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7  
8 *Counsel for Plaintiffs and the Putative Classes*

9  
10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12  
13 LOUIS TARANTINO, DAVID  
 14 BABAIAN, and NANCY KOMESSAR,  
 Individually and on Behalf of a Class of  
 15 All Others Similarly Situated,

16 Plaintiffs,

17  
18 v.

19 TRADER JOE’S COMPANY,  
 20  
 21 Defendant.

No. '23CV0853 L KSC

**CLASS ACTION COMPLAINT**

**Jury Trial Demanded**

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1 Upon personal knowledge as to their own acts, and based upon their  
2 investigation, the investigation of counsel, and information and belief as to all other  
3 matters, Plaintiffs Louis Tarantino, David Babaian, and Nancy Komessar, on behalf  
4 of themselves and all others similarly situated, allege as follows:

5 **NATURE OF THE ACTION**

6 1. This is a class action brought on behalf of persons who purchased certain  
7 private-label dark chocolate products manufactured, marketed, advertised, distributed,  
8 and sold by Defendant Trader Joe’s Company (“Trader Joe’s” or “Defendant”) which  
9 were contaminated with high amounts of dangerous heavy metals cadmium and lead,  
10 consumption of which is known to cause a wide range of harmful health effects.

11 2. The Trader Joe’s dark chocolate products contaminated with these  
12 harmful heavy metals include, without limitation, the following: (i) Trader Joe’s Dark  
13 Chocolate 72% Cacao bars; and (ii) Trader Joe’s The Dark Chocolate Lover’s  
14 Chocolate 85% Cacao bars.

15 3. Trader Joe’s is a national chain of neighborhood grocery stores, with over  
16 560 stores in 43 states across the United States. Among the wide range of food and  
17 household products sold at its stores, Trader Joe’s also sells many items under its  
18 Trader Joe’s private label. It warrants these private-label food products as safe and fit  
19 for human consumption.

20 4. In its marketing and labeling of Trader Joe’s Dark Chocolate 72% Cacao  
21 bars and Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars, Trader  
22 Joe’s does not disclose that these food items contain any amount of lead or cadmium—  
23 let alone high amounts thereof—rendering these foods unsafe, unfit for human  
24 consumption, and otherwise worthless. Additionally, Trader Joe’s advertising and  
25 packaging of these chocolate bars is also consequently materially false, deceptive, and  
26 misleading, and reasonably likely to deceive the public.

27 5. Lead and cadmium are both carcinogenic and dangerous when  
28 consumed, posing obvious and well-documented serious health risks to humans. In



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1 addition to causing cancer, these heavy metals can impair kidneys, the liver, bones,  
2 brain development, and other key organs and systems. Given such health risks, the  
3 presence of even small lead and cadmium amounts in food items, whether alone or  
4 combined, is material to reasonable consumers.

5 6. On December 15, 2022, the independent nonprofit consumer watchdog  
6 organization Consumer Reports published its exposé revealing that many popular dark  
7 chocolate bars, including those manufactured and sold by Trader Joe’s, contained  
8 heavy metals.<sup>1</sup> The Consumer Reports investigation was supported independent lab  
9 testing showing that at least two Trader Joe’s dark chocolate products contained high  
10 levels of cadmium or lead, measured against California’s maximum allowable dose  
11 level (or “MADL”), as follows:





**Trader Joe's**  
Dark Chocolate  
72% Cacao

LEAD  
 **192%**  
CADMIUM  
 **36%**



**Trader Joe's**  
The Dark Chocolate  
Lover's Chocolate  
85% Cacao

LEAD  
 **127%**  
CADMIUM  
 **229%**

20 7. To their detriment, Plaintiffs relied on Trader Joe’s misrepresentations  
21 and omissions that these dark chocolate bars contained only those ingredients listed  
22 on the packaging and labeling, and that they were safe and fit for human consumption.  
23 Had Plaintiffs known these food items contained heavy metals like lead or cadmium,  
24

26 \_\_\_\_\_  
27 <sup>1</sup> Kevin Loria, *Lead and Cadmium Could Be in Your Dark Chocolate*, CONSUMER  
28 REPORTS (Dec. 15, 2022), <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

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1 they would not have purchased the contaminated products on the same terms and  
2 prices, if at all.

3 8. Since at least approximately 2014, Trader Joe’s has known of the  
4 presence of lead and cadmium in various of its private-label dark chocolate food  
5 products, when a consumer advocacy group tested these items and subsequently  
6 notified Trader Joe’s of the results. Additionally, Trader Joe’s sources the ingredients  
7 and manufactures these private label products and has exclusive knowledge of their  
8 quality control testing and the ingredients contained therein.

9 9. Through this action, Plaintiffs, both individually and on behalf of classes  
10 of other similarly situated purchasers of Trader Joe’s products containing high levels  
11 of heavy metals lead and cadmium, seek all applicable and available relief and  
12 damages under the laws of California, Illinois, Maryland, and the United States.

13 **PARTIES**

14 10. Plaintiff Louis Tarantino is a citizen of California and resident of Los  
15 Angeles, California. For at least approximately the past fifteen years, Plaintiff  
16 Tarantino has regularly purchased Trader Joe’s dark chocolate products. More  
17 recently, Plaintiff Tarantino has purchased Trader Joe’s Dark Chocolate 72% Cacao  
18 bars approximately once every week primarily from Trader Joe’s locations in  
19 Hollywood, California and Sherman Oaks, California. At the time Plaintiff Tarantino  
20 purchased these Trader Joe’s dark chocolate products, due to the false and misleading  
21 claims, warranties, representations, advertisements, and other marketing by  
22 Defendant, he was unaware that these food items were contaminated with high levels  
23 of lead or cadmium. Plaintiff Tarantino would not have purchased the Trader Joe’s  
24 Dark Chocolate 72% Cacao bars if Defendant had disclosed that these food items  
25 contained high levels of lead or cadmium. As a result, Plaintiff Tarantino suffered  
26 injury in fact when he spent money to purchase products that he would not otherwise  
27 have purchased absent Defendant Trader Joe’s misconduct and unlawful actions, as  
28 alleged herein. Plaintiff Tarantino continues to purchase other dark chocolate

1 products containing lower levels of lead and cadmium than Trader Joe's Dark  
2 Chocolate 72% Cacao bars, and intends to make additional purchases in the future.  
3 Plaintiff Tarantino would like to purchase Trader Joe's dark chocolate products again  
4 in the future, but only if he was confident that lead and cadmium were removed  
5 entirely from such food items or such heavy metals were significantly reduced to safe  
6 levels.

7 11. Plaintiff David Babaian is a citizen of Maryland and resident of Severna  
8 Park, Maryland. For approximately the past five years, Plaintiff Babaian has regularly  
9 purchased Trader Joe's dark chocolate products, and often purchases five Trader  
10 Joe's The Dark Chocolate Lover's Chocolate 85% Cacao bars at a time. For the past  
11 three years, Plaintiff Babaian has purchased these food products from Trader Joe's  
12 locations in Annapolis, Maryland and Elkridge, Maryland. Prior to that, Plaintiff  
13 Babaian was a citizen and resident of Massachusetts and purchased the same dark  
14 chocolate products from a Trader Joe's location in Cambridge, Massachusetts. Before  
15 learning of the high levels of heavy metals in these Trader Joe's products, Plaintiff  
16 Babaian consumed some portion of these bars daily. At the time Plaintiff Babaian  
17 purchased these Trader Joe's dark chocolate products, due to the false and misleading  
18 claims, warranties, representations, advertisements, and other marketing by  
19 Defendant, he was unaware that these food items were contaminated with high levels  
20 of lead or cadmium. Plaintiff Babaian would not have purchased the Trader Joe's The  
21 Dark Chocolate Lover's Chocolate 85% Cacao bars if Defendant had disclosed that  
22 these food items contained high levels of lead or cadmium. As a result, Plaintiff  
23 Babaian suffered injury in fact when he spent money to purchase products that he  
24 would not otherwise have purchased absent Defendant Trader Joe's misconduct and  
25 unlawful actions, as alleged herein. Plaintiff Babaian continues to purchase other dark  
26 chocolate products containing lower levels of lead and cadmium than Trader Joe's  
27 The Dark Chocolate Lover's Chocolate 85% Cacao bars, and intends to make  
28 additional purchases in the future. Plaintiff Babaian would like to purchase Trader

1 Joe's dark chocolate products again in the future, but only if he was confident that  
2 lead and cadmium were removed entirely from such food items or such heavy metals  
3 were significantly reduced to safe levels.

