURTH CAUSE OF ACTION**
25 **(“Fraudulent” Business Practices in Violation of**
26 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

27 84. Plaintiff incorporates each and every allegation contained in the paragraphs above as if
28 restated herein.

1 85. The UCL defines unfair business competition to include any “unlawful, unfair or
2 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
3 Bus. & Prof. Code § 17200.

4 86. A business act or practice is “fraudulent” under the Unfair Competition Law if it
5 actually deceives or is likely to deceive members of the consuming public.

6 87. Defendant’s omissions regarding the toxic lead and cadmium content of the Products
7 is likely to deceive reasonable consumers and the public.

8 88. As a result of the conduct described above, Defendant has been, and will continue to
9 be, unjustly enriched at the expense of Plaintiff and members of the proposed Class. Specifically,
10 Defendant has been unjustly enriched by the profits they have obtained from Plaintiff and the Class
11 from the purchases of their Products.

12 89. Through its fraudulent acts and practices, Defendant has improperly obtained, and
13 continues to improperly obtain, money from members of the Class. As such, Plaintiff requests that this
14 Court cause Defendant to restore this money to Plaintiff and the Class, to disgorge the profits
15 Defendant has made, and to enjoin Defendant from continuing to violate the Unfair Competition Law
16 or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and
17 denied an effective and complete remedy if such an Order is not granted.

18 **FIFTH CAUSE OF ACTION**
19 **(False Advertising in Violation of**
20 **California Business & Professions Code §§ 17500, *et seq.*)**

21 90. Plaintiff incorporates each and every allegation contained in the paragraphs above as if
22 restated herein.

23 91. Defendant uses advertising and packaging to sell its Products. Defendant disseminates
24 advertising regarding its Products which by its very nature is deceptive, untrue, or misleading within
25 the meaning of California Business & Professions Code §§ 17500, *et seq.* because those advertising
26 statements omitted the presence of known carcinogens in the Products—an omission likely to deceive,
27 and continues to deceive, members of the putative Class and the general public.

28 92. Defendant knew or should have known that the omissions were untrue or misleading,
and acted in violation of California Business & Professions Code §§ 17500, *et seq.*

1 93. The misrepresentations and non-disclosures by Defendant of the material facts detailed
2 above constitute false and misleading advertising and therefore constitute a violation of California
3 Business & Professions Code §§ 17500, *et seq.*

4 94. Through its deceptive acts and practices, Defendant has improperly and illegally
5 obtained money from Plaintiff and the members of the Class. As such, Plaintiff requests that this Court
6 cause Defendant to restore this money to Plaintiff and the members of the Class, and to enjoin
7 Defendant from continuing to violate California Business & Professions Code §§ 17500, *et seq.*, as
8 discussed above. Otherwise, Plaintiff and those similarly situated will continue to be harmed by
9 Defendant's false and/or misleading advertising.

10 95. Pursuant to California Business & Professions Code § 17535, Plaintiff seeks an Order
11 of this Court ordering Defendant to fully disclose the true nature of its misrepresentations. Plaintiff
12 additionally requests an Order: (1) requiring Defendant to disgorge its ill-gotten gains, (2) award full
13 restitution of all monies wrongfully acquired by Defendant and (3), interest and attorneys' fees.
14 Plaintiff and the Class may be irreparably harmed and denied an effective and complete remedy if
15 such an Order is not granted.

16 96. Injunctive relief is also appropriate, and indeed necessary, to require Trader Joe's to
17 provide full and accurate disclosures regarding the Products so that Plaintiff and Class members can
18 reasonably rely on the Products' packaging.

19 **SIXTH CAUSE OF ACTION**
20 **(Violation of the Consumers Legal Remedies Act,**
California Civil Code §§ 1750, *et seq.*)

21 97. Plaintiff incorporates each and every allegation contained in the paragraphs above as if
22 restated herein.

23 98. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
24 California Civil Code §§ 1750, *et seq.* (the "CLRA").

25 99. Plaintiff and each member of the proposed Class are "consumers" within the meaning
26 of Civil Code § 1761(d).

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1 100. The purchases of the Products by consumers constitute “transactions” within the
2 meaning of Civil Code §1761(e) and the Products constitute “goods” within the meaning of Civil
3 Code § 1761(a).

4 101. Defendant has violated, and continues to violate, the CLRA in at least the following
5 respects:

- 6 a. § 1770(5) pertaining to misrepresentations regarding the characteristics of
7 goods sold—specifying that misleading representations regarding ingredients
8 violate the CLRA;
- 9 b. § 1770(7) pertaining to misrepresentations regarding the standard, quality, or
10 grade of goods sold; and
- 11 c. § 1770(9) pertaining to goods advertised with the intent not to provide what is
12 advertised.