4 12. Plaintiff Nancy Komessar is a citizen of Illinois and resident of Chicago,  
5 Illinois. For at least approximately the past three years, Plaintiff Komessar has  
6 regularly purchased Trader Joe's Dark Chocolate 72% Cacao bars every few months  
7 from a Trader Joe's location in Chicago, Illinois, and often purchases approximately  
8 six such bars at a time. At the time Plaintiff Komessar purchased these Trader Joe's  
9 dark chocolate products, due to the false and misleading claims, warranties,  
10 representations, advertisements, and other marketing by Defendant, she was unaware  
11 that these food items were contaminated with high levels of lead or cadmium.  
12 Plaintiff Komessar would not have purchased the Trader Joe's Dark Chocolate 72%  
13 Cacao bars if Defendant had disclosed that these food items contained high levels of  
14 lead or cadmium. As a result, Plaintiff Komessar suffered injury in fact when she  
15 spent money to purchase products that she would not otherwise have purchased  
16 absent Defendant Trader Joe's misconduct and unlawful actions, as alleged herein.  
17 Plaintiff Komessar continues to purchase other dark chocolate products containing  
18 lower levels of lead and cadmium than Trader Joe's Dark Chocolate 72% Cacao bars,  
19 and intends to make additional purchases in the future. Plaintiff Komessar would like  
20 to purchase Trader Joe's dark chocolate products again in the future, but only if she  
21 was confident that lead and cadmium were removed entirely from such food items or  
22 such heavy metals were significantly reduced to safe levels.

23 13. Defendant Trader Joe's Company is a California corporation with its  
24 principal place of business and corporate headquarters in Monrovia, California.  
25 Trader Joe's operates 561 retail grocery stores in the United States, across 43 states.  
26 Over 190 of these stores are located in California. As part of its broader business,  
27 Trader Joe's manufactures, advertises, labels, and sells many private label products  
28 throughout the United States, including dark chocolate food items and the Trader

1 Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate  
2 Lover’s Chocolate 85% Cacao bars that are the subject of this action.

3 **JURISDICTION AND VENUE**

4 14. This Court has original jurisdiction over this action pursuant to the Class  
5 Action Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is a  
6 citizen of a state other than that of Defendant, and the aggregate amount in controversy  
7 exceeds \$5,000,000, exclusive of interest and costs.

8 15. This Court has personal jurisdiction over Defendant because Defendant  
9 is a California corporation, is headquartered in this State, and regularly sells and  
10 markets its products throughout California. Defendant derives substantial revenue  
11 from sales of its products in this State, with knowledge that its products are being  
12 marketed and sold for use in California.

13 16. This Court has personal jurisdiction over the Plaintiffs because Plaintiffs  
14 submit to the Court’s jurisdiction.

15 17. Venue is proper in this District under 28 U.S.C. § 1391(b), (c), and (d)  
16 because Defendant is a California corporation (and thus resides in this District), is  
17 headquartered in this State, and regularly sells and markets its products throughout  
18 California, including by owning and operating at least a dozen of grocery stores  
19 located in this District.

20 **FACTUAL BACKGROUND**

21 **Heavy Metals Lead and Cadmium Are Known Carcinogens and Are**  
22 **Linked to a Wide Range of Other Harmful Health Effects**

23 18. The consensus in the scientific community is that there is no level of lead  
24 that is safe. According to the Mayo Clinic, “Lead poisoning occurs when lead builds  
25 up in the body, often over months or years. Even small amounts of lead can cause  
26 serious health problems. Children younger than 6 years are especially vulnerable to  
27 lead poisoning, which can severely affect mental and physical development. At very  
28

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1 high levels, lead poisoning can be fatal.”<sup>2</sup> In other words, “No amount of lead is known  
2 to be safe.”<sup>3</sup> Lead exposure can cause anemia, weakness, and kidney and brain  
3 damage.<sup>4</sup> Lead affects almost every organ and system in the body and accumulates  
4 over time, leading to severe health risks and toxicity, including inhibiting neurological  
5 function, anemia, kidney damage, seizures, and in extreme cases, even coma and  
6 death.<sup>5</sup> Lead poses even higher risks to pregnant women because it can cross the fetal  
7 barrier, potentially harming the developing fetus and resulting in reduced growth and  
8 premature birth.<sup>6</sup> For adults, lead can accumulate in bones, where it is stored and then  
9 later released into the blood, re-exposing organ systems long after an original  
10 exposure.<sup>7</sup>

11 19. Lead contamination in dark chocolate food products is largely  
12 preventable. According to a reports, lead levels are influenced by where and how the  
13 cacao beans are handled by humans after being harvested.<sup>8</sup> Such post-harvest  
14 contamination mostly happens during the outdoor fermentation and drying of beans,  
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16 <sup>2</sup> See [https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-  
17 causes/syc-20354717](https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717).

18 <sup>3</sup> See Jessica Pupovac, *Lead Levels Below EPA Limits Can Still Impact Your Health*,  
19 NPR (Aug. 13, 2016), [https://www.npr.org/sections/thetwoway/2016/08/13/  
489825051/lead-levels-below-epalimits-can-still-impact-your-health](https://www.npr.org/sections/thetwoway/2016/08/13/489825051/lead-levels-below-epalimits-can-still-impact-your-health).

20 <sup>4</sup> See *The National Institute for Occupational Safety and Health (NIOSH): Lead*,  
21 <https://www.cdc.gov/niosh/topics/lead/health.html> (last visited May 3, 2023).

22 <sup>5</sup> See *id.*

23 <sup>6</sup> See Center for Disease Control and Prevention: Childhood Lead Poisoning  
24 Prevention, Pregnant Women, [https://www.cdc.gov/nceh/lead/prevention/  
pregnant.htm](https://www.cdc.gov/nceh/lead/prevention/pregnant.htm) (last visited May 3, 2023).

25 <sup>7</sup> See State of New York Department of Health, “Lead Exposure in Adults: A Guide  
26 for Health Care Providers,” <https://www.health.ny.gov/publications/2584.pdf>.

27 <sup>8</sup> Vonnai Phair, *How Heavy Metals Get Into Dark Chocolate Bars*, THE SEATTLE  
28 TIMES (Feb. 10, 2023), [https://www.seattletimes.com/seattle-news/health/how-heavy-  
-metals-get-into-dark-chocolate-bars/](https://www.seattletimes.com/seattle-news/health/how-heavy-metals-get-into-dark-chocolate-bars/).



1 during which soil and dust that contain lead come into contact with the cacao bean  
 2 shell.<sup>9</sup> Bean cleaning and shell removal at chocolate manufacturing facilities also play  
 3 a significant role in lead exposure.<sup>10</sup> Thus, improved harvesting and manufacturing  
 4 processes can reduce lead contamination in dark chocolate food products.

5 20. Likewise, cadmium is dangerous and harmful when consumed. It can be  
 6 found in cigarette smoke and a wide variety of industrial products, such as batteries,  
 7 metal coatings, and plastics. Cadmium is carcinogenic and exposure to even low levels  
 8 over time may result in a toxic build-up of cadmium in the kidneys, leading to kidney  
 9 disease, as well as bone damage and osteoporosis.<sup>11</sup> Additionally, “[w]hen eaten, large  
 10 amounts of cadmium can severely irritate the stomach and cause vomiting and  
 11 diarrhea.”<sup>12</sup> It is also linked to cardiovascular disease and cancer.<sup>13</sup> Thus, “any  
 12 cadmium exposure should be avoided.”<sup>14</sup>

13 21. Although cacao plants take up cadmium from the soil before harvest  
 14 through root systems which is later deposited in the cacao beans, solutions exist to  
 15 address high cadmium levels in dark chocolate products.<sup>15</sup> For example, the National  
 16 Confectioners Association and the nonprofit As You Sow released a report in March

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18 <sup>9</sup> *Id.*

19 <sup>10</sup> *Id.*

20 <sup>11</sup> Agneta Akesson, *Cadmium-Induced Effects on Bone in a Population-Based Study*  
 21 *of Women*, ENVIRON. HEALTH PERSPECT. (June 2006),  
 22 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1480481/>.

23 <sup>12</sup> Center for Disease Control and Prevention: National Biomonitoring Program,  
 24 Cadmium Factsheet, [https://www.cdc.gov/biomonitoring/Cadmium\\_FactSheet.html](https://www.cdc.gov/biomonitoring/Cadmium_FactSheet.html)  
 (last visited May 2, 2023).

25 <sup>13</sup> M. Nathaniel Mead, *Cadmium Confusion: Do Consumers Need Protection?*,  
 26 ENVIRON. HEALTH PERSPECT. (Dec. 2010), [https://www.ncbi.nlm.nih.gov/pmc/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/)  
[articles/PMC3002210/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/).

27 <sup>14</sup> *See id.*

28 <sup>15</sup> *See Phair, supra.*

1 2022 recommending efforts to increase soil pH to reduce cadmium uptake, carefully  
 2 breeding or genetically engineering plants to take up less cadmium, replacing older  
 3 cacao trees with younger ones, and removing or treating soil known to be  
 4 contaminated with cadmium.<sup>16</sup>

5 **In December 2022, Consumer Reports Reveals That at Least Two Trader**  
 6 **Joe’s Dark Chocolate Products Contain High Levels of Lead or Cadmium**

7 22. As observed in its December 15, 2022 report titled *Lead and Cadmium*  
 8 *Could Be in Your Dark Chocolate*, Consumer Reports identifies “there’s a dark side”  
 9 to dark chocolate, often otherwise known for its potential health benefits and rich  
 10 supply of antioxidants.<sup>17</sup> Therein, Consumer Reports explained that its scientists had  
 11 recently measured the amount of heavy metals in twenty-eight popular dark chocolate  
 12 bars and detected cadmium and lead in every product. The two Trader Joe’s dark  
 13 chocolate products tested by Consumer Reports showed high levels of lead or  
 14 cadmium, or both. Using California’s MADL for lead (0.5 micrograms) and cadmium  
 15 (4.1 micrograms), Consumer Reports revealed that: (i) Trader Joe’s Dark Chocolate  
 16 72% Cacao bars contained 192% of the MADL for lead and 36% of the MADL for  
 17 cadmium; and Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars  
 18 contained 127% of the MADL for lead and 229% of the MADL for cadmium.  
 19 California’s MADLs (otherwise known as Proposition 65) are regulatory standards  
 20 for chemicals causing reproductive toxicity. Of the twenty-eight products tested by  
 21 Consumer Reports, the observed lead levels in Trader Joe’s Dark Chocolate 72%  
 22 Cacao bars (192% of the MADL) were the fourth-highest and the observed cadmium  
 23 levels in Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars (229%  
 24 of the MADL) were the overall highest.

25  
 26  
 27 <sup>16</sup> *Id.*

28 <sup>17</sup> Loria, *supra*.

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**Trader Joe’s Promises Customers That Its Private Label Products, Including Dark Chocolate Food Items, Are Safe and Trusted**

23. Trader Joe’s tells customers that “We want to make absolutely clear that we would never sell any product we believe to be unsafe” and that “We take these matters seriously—personally, even, as our families eat and drink TJ’s products, too.”<sup>18</sup> On its “About Us” website page, Trader Joe’s declares it is “committed to providing our customers outstanding value in form of the best quality products.”<sup>19</sup> Trader Joe’s promises that “nothing is more important than the health and safety of our customers and Crew Members.”<sup>20</sup> Additionally, regarding its private label products (such as the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars), Trader Joe’s also touts their safety and quality, as follows:

What can I expect from Trader Joe’s private label products?

Trader Joe’s private label products promise great quality fare for exceptional, everyday prices. We taste everything before we put our name on it and offer only what we feel is extraordinary.

\* \* \* \*

When you see our name on a label, you can be assured that the product contains:

- YES quality ingredients
- NO artificial flavors
- NO artificial preservatives
- YES colors derived only from naturally available products
- NO MSG
- NO genetically modified ingredients
- NO partially hydrogenated oils (artificial trans-fats)
- NO “marketing” costs

<sup>18</sup> <https://www.traderjoes.com/home/FAQ/product-faqs> (last visited May 3, 2023).

<sup>19</sup> <https://www.traderjoes.com/home/about-us> (last visited May 3, 2023).

<sup>20</sup> <https://www.traderjoes.com/home/FAQ/product-faqs> (last visited May 3, 2023).



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1 California Consumer Legal Remedies Act, defined. The proposed California Subclass  
2 is defined as follows:

3 All persons who purchased the Trader Joe’s Dark Chocolate 72% Cacao  
4 bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85%  
5 Cacao bars in the State of California for personal, family, or household  
6 purposes (the “California Subclass”).

7 28. Excluded from the Nationwide Class and Subclasses are governmental  
8 entities, Trader Joe’s, any entity in which Trader Joe’s has a controlling interest, and  
9 Trader Joe’s officers, directors, affiliates, legal representatives, co-conspirators,  
10 successors, subsidiaries, and assigns. Also excluded from the Nationwide Class and  
11 Subclasses are any judges, justices, or judicial officers presiding over this matter and  
12 the members of their immediate families and judicial staff. This action is brought and  
13 may be properly maintained as a class action pursuant to Federal Rule of Civil  
14 Procedure 23(b)(2) and 23(b)(3), and satisfies the numerosity, commonality,  
15 typicality, adequacy, predominance, and superiority requirements of these rules.

16 29. **Numerosity Under Rule 23(a)(1).** The Nationwide Class and Subclasses  
17 are so numerous that the individual joinder of all members is impracticable, and the  
18 disposition of the claims of all members of the Nationwide Class and Subclasses in a  
19 single action will provide substantial benefits to the parties and the Court. Although  
20 the precise number of members of the Nationwide Class and Subclasses are unknown  
21 to Plaintiffs at this time, on information and belief, the proposed Nationwide Class  
22 and Subclasses contain at least thousands of purchasers of the subject Trader Joe’s  
23 dark chocolate products who have been damaged by Trader Joe’s conduct as alleged  
24 herein. Discovery will reveal, through Trader Joe’s records, the approximate number  
25 of members of the Nationwide Class and Subclasses.

26 30. **Commonality Under Rule 23(a)(2).** Common legal and factual questions  
27 exist that predominate over any questions affecting only individual members of the  
28 Nationwide Class and Subclasses. These common questions, which do not vary among  
members of the Nationwide Class or Subclasses and which may be determined without

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1 reference to any Nationwide Class or Subclass member’s individual circumstances,  
2 include, but are not limited to:

3 (a) Whether the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader  
4 Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars were contaminated with  
5 the heavy metals lead or cadmium;

6 (b) Whether Trader Joe’s knew or should have known that the Trader Joe’s  
7 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
8 Chocolate 85% Cacao bars were contaminated with the heavy metals lead or  
9 cadmium;

10 (c) Whether Trader Joe’s representations and omissions in its advertising  
11 and/or labeling are false, deceptive, or misleading;

12 (d) Whether Trader Joe’s representations and omissions in its advertising  
13 and/or labeling are likely to deceive a reasonable consumer;

14 (e) Whether Trader Joe’s had knowledge that its representations and  
15 omissions in its advertising and/or labeling were false, deceptive, or misleading;

16 (f) Whether Trader Joe’s engaged in unlawful, fraudulent, or unfair business  
17 practices;

18 (g) Whether Trader Joe’s conduct violated the applicable state consumer  
19 protection laws alleged herein;

20 (h) Whether, as a result of Trader Joe’s omissions and/or misrepresentations  
21 of material facts, Plaintiffs and members of the Nationwide Class and Subclasses have  
22 suffered an ascertainable loss of monies and/or property and/or value;

23 (i) Whether Plaintiffs and the members of the Nationwide Class or  
24 Subclasses have been damaged by the wrongs alleged are entitled to actual, statutory,  
25 and punitive damages; and

26 (j) Whether Plaintiffs and members of the Nationwide Class and Subclasses  
27 are entitled to declaratory and injunctive relief.  
28

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1           31.    **Typicality Under Rule 23(a)(3).** Plaintiffs’ claims are typical of the  
2 Nationwide Class and Subclasses members’ claims. Trader Joe’s course of conduct  
3 caused Plaintiffs and members of the Nationwide Class and Subclasses the same harm,  
4 damages, and losses as a result of Trader Joe’s uniformly unlawful conduct. Likewise,  
5 Plaintiffs and other members of the Nationwide Class and Subclasses must prove the  
6 same facts in order to establish the same claims.

7           32.    **Adequacy of Representation Under Rule 23(a)(4).** Plaintiffs are  
8 adequate Nationwide Class and Subclass representatives because they are Nationwide  
9 Class and Subclass members, and their interests do not conflict with the interests of  
10 the Nationwide Class or Subclass. Plaintiffs have retained counsel competent and  
11 experienced in complex litigation and consumer protection class action matters such  
12 as this action, and Plaintiffs and their counsel intend to vigorously prosecute this  
13 action for the Nationwide Class and Subclasses’ benefit and have the resources to do  
14 so. Plaintiffs and their counsel have no interests adverse to those of the other members  
15 of the Nationwide Class or Subclasses.

16           33.    Further, Plaintiffs have standing to represent members of the putative  
17 classes because there is sufficient similarity between the specific products purchased  
18 by Plaintiffs and the other Trader Joe’s dark chocolate products that are the subject of  
19 this action. More specifically, the Trader Joe’s Dark Chocolate 72% Cacao bars and  
20 the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars uniformly  
21 fail to include labeling to indicate to consumers that these food items were  
22 contaminated with the heavy metals lead or cadmium.

23           34.    **Superiority.** A class action is superior to all other available methods for  
24 the fair and efficient adjudication of this controversy because individual litigation of  
25 each Nationwide Class and Subclass member’s claim is impracticable. The damages,  
26 harm, and losses suffered by the individual members of the Nationwide Class and  
27 Subclasses will likely be small relative to the burden and expense of individual  
28 prosecution of the complex litigation necessitated by Trader Joe’s wrongful conduct.

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1 Even if each Nationwide Class and Subclass member could afford individual  
2 litigation, the Court system could not. It would be unduly burdensome if thousands of  
3 individual cases proceeded. Individual litigation also presents the potential for  
4 inconsistent or contradictory judgments, the prospect of a race to the courthouse, and  
5 the risk of an inequitable allocation of recovery among those individuals with equally  
6 meritorious claims. Individual litigation would increase the expense and delay to all  
7 parties and the Courts because it requires individual resolution of common legal and  
8 factual questions. By contrast, the class action device presents far fewer management  
9 difficulties and provides the benefit of a single adjudication, economies of scale, and  
10 comprehensive supervision by a single court.