13 102. Defendant knew, or should have known, that the labeling of their Products violated
14 consumer protection laws, and that these statements would be relied upon by Plaintiff and the members
15 of the Class.

16 103. The representations were made to Plaintiff and all members of the Class. Plaintiff relied
17 on the accuracy of the representations on Defendant’s labels which formed a material basis for his
18 decision to purchase the Products. Moreover, based on the very materiality of Defendant’s
19 misrepresentations uniformly made on or omitted from their Product labels, reliance may be presumed
20 or inferred for all members of the Class.

21 104. Defendant carried out the scheme set forth in this Complaint willfully, wantonly, and
22 with reckless disregard for the interests of Plaintiff and the Class, and as a result, Plaintiff and the
23 Class have suffered an ascertainable loss of money or property.

24 105. Plaintiff and the members of the Class request that this Court enjoin Defendant from
25 continuing to engage in the unlawful and deceptive methods, acts and practices alleged above, pursuant
26 to California Civil Code § 1780(a)(2). Unless Defendant is permanently enjoined from continuing to
27 engage in such violations of the CLRA, future consumers of Defendant’s Products will be damaged
28 by their acts and practices in the same way as have Plaintiff and the members of the proposed Class.

1 106. Plaintiff served a CLRA demand pursuant to Civil Code § 1782, in conjunction with
2 this Complaint. If Trader Joe’s fails to provide the requested relief within the next 30 days, Plaintiff
3 will amend this complaint to seek damages as provided under Civil Code § 1780.

4 **SEVENTH CAUSE OF ACTION**
5 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**
6 **By Plaintiffs on Behalf of the Nationwide Class**

7 107. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if
8 restated herein.

9 108. Defendant’s conduct in enticing Plaintiffs and the Class to purchase is Products with
10 false and misleading packaging is unlawful because the statements contained on the Defendant’s
11 Product labels are untrue.

12 109. Defendant took monies from Plaintiffs and the Class for these Products and have been
13 unjustly enriched at the expense of Plaintiffs and the Class as result of their unlawful conduct alleged
14 herein, thereby creating a quasi-contractual obligation on Defendant to restore these ill-gotten gains
15 to Plaintiffs and the Class.

16 110. It is against equity and good conscience to permit Defendant to retain the ill-gotten
17 benefits received from Plaintiffs and Class members.

18 111. As a direct and proximate result of Defendant’s unjust enrichment, Plaintiffs and the
19 Class are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

20 **PRAYER FOR RELIEF**

21 THEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the Class
22 and for the Counts so applicable on behalf of the general public request an award and relief as follows:

23 A. An order certifying that this action is properly brought and may be maintained as a
24 class action, that Plaintiff be appointed Class Representative, and Plaintiff’s counsel be appointed
25 Lead Counsel for the Class.

26 B. Restitution in such amount that Plaintiff and all members of the Class paid to purchase
27 Defendant’s Product or restitutionary disgorgement of the profits Defendant obtained from those
28 transactions, for Causes of Action for which they are available.

C. Compensatory damages for Causes of Action for which they are available.

- 1 D. Other statutory penalties for Causes of Action for which they are available.
- 2 E. Punitive Damages for Causes of Action for which they are available.
- 3 F. A declaration and Order enjoining Defendant from marketing and labeling its Product
- 4 deceptively, in violation of laws and regulations as specified in this Complaint.
- 5 G. An Order awarding Plaintiff their costs of suit, including reasonable attorneys' fees and
- 6 pre and post judgment interest.
- 7 H. An Order requiring an accounting for, and imposition of, a constructive trust upon all
- 8 monies received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct
- 9 alleged herein.
- 10 I. Such other and further relief as may be deemed necessary or appropriate.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

DATED: January 27, 2023

KUZYK LAW, LLP

By: /s/ Michael D. Braun
Michael D. Braun

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DATED: January 27, 2023

KAPLAN FOX & KILSHEIMER LLP

By: /s/ Laurence D. King
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Counsel for Plaintiff and the Proposed Class

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROBERT L. WARING, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) San Mateo County

(c) Attorneys (Firm Name, Address, and Telephone Number)

Laurence D. King / Kaplan Fox & Kilsheimer LLP 1999 Harrison St., Ste. 1560, Oakland, CA 94612; (415) 772-4700; lking@kaplanfox.com

DEFENDANTS

TRADER JOE'S COMPANY

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. sec. 1332(d)

Brief description of cause: defendant sells chocolate products contaminated with lead and cadmium

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE James Donato

DOCKET NUMBER 3:23-cv-00064-JD

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/27/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Laurence D. King

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.