11 35. As a result of the foregoing, class treatment is appropriate.

12 **FIRST CLAIM FOR RELIEF**  
13 **Violations of the California Consumer Legal Remedies Act**  
14 **Cal. Civ. Code §§ 1750, et seq.**  
15 ***(On Behalf of Plaintiff Tarantino and the California Subclass)***

16 36. Plaintiff Tarantino, individually and on behalf of the California Subclass,  
17 incorporates by reference all the allegations contained in the preceding paragraphs of  
18 this Class Action Complaint as if fully set forth herein.

19 37. Plaintiff Tarantino brings this claim individually and on behalf of the  
20 California Subclass against Trader Joe’s.

21 38. Plaintiff Tarantino and each proposed California Subclass member is a  
22 “consumer,” as that term is defined in Cal. Civ. Code § 1761(d).

23 39. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
24 The Dark Chocolate Lover’s Chocolate 85% Cacao bars are “goods,” as that term is  
25 defined in Cal. Civ. Code § 1761(a).

26 40. Trader Joe’s is a “person” as that term is defined in Cal. Civ. Code  
27 § 1761(c).

28 41. Plaintiff Tarantino and each proposed California Subclass member’s  
purchase of the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s



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1 The Dark Chocolate Lover’s Chocolate 85% Cacao bars constituted a “transaction,”  
2 as that term is defined in Cal. Civ. Code §§ 1761(e) and 1770.

3 42. Trader Joe’s conduct alleged herein violates the following provisions of  
4 California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (the  
5 “CLRA”):

6 a. Representing that goods have characteristics, uses, and benefits which  
7 they do not have (Cal. Civ. Code § 1770(a)(5));

8 b. Representing that goods are of a particular standard, quality, or grade, if  
9 they are of another (Cal. Civ. Code § 1770(a)(7));

10 c. Advertising goods with intent not to sell them as advertised (Cal. Civ.  
11 Code § 1770(a)(9)); and

12 d. Representing that the subject of a transaction has been supplied in  
13 accordance with a previous representation when it has not (Cal. Civ. Code  
14 § 1770(a)(16)).

15 43. In addition, under California law, a duty to disclose arises in four  
16 circumstances: (i) when the defendant is in a fiduciary relationship with the plaintiff;  
17 (ii) when the defendant has exclusive knowledge of material facts not known to the  
18 plaintiff; (iii) when the defendant actively conceals a material fact from the plaintiff;  
19 and (iv) when the defendant makes partial representations but also suppresses some  
20 material facts.

21 44. Trader Joe’s had a duty to disclose to Plaintiff Tarantino and the  
22 California Subclass that the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
23 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars contained high  
24 levels of the heavy metals lead and cadmium for the following three independent  
25 reasons: (i) Trader Joe’s had exclusive knowledge of the information at the time of  
26 sale; (ii) Trader Joe’s actively concealed from Plaintiff Tarantino and the California  
27 Subclass this information which is important to customers; and (iii) Trader Joe’s made  
28

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1 partial representations to Plaintiff Tarantino and the California Subclass regarding the  
2 safety, quality, and ingredients of its dark chocolate products.

3 45. Trader Joe’s misrepresentations and omissions alleged herein were likely  
4 to mislead an ordinary consumer. Plaintiff Tarantino and the California Subclass  
5 reasonably understood Trader Joe’s representations and omissions to mean that the  
6 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
7 Chocolate Lover’s Chocolate 85% Cacao bars were reasonably safe and fit for human  
8 consumption.

9 46. Trader Joe’s misrepresentations and omissions alleged herein were  
10 material in that a reasonable person would attach importance to the information and  
11 would be induced to act upon the information in making purchase decisions.

12 47. Plaintiff Tarantino and members of the California Subclass relied to their  
13 detriment on Trader Joe’s misrepresentations and omissions in purchasing the Trader  
14 Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate  
15 Lover’s Chocolate 85% Cacao bars.

16 48. Plaintiff Tarantino, on behalf of himself and the California Subclass,  
17 demands judgment against Trader Joe’s under the CLRA for injunctive relief to  
18 Plaintiff Tarantino and the California Subclass.

19 49. Plaintiff Tarantino, on behalf of himself and the California Subclass,  
20 further intends to seek compensatory damages.

21 50. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff Tarantino will serve  
22 Trader Joe’s with notice of its alleged violations of the CLRA by certified mail return  
23 receipt requested. If, within thirty days after the date of such notification, Trader Joe’s  
24 fails to provide appropriate relief for its violations of the CLRA, Plaintiff Tarantino  
25 will amend this Class Action Complaint to seek monetary damages under the CLRA.

26 51. Notwithstanding any other statements in this Class Action Complaint,  
27 Plaintiff Tarantino does not seek monetary damages in connection with his CLRA  
28 claim—and will not do so—until the applicable thirty-day period has passed.



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1 bars and through marketing and advertising which did not reveal the presence of the  
2 heavy metals lead and cadmium therein, as described above. Instead, Trader Joe’s  
3 written warranties with Plaintiff Tarantino and the California Class represented that  
4 the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
5 Chocolate Lover’s Chocolate 85% Cacao bars were food products which contained  
6 only those ingredients listed on their labels. Trader Joe’s further expressly warrants  
7 and represents in its marketing, advertising, and labeling of the Trader Joe’s Dark  
8 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
9 Chocolate 85% Cacao bars that all its private label products contain only “quality  
10 ingredients” and that Trader Joe’s would “never sell any product we believe to be  
11 unsafe.”<sup>22</sup> Together, this labeling, marketing, and advertising constituted express  
12 warranties that formed a basis of the bargain that was breached when Plaintiff  
13 Tarantino and the California Class members purchased the Trader Joe’s Dark  
14 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
15 Chocolate 85% Cacao bars which contained high levels of heavy metals lead and  
16 cadmium and were accordingly misbranded, adulterated, and not safe or suitable for  
17 human consumption.

18         60. Plaintiff Tarantino and the California Class, by use of reasonable care,  
19 could not have discovered the breached warranty and incurred the hidden increased  
20 risks and unreasonable dangers of consuming the Trader Joe’s Dark Chocolate 72%  
21 Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao  
22 bars.

23         61. As a direct and proximate result of Trader Joe’s breach of express  
24 warranties, Plaintiff Tarantino and the California Class members have been injured  
25 and damaged in an amount to be determined at trial.

26  
27  
28 <sup>22</sup> <https://www.traderjoes.com/home/FAQ/product-faqs> (last visited May 3, 2023).



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1           68. The Trader Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's  
2 The Dark Chocolate Lover's Chocolate 85% Cacao bars were not in merchantable  
3 condition and are not fit for the ordinary purpose for which food products are used  
4 (i.e., human consumption) because they were contaminated with heavy metals lead  
5 and cadmium. Trader Joe's knew or had reason to know of the specific use for which  
6 the Trader Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's The Dark  
7 Chocolate Lover's Chocolate 85% Cacao bars were purchased. More specifically, at  
8 the time Trader Joe's marketed and otherwise placed its Trader Joe's Dark Chocolate  
9 72% Cacao bars and the Trader Joe's The Dark Chocolate Lover's Chocolate 85%  
10 Cacao bars into the stream of commerce, it knew that Plaintiff Tarantino and the  
11 California Class would purchase these products for safe human consumption,  
12 expecting them to be free from dangerous ingredients such as heavy metals. Trader  
13 Joe's further knew that consumers, including Plaintiff Tarantino and the California  
14 Class, lacked the ability or opportunity to determine whether any unspecified  
15 ingredients were present in the Trader Joe's Dark Chocolate 72% Cacao bars and the  
16 Trader Joe's The Dark Chocolate Lover's Chocolate 85% Cacao bars, but would  
17 instead rely on Trader Joe's representations that the Trader Joe's Dark Chocolate 72%  
18 Cacao bars and the Trader Joe's The Dark Chocolate Lover's Chocolate 85% Cacao  
19 bars were suitable for their particular purpose and free from heavy metals.

20           69. At all times, Plaintiff Tarantino and California Class members used the  
21 Trader Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's The Dark  
22 Chocolate Lover's Chocolate 85% Cacao bars in the manner that was intended for use.

23           70. Trader Joe's implied warranties apply to the purchasers of the Trader  
24 Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's The Dark Chocolate  
25 Lover's Chocolate 85% Cacao bars, creating privity between Trader Joe's and  
26 Plaintiff Tarantino and California Class members. Further, as intended consumers and  
27 ultimate users of the Trader Joe's Dark Chocolate 72% Cacao bars and the Trader  
28 Joe's The Dark Chocolate Lover's Chocolate 85% Cacao bars, Plaintiff Tarantino and

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1 California Class members are the intended third-party beneficiaries of any contracts  
2 between Trader Joe’s and other retailers from which Plaintiff Tarantino and California  
3 Class members obtained the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
4 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars, which  
5 contained the implied warranty of merchantability and fitness for ordinary use.  
6 Plaintiff Tarantino and the California Class members are the parties intended to benefit  
7 from any such contract because they are the persons consuming the Trader Joe’s Dark  
8 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
9 Chocolate 85% Cacao bars in the manner intended.

10 71. As a direct and proximate result of Trader Joe’s breach of the implied  
11 warranty of merchantability, Plaintiff Tarantino and the California Class members  
12 have been injured and damaged in an amount to be proven at trial.

13 72. Plaintiff Tarantino and the California Class did not need to send notice  
14 to Trader Joe’s of its breaches of its implied warranty of merchantability because  
15 Trader Joe’s was already on notice that its Trader Joe’s Dark Chocolate 72% Cacao  
16 bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars  
17 contained heavy metals, thereby violating Trader Joe’s implied warranties as alleged  
18 herein. Additionally, Trader Joe’s is already facing similar lawsuits for the conduct  
19 alleged herein.

20 **FOURTH CLAIM FOR RELIEF**  
21 **Violations of Song-Beverly Consumer Warranty Act**  
22 **Cal. Civ. Code §§ 1790, et seq.**  
23 ***(On Behalf of Plaintiff Tarantino and the California Subclass)***

24 73. Plaintiff Tarantino, individually and on behalf of the California Subclass,  
25 incorporates by reference all the allegations contained in the preceding paragraphs of  
26 this Class Action Complaint as if fully set forth herein.

27 74. Plaintiff Tarantino brings this claim individually and on behalf of the  
28 California Subclass against Trader Joe’s.

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1           75. Plaintiff Tarantino and the California Subclass purchased Trader Joe’s  
2 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
3 Chocolate 85% Cacao bars marketed by Trader Joe’s as safe and appropriate for  
4 human consumption.

5           76. Plaintiffs Tarantino and the California Subclass purchased Trader Joe’s  
6 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
7 Chocolate 85% Cacao bars new and in their original packaging and did not alter these  
8 dark chocolate food products.

9           77. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
10 The Dark Chocolate Lover’s Chocolate 85% Cacao bars were used and bought  
11 primarily for personal, family, or household purposes and are therefore consumer  
12 goods.

13           78. At the time of Plaintiff Tarantino and the California Subclass’s  
14 purchases, Trader Joe’s was in the business of selling and marketing grocery food  
15 items, including the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
16 The Dark Chocolate Lover’s Chocolate 85% Cacao bars.

17           79. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
18 The Dark Chocolate Lover’s Chocolate 85% Cacao bars were contaminated with high  
19 levels of the heavy metals lead and cadmium. Lead and cadmium were present in the  
20 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
21 Chocolate Lover’s Chocolate 85% Cacao bars when they left the exclusive control of  
22 Trader Joe’s and therefore existed during the duration of the warranty period.

23           80. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
24 The Dark Chocolate Lover’s Chocolate 85% Cacao bars were not of the same quality  
25 as those generally acceptable in the trade; were not safe, effective, or fit for the  
26 ordinary purpose of human consumption; were not adequately contained, packaged,  
27 and labeled; and did not conform to the promises and facts stated on their containers  
28 and labels.



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1 81. Trader Joe’s therefore breached the implied warranty of merchantability,  
2 which by California law is provided in every consumer agreement for the sale of  
3 goods, including the sale of the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
4 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars.

5 82. As a direct and proximate cause of Trader Joe’s breach of the implied  
6 warranty of merchantability, Plaintiff Tarantino and the California Subclass have been  
7 damaged by receiving an inferior and unsafe product from that which they were  
8 promised. Plaintiff Tarantino and the California Subclass, therefore, have the right to  
9 cancel and recover the purchase price of their purchases of Trader Joe’s Dark  
10 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
11 Chocolate 85% Cacao bars.

12 **FIFTH CLAIM FOR RELIEF**  
13 **Violations of the California False Advertising Law**  
14 **Cal. Bus. & Prof. Code §§ 17500, et seq.**  
15 ***(On Behalf of Plaintiff Tarantino and the California Class)***

16 83. Plaintiff Tarantino, individually and on behalf of the California Class,  
17 incorporates by reference all the allegations contained in the preceding paragraphs of  
18 this Class Action Complaint as if fully set forth herein.

19 84. Plaintiff Tarantino brings this claim individually and on behalf of the  
20 California Class against Trader Joe’s.

21 85. California’s False Advertising Law prohibits any statement in connection  
22 with the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof. Code  
23 § 17500.

24 86. Plaintiff Tarantino, individually and on behalf of the California Class,  
25 has standing to pursue this claim because he suffered injury in fact and lost money or  
26 property as a result of Trader Joe’s actions, as described above.

27 87. Trader Joe’s engaged in advertising and marketing to the public and  
28 offered for sale the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
The Dark Chocolate Lover’s Chocolate 85% Cacao bars in California.

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1           88.    Trader Joe’s engaged in the advertising and marketing alleged herein  
2 with the intent to induce the sale of the Trader Joe’s Dark Chocolate 72% Cacao bars  
3 and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars to  
4 consumers like Plaintiff Tarantino and the California Class.

5           89.    Trader Joe’s advertising and marketing representations regarding its  
6 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
7 Chocolate Lover’s Chocolate 85% Cacao bars were false, misleading, and deceptive  
8 as set forth in detail above, within the definition, meaning, and construction of  
9 California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* Trader  
10 Joe’s concealed the material information from consumers that these dark chocolate  
11 food products contained high levels of the heavy metals lead and cadmium.

12           90.    Trader Joe’s misrepresentations and omissions alleged herein deceive or  
13 have the tendency to deceive the general public regarding safety of the Trader Joe’s  
14 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
15 Chocolate 85% Cacao bars for ordinary consumer use and consumption.

16           91.    Trader Joe’s misrepresentations and omissions alleged herein were the  
17 type of misrepresentations that are material (*i.e.*, a reasonable person would attach  
18 importance to them and would be induced to act on the information in making  
19 purchase decisions).

20           92.    Trade Joe’s misrepresentations and omissions alleged herein are  
21 objectively material to a reasonable consumer, and therefore reliance upon such  
22 misrepresentations may be presumed as a matter of law.

23           93.    At the time Trader Joe’s made the misrepresentations and omissions  
24 alleged herein, it knew or should have known that they were untrue or misleading and  
25 acted in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

26           94.    Unless restrained by this Court, Trader Joe’s will continue to engage in  
27 untrue and misleading advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et*  
28 *seq.*



1 contained high levels of lead and cadmium, Trader Joe’s conduct was likely to deceive  
2 consumers. Trader Joe’s failures to disclose that these products contained high levels  
3 of heavy metals, constitute material omissions in violation of the UCL.

4 100. Trader Joe’s actions as alleged herein constitute an “unfair” practice  
5 because they offend established public policy and are immoral, unethical, oppressive,  
6 unscrupulous, and substantially injurious to Trader Joe’s customers. The harm caused  
7 by Trader Joe’s wrongful conduct outweighs any utility of such conduct and has  
8 caused—and will continue to cause—substantial injury to Plaintiff Tarantino and the  
9 California Class. Trader Joe’s could and should have chosen one of many reasonably  
10 available alternatives, such as: (i) not including high levels of the heavy metals lead  
11 and cadmium in its dark chocolate food products; (ii) altering the marketing,  
12 packaging, and labeling of the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
13 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars to accurately  
14 disclose the products’ ingredients; or (iii) not selling its Trader Joe’s Dark Chocolate  
15 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85%  
16 Cacao bars altogether. Additionally, Trade Joe’s conduct was “unfair,” because it  
17 violated the legislatively declared policies reflected by California’s strong consumer  
18 protection, consumer warranty, and false advertising laws, including the California  
19 Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790, *et seq.*, the California  
20 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, and the California False  
21 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*

22 101. As a result of Trader Joe’s unlawful, fraudulent, and unfair conduct,  
23 Plaintiff Tarantino and the California Class were damaged. Plaintiff Tarantino and the  
24 California Class received an inferior product from that which they were promised.  
25 Had Trader Joe’s disclosed that its Trader Joe’s Dark Chocolate 72% Cacao bars and  
26 the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars contained  
27 high levels of heavy metals, Plaintiff Tarantino and the California Class would not  
28 have purchased these food products or would have paid substantially less.

1 102. Plaintiff Tarantino and the California Class also seek an order requiring  
2 Trader Joe’s to make full restitution of all monies it has wrongfully obtained from  
3 California Class Members, as well as all other relief permitted under the UCL.

4 **SEVENTH CLAIM FOR RELIEF**

5 **Breach of Express Warranty**

6 **Md. Code Com. Law § 2-313**

7 *(On Behalf of Plaintiff Babaian and the Maryland Class)*

8 103. Plaintiff Babaian, individually and on behalf of the Maryland Class,  
9 incorporates by reference all the allegations contained in the preceding paragraphs of  
10 this Class Action Complaint as if fully set forth herein.

11 104. Plaintiff Babaian brings this claim individually and on behalf of the  
12 Maryland Class against Trader Joe’s.

13 105. Trader Joe’s is and was at all relevant times a “merchant” with respect to  
14 food products under Md. Code Com. Law 2-104(1) and a “seller” of such products  
15 under Md. Code Com. Law § 2-103(1)(d).

16 106. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
17 The Dark Chocolate Lover’s Chocolate 85% Cacao bars are and were at all relevant  
18 times “goods” within the meaning of Md. Code Com. Law § 2-105(1).

19 107. Plaintiff Babaian and each member of the Maryland Class formed a  
20 contract with Trader Joe’s at the time Plaintiff Babaian and each member of the  
21 Maryland Class purchased the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
22 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars.

23 108. The terms of these contracts included the promises and affirmations of  
24 fact made by Trader Joe’s on the packaging of the Trader Joe’s Dark Chocolate 72%  
25 Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao  
26 bars and through marketing and advertising which did not reveal the presence of the  
27 heavy metals lead and cadmium therein, as described above. Instead, Trader Joe’s  
28 written warranties with Plaintiff Babaian and the Maryland Class represented that the  
Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark

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1 Chocolate Lover’s Chocolate 85% Cacao bars were food products which contained  
 2 only those ingredients listed on their labels. Trader Joe’s further expressly warrants  
 3 and represents in its marketing, advertising, and labeling of the Trader Joe’s Dark  
 4 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
 5 Chocolate 85% Cacao bars that all its private label products contain only “quality  
 6 ingredients” and that Trader Joe’s would “never sell any product we believe to be  
 7 unsafe.”<sup>23</sup> Together, this labeling, marketing, and advertising constituted express  
 8 warranties that formed a basis of the bargain that was breached when Plaintiff Babaian  
 9 and the Maryland Class members purchased the Trader Joe’s Dark Chocolate 72%  
 10 Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao  
 11 bars which contained high levels of heavy metals lead and cadmium and were  
 12 accordingly misbranded, adulterated, and not safe or suitable for human consumption.

13 109. Plaintiff Babaian and the Maryland Class, by use of reasonable care,  
 14 could not have discovered the breached warranty and incurred the hidden increased  
 15 risks and unreasonable dangers of consuming the Trader Joe’s Dark Chocolate 72%  
 16 Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao  
 17 bars.

18 110. As a direct and proximate result of Trader Joe’s breach of express  
 19 warranties, Plaintiff Babaian and the Maryland Class members have been injured and  
 20 damaged in an amount to be determined at trial.

21 111. Plaintiff Babaian and the Maryland Class did not need to send notice to  
 22 Trader Joe’s of its breaches of its express warranties because Trader Joe’s was already  
 23 on notice that its Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
 24 The Dark Chocolate Lover’s Chocolate 85% Cacao bars contained lead and cadmium,  
 25  
 26  
 27

28 <sup>23</sup> <https://www.traderjoes.com/home/FAQ/product-faqs> (last visited May 3, 2023).

1 in violation of Trader Joe’s express warranties as alleged herein. Additionally, Trader  
2 Joe’s is already facing similar lawsuits for the conduct alleged herein.

3 **EIGHTH CLAIM FOR RELIEF**

4 **Breach of Implied Warranty of Merchantability**

5 **Md. Code Com. Law § 2-314**

6 ***(On Behalf of Plaintiff Babaian and the Maryland Class)***

7 112. Plaintiff Babaian, individually and on behalf of the Maryland Class,  
8 incorporates by reference all the allegations contained in the preceding paragraphs of  
9 this Class Action Complaint as if fully set forth herein.

10 113. Plaintiff Babaian brings this claim individually and on behalf of the  
11 Maryland Class against Trader Joe’s.

12 114. Trader Joe’s is and was at all relevant times a “merchant” with respect to  
13 food products under Md. Code Com. Law § 2-104(1) and a “seller” of such products  
14 under Md. Code Com. Law § 2-103(1)(d).

15 115. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
16 The Dark Chocolate Lover’s Chocolate 85% Cacao bars are and were at all relevant  
17 times “goods” within the meaning of Md. Code Com. Law § 2-105(1).

18 116. A warranty that the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
19 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars were in  
20 merchantable condition and fit for the ordinary purpose for which these food products  
21 are used (and were not otherwise injurious to consumers) is implied by law pursuant  
22 to Md. Code Com. Law §§ 2-314 and 2-315. The implied warranty of merchantability  
23 is part of the basis for the benefit of the bargain between Trader Joe’s and Plaintiff  
24 Babaian and the Maryland Class members.

25 117. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
26 The Dark Chocolate Lover’s Chocolate 85% Cacao bars were not in merchantable  
27 condition and are not fit for the ordinary purpose for which food products are used  
28 (i.e., human consumption) because they were contaminated with heavy metals lead  
and cadmium. Trader Joe’s knew or had reason to know of the specific use for which

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1 the Trader Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's The Dark  
2 Chocolate Lover's Chocolate 85% Cacao bars were purchased. More specifically, at  
3 the time Trader Joe's marketed and otherwise placed its Trader Joe's Dark Chocolate  
4 72% Cacao bars and the Trader Joe's The Dark Chocolate Lover's Chocolate 85%  
5 Cacao bars into the stream of commerce, it knew that Plaintiff Babaian and the  
6 Maryland Class would purchase these products for safe human consumption,  
7 expecting them to be free from dangerous ingredients such as heavy metals. Trader  
8 Joe's further knew that consumers, including Plaintiff Babaian and the Maryland  
9 Class, lacked the ability or opportunity to determine whether any unspecified  
10 ingredients were present in the Trader Joe's Dark Chocolate 72% Cacao bars and the  
11 Trader Joe's The Dark Chocolate Lover's Chocolate 85% Cacao bars, but would  
12 instead rely on Trader Joe's representations that the Trader Joe's Dark Chocolate 72%  
13 Cacao bars and the Trader Joe's The Dark Chocolate Lover's Chocolate 85% Cacao  
14 bars were suitable for their particular purpose and free from heavy metals.

15 118. At all times, Plaintiff Babaian and Maryland Class members used the  
16 Trader Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's The Dark  
17 Chocolate Lover's Chocolate 85% Cacao bars in the manner that was intended for use.

18 119. Trader Joe's implied warranties apply to the purchasers of the Trader  
19 Joe's Dark Chocolate 72% Cacao bars and the Trader Joe's The Dark Chocolate  
20 Lover's Chocolate 85% Cacao bars, creating privity between Trader Joe's and  
21 Plaintiff Babaian and Maryland Class members. Further, as intended consumers and  
22 ultimate users of the Trader Joe's Dark Chocolate 72% Cacao bars and the Trader  
23 Joe's The Dark Chocolate Lover's Chocolate 85% Cacao bars, Plaintiff Babaian and  
24 Maryland Class members are the intended third-party beneficiaries of any contracts  
25 between Trader Joe's and other retailers from which Plaintiff Babaian and Maryland  
26 Class members obtained the Trader Joe's Dark Chocolate 72% Cacao bars and the  
27 Trader Joe's The Dark Chocolate Lover's Chocolate 85% Cacao bars, which  
28 contained the implied warranty of merchantability and fitness for ordinary use.



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1 Plaintiff Babaian and the Maryland Class members are the parties intended to benefit  
2 from any such contract because they are the persons consuming the Trader Joe’s Dark  
3 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
4 Chocolate 85% Cacao bars in the manner intended.

5 120. As a direct and proximate result of Trader Joe’s breach of the implied  
6 warranty of merchantability, Plaintiff Babaian and the Maryland Class members have  
7 been injured and damaged in an amount to be proven at trial.

8 121. Plaintiff Babaian and the Maryland Class did not need to send notice to  
9 Trader Joe’s of its breaches of its implied warranty of merchantability because Trader  
10 Joe’s was already on notice that its Trader Joe’s Dark Chocolate 72% Cacao bars and  
11 the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars contained  
12 heavy metals, thereby violating Trader Joe’s implied warranties as alleged herein.  
13 Additionally, Trader Joe’s is already facing similar lawsuits for the conduct alleged  
14 herein.

15 **NINTH CLAIM FOR RELIEF**

16 **Violations of the Maryland Consumer Protection Act**  
17 **Md. Code Com. Law §§ 13-101, et seq.**

18 ***(On Behalf of Plaintiff Babaian and the Maryland Class)***

19 122. Plaintiff Babaian, individually and on behalf of the Maryland Class,  
20 incorporates by reference all the allegations contained in the preceding paragraphs of  
21 this Class Action Complaint as if fully set forth herein.

22 123. Plaintiff Babaian brings this claim individually and on behalf of the  
23 Maryland Class against Trader Joe’s.

24 124. Trader Joe’s, Plaintiff Babaian, and the Maryland Class are “persons”  
25 within the meaning of the Maryland Consumer Protection Act (“Maryland CPA”),  
26 Md. Code Com. Law § 13-101(h).

27 125. The Maryland CPA provides that a person may not engage in any unfair  
28 or deceptive trade practice in the sale of any consumer good. Md. Code Com. Law  
§ 13-303. Trader Joe’s participated in misleading, false, or deceptive acts that violated

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1 the Maryland CPA, including by violation Md. Code Com. Law §§ 13-301(2)(i), 13-  
2 301(2)(iv), 13-301(1), 13-301(9), 13-301(3), and 13-301(9).

3 126. In the course of its business, Trader Joe’s concealed that the Trader Joe’s  
4 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
5 Chocolate 85% Cacao bars contained high levels of the heavy metals lead and  
6 cadmium and otherwise engaged in activities with a tendency or capacity to deceive.  
7 Trader Joe’s also engaged in unlawful trade practices by employing deception,  
8 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
9 omission of any material fact with intent that others rely upon such concealment,  
10 suppression or omission, in connection with the sale of the Trader Joe’s Dark  
11 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
12 Chocolate 85% Cacao bars. Trader Joe’s deceptive acts or practices were likely to,  
13 and did in fact, deceive reasonable consumers about the safety of the Trader Joe’s  
14 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
15 Chocolate 85% Cacao bars and their ingredients. Plaintiff Babaian and the Maryland  
16 Class reasonably understood Trader Joe’s representations and omissions to mean that  
17 the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
18 Chocolate Lover’s Chocolate 85% Cacao bars were reasonably safe and fit for human  
19 consumption.

20 127. Trader Joe’s knew that its Trader Joe’s Dark Chocolate 72% Cacao bars  
21 and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars were  
22 contaminated with high levels of lead and cadmium at the time of sale and acquired  
23 additional information thereon after these food products were sold, but concealed all  
24 of that information until it was revealed by Consumer Reports.

25 128. Trader Joe’s thus violated the Maryland CPA by, at a minimum:  
26 employing deception, deceptive acts or practices, fraud, misrepresentations, or  
27 concealment, suppression or omission of any material fact with intent that others rely  
28 upon such concealment, suppression or omission, in connection with the sale of the

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1 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
2 Chocolate Lover’s Chocolate 85% Cacao bars.

3 129. Trader Joe’s actions as set forth above occurred in the conduct of trade  
4 or commerce.

5 130. Trader Joe’s unfair or deceptive acts or practices were likely to and did  
6 in fact deceive reasonable consumers, including Plaintiff Babaian and the Maryland  
7 Class about the safety of its dark chocolate products. Trader Joe’s intentionally and  
8 knowingly misrepresented material facts regarding the Trader Joe’s Dark Chocolate  
9 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85%  
10 Cacao bars with the intent to mislead Plaintiff Babaian and the Maryland Class.

11 131. Trader Joe’s knew or should have known that its conduct violated the  
12 Maryland CPA.

13 132. Trader Joe’s owed Plaintiff Babaian and the Maryland Class a duty to  
14 disclose the true safety of these dark chocolate food products because Trader Joe’s:  
15 (i) possessed exclusive knowledge about the presence of high levels of lead and  
16 cadmium in its Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The  
17 Dark Chocolate Lover’s Chocolate 85% Cacao bars; (ii) intentionally concealed the  
18 foregoing from Plaintiff Babaian and the Maryland Class; and (iii) made incomplete  
19 representations about the safety of the dark chocolate products, while purposefully  
20 withholding material facts from Plaintiff Babaian and the Maryland Class that  
21 contradicted these representations.

22 133. Because Trader Joe’s fraudulently concealed that its Trader Joe’s Dark  
23 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
24 Chocolate 85% Cacao bars contained high levels of heavy metals lead and cadmium,  
25 purchasers of these food items were deprived of the benefit of their bargain because  
26 these dark chocolate products were worth less than they would have been if they were  
27 free from heavy metals. Had purchasers of the Trader Joe’s Dark Chocolate 72%  
28 Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao

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1 bars been aware of the high levels of lead and cadmium, they would have either not  
2 bought them or would have paid less for them.

3 134. Trader Joe’s concealment of the true nature of its Trader Joe’s Dark  
4 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
5 Chocolate 85% Cacao bars was material to Plaintiff Babaian and the Maryland Class.

6 135. Trader Joe’s had an ongoing duty to all purchasers of its products to  
7 refrain from unfair and deceptive practices under the Maryland CPA. As a direct and  
8 proximate result of Trader Joe’s unfair and deceptive conduct in violation of the  
9 Maryland CPA, Plaintiff Babaian and the Maryland Class members have suffered  
10 injury, ascertainable losses of money or property, and monetary and nonmonetary  
11 damages.

12 136. Trader Joe’s violations caused ascertainable injury to Plaintiff Babaian  
13 and the Maryland Class, as well as to the general public. Trader Joe’s unlawful acts  
14 and practices alleged herein negatively affect the public interest, and there are no  
15 countervailing benefits to consumers that outweigh the harm caused by Trader Joe’s  
16 conduct.

17 137. Pursuant to Md. Code Com. Law § 13-408, Plaintiff Babaian and the  
18 Maryland Class seek monetary relief against Trader Joe’s in the amount of a full  
19 refund, actual damages, attorneys’ fees, injunctive relief, and any other just and proper  
20 relief available the Court deems necessary to protect the public from further violations  
21 of the Maryland CPA.

22 **TENTH CLAIM FOR RELIEF**

23 **Breach of Express Warranty**

24 **810 Ill. Comp. Stat. § 5/2-313**

25 *(On Behalf of Plaintiff Komessar and the Illinois Class)*

26 138. Plaintiff Komessar, individually and on behalf of the Illinois Class,  
27 incorporates by reference all the allegations contained in the preceding paragraphs of  
28 this Class Action Complaint as if fully set forth herein.

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1 139. Plaintiff Komessar brings this claim individually and on behalf of the  
2 Illinois Class against Trader Joe’s.

3 140. Trader Joe’s is and was at all relevant times a “merchant” with respect to  
4 food products under 810 Ill. Comp. Stat. § 5/2-104(1) and a “seller” of such products  
5 under 810 Ill. Comp. Stat. § 5/2-103(1)(d).

6 141. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
7 The Dark Chocolate Lover’s Chocolate 85% Cacao bars are and were at all relevant  
8 times “goods” within the meaning of 810 Ill. Comp. Stat. § 5/2-105(1).

9 142. Plaintiff Komessar and each member of the Illinois Class formed a  
10 contract with Trader Joe’s at the time Plaintiff Komessar and each member of the  
11 Illinois Class purchased the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
12 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars.

13 143. The terms of these contracts included the promises and affirmations of  
14 fact made by Trader Joe’s on the packaging of the Trader Joe’s Dark Chocolate 72%  
15 Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao  
16 bars and through marketing and advertising which did not reveal the presence of the  
17 heavy metals lead and cadmium therein, as described above. Instead, Trader Joe’s  
18 written warranties with Plaintiff Komessar and the Illinois Class represented that the  
19 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
20 Chocolate Lover’s Chocolate 85% Cacao bars were food products which contained  
21 only those ingredients listed on their labels. Trader Joe’s further expressly warrants  
22 and represents in its marketing, advertising, and labeling of the Trader Joe’s Dark  
23 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
24 Chocolate 85% Cacao bars that all its private label products contain only “quality  
25 ingredients” and that Trader Joe’s would “never sell any product we believe to be  
26  
27  
28

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1 unsafe.”<sup>24</sup> Together, this labeling, marketing, and advertising constituted express  
2 warranties that formed a basis of the bargain that was breached when Plaintiff  
3 Komessar and the Illinois Class members purchased the Trader Joe’s Dark Chocolate  
4 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85%  
5 Cacao bars which contained high levels of heavy metals lead and cadmium and were  
6 accordingly misbranded, adulterated, and not safe or suitable for human consumption.

7 144. Plaintiff Komessar and the Illinois Class, by use of reasonable care, could  
8 not have discovered the breached warranty and incurred the hidden increased risks  
9 and unreasonable dangers of consuming the Trader Joe’s Dark Chocolate 72% Cacao  
10 bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars.

11 145. As a direct and proximate result of Trader Joe’s breach of express  
12 warranties, Plaintiff Komessar and the Illinois Class members have been injured and  
13 damaged in an amount to be determined at trial.

14 146. Plaintiff Komessar and the Illinois Class did not need to send notice to  
15 Trader Joe’s of its breaches of its express warranties because Trader Joe’s was already  
16 on notice that its Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
17 The Dark Chocolate Lover’s Chocolate 85% Cacao bars contained lead and cadmium,  
18 in violation of Trader Joe’s express warranties as alleged herein. Additionally, Trader  
19 Joe’s is already facing similar lawsuits for the conduct alleged herein.

20 **ELEVENTH CLAIM FOR RELIEF**  
21 **Breach of Implied Warranty of Merchantability**  
22 **810 Ill. Comp. Stat. § 5/2-314**  
23 ***(On Behalf of Plaintiff Komessar and the Illinois Class)***

24 147. Plaintiff Komessar, individually and on behalf of the Illinois Class,  
25 incorporates by reference all the allegations contained in the preceding paragraphs of  
26 this Class Action Complaint as if fully set forth herein.

27 \_\_\_\_\_  
28 <sup>24</sup> <https://www.traderjoes.com/home/FAQ/product-faqs> (last visited May 3, 2023).

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1 148. Plaintiff Komessar brings this claim individually and on behalf of the  
2 Illinois Class against Trader Joe’s.

3 149. Trader Joe’s is and was at all relevant times a “merchant” with respect to  
4 food products under 810 Ill. Comp. Stat. § 5/2-104(1) and a “seller” of such products  
5 under 810 Ill. Comp. Stat. § 5/2-103(1)(d).

6 150. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
7 The Dark Chocolate Lover’s Chocolate 85% Cacao bars are and were at all relevant  
8 times “goods” within the meaning of 810 Ill. Comp. Stat. § 5/2-105(1).

9 151. A warranty that the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
10 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars were in  
11 merchantable condition and fit for the ordinary purpose for which these food products  
12 are used (and were not otherwise injurious to consumers) is implied by law pursuant  
13 to 810 Ill. Comp. Stat. §§ 5/2-314 and 5/2-315. The implied warranty of  
14 merchantability is part of the basis for the benefit of the bargain between Trader Joe’s  
15 and Plaintiff Komessar and the Illinois Class members.

16 152. The Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
17 The Dark Chocolate Lover’s Chocolate 85% Cacao bars were not in merchantable  
18 condition and are not fit for the ordinary purpose for which food products are used  
19 (i.e., human consumption) because they were contaminated with heavy metals lead  
20 and cadmium. Trader Joe’s knew or had reason to know of the specific use for which  
21 the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
22 Chocolate Lover’s Chocolate 85% Cacao bars were purchased. More specifically, at  
23 the time Trader Joe’s marketed and otherwise placed its Trader Joe’s Dark Chocolate  
24 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85%  
25 Cacao bars into the stream of commerce, it knew that Plaintiff Komessar and the  
26 Illinois Class would purchase these products for safe human consumption, expecting  
27 them to be free from dangerous ingredients such as heavy metals. Trader Joe’s further  
28 knew that consumers, including Plaintiff Komessar and the Illinois Class, lacked the

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1 ability or opportunity to determine the any unspecified ingredients in the Trader Joe’s  
2 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
3 Chocolate 85% Cacao bars, but would instead rely on Trader Joe’s representations  
4 that the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
5 Chocolate Lover’s Chocolate 85% Cacao bars were suitable for their particular  
6 purpose and free from heavy metals.

7 153. At all times, Plaintiff Komessar and Illinois Class members used the  
8 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
9 Chocolate Lover’s Chocolate 85% Cacao bars in the manner that was intended for use.

10 154. Trader Joe’s implied warranties apply to the purchasers of the Trader  
11 Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate  
12 Lover’s Chocolate 85% Cacao bars, creating privity between Trader Joe’s and  
13 Plaintiff Komessar and Illinois Class members. Further, as intended consumers and  
14 ultimate users of the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader  
15 Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars, Plaintiff Komessar and  
16 Illinois Class members are the intended third-party beneficiaries of any contracts  
17 between Trader Joe’s and other retailers from which Plaintiff Komessar and Illinois  
18 Class members obtained the Trader Joe’s Dark Chocolate 72% Cacao bars and the  
19 Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars, which  
20 contained the implied warranty of merchantability and fitness for ordinary use.  
21 Plaintiff Komessar and the Illinois Class members are the parties intended to benefit  
22 from any such contract because they are the persons consuming the Trader Joe’s Dark  
23 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
24 Chocolate 85% Cacao bars in the manner intended.

25 155. As a direct and proximate result of Trader Joe’s breach of the implied  
26 warranty of merchantability, Plaintiff Komessar and the Illinois Class members have  
27 been injured and damaged in an amount to be proven at trial.

28



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1 156. Plaintiff Komessar and the Illinois Class did not need to send notice to  
2 Trader Joe’s of its breaches of its implied warranty of merchantability because Trader  
3 Joe’s was already on notice that its Trader Joe’s Dark Chocolate 72% Cacao bars and  
4 the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars contained  
5 heavy metals, thereby violating Trader Joe’s implied warranties as alleged herein.  
6 Additionally, Trader Joe’s is already facing similar lawsuits for the conduct alleged  
7 herein.

8 **TWELFTH CLAIM FOR RELIEF**  
9 **Violations of Illinois Consumer Fraud and Deceptive Business Practices Act**  
10 **815 Ill. Comp. Stat. §§ 505/1, et seq.**  
11 ***(On Behalf of Plaintiff Komessar and the Illinois Class)***

12 157. Plaintiff Komessar, individually and on behalf of the Illinois Class,  
13 incorporates by reference all the allegations contained in the preceding paragraphs of  
14 this Class Action Complaint as if fully set forth herein.

15 158. Plaintiff Komessar brings this claim individually and on behalf of the  
16 Illinois Class against Trader Joe’s.

17 159. Trader Joe’s is a “person” as that term is defined in 815 Ill. Comp. Stat.  
18 § 505/1(c).

19 160. Plaintiff Komessar and the Illinois Class members are “consumers” as  
20 that term is defined in 815 Ill. Comp. Stat. § 505/1(e).

21 161. The Illinois Consumer Fraud and Deceptive Business Practices Act  
22 (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including, but not  
23 limited to, the use or employment of any deception, fraud, false pretense, false  
24 promise, misrepresentation or the concealment, suppression or omission of any  
25 material fact, with intent that others rely upon the concealment, suppression or  
26 omission of such material fact ... in the conduct of trade or commerce ... whether any  
27 person has in fact been misled, deceived or damaged thereby.” 815 Ill. Comp. Stat. §  
28 505/2.

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1 162. Plaintiff Komessar and the Illinois Class purchased the Trader Joe’s Dark  
2 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
3 Chocolate 85% Cacao bars new and in their original packaging and did not alter these  
4 products.

5 163. In the course of its business, Trader Joe’s concealed that the Trader Joe’s  
6 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
7 Chocolate 85% Cacao bars contained high levels of the heavy metals lead and  
8 cadmium and otherwise engaged in activities with a tendency or capacity to deceive.  
9 Trader Joe’s also engaged in unlawful trade practices by employing deception,  
10 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
11 omission of any material fact with intent that others rely upon such concealment,  
12 suppression or omission, in connection with the sale of the Trader Joe’s Dark  
13 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
14 Chocolate 85% Cacao bars. Trader Joe’s deceptive acts or practices were likely to,  
15 and did in fact, deceive reasonable consumers about the safety of the Trader Joe’s  
16 Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s  
17 Chocolate 85% Cacao bars and their ingredients. Plaintiff Komessar and the Illinois  
18 Class reasonably understood Trader Joe’s representations and omissions to mean that  
19 the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
20 Chocolate Lover’s Chocolate 85% Cacao bars were reasonably safe and fit for human  
21 consumption.

22 164. Trader Joe’s knew that its Trader Joe’s Dark Chocolate 72% Cacao bars  
23 and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars were  
24 contaminated with high levels of lead and cadmium at the time of sale and acquired  
25 additional information thereon after these food products were sold, but concealed all  
26 of that information until it was revealed by Consumer Reports. By failing to disclose  
27 and by actively concealing this information concerning its Trader Joe’s Dark  
28 Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate Lover’s

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1 Chocolate 85% Cacao bars, Trader Joe’s engaged in unfair and deceptive business  
2 practices in violation of the Illinois CFA.

3 165. As alleged above, Trader Joe’s made material statements about the safety  
4 of the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
5 Chocolate Lover’s Chocolate 85% Cacao bars that were either false or misleading.  
6 Trader Joe’s owed Plaintiff Komessar and the Illinois Class a duty to disclose the true  
7 safety of these dark chocolate food products because Trader Joe’s: (i) possessed  
8 exclusive knowledge about the presence of high levels of lead and cadmium in its  
9 Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark  
10 Chocolate Lover’s Chocolate 85% Cacao bars; (ii) intentionally concealed the  
11 foregoing from Plaintiff Komessar and the Illinois Class; and (iii) made incomplete  
12 representations about the safety of the dark chocolate products, while purposefully  
13 withholding material facts from Plaintiff Komessar and the Illinois Class that  
14 contradicted these representations.

15 166. Trader Joe’s intentionally and knowingly misrepresented material facts  
16 regarding the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The  
17 Dark Chocolate Lover’s Chocolate 85% Cacao bars with the intent to mislead Plaintiff  
18 Komessar and the Illinois Class. Trader Joe’s knew or should have known that its  
19 conduct violated the Illinois CFA.

20 167. As a direct and proximate result of Trader Joe’s unfair and deceptive  
21 conduct, Plaintiff Komessar and the Illinois Class members have suffered injury,  
22 ascertainable losses of money or property, and monetary and nonmonetary damages.  
23 Because Trader Joe’s fraudulently concealed the dangerously high levels of lead and  
24 cadmium in the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s  
25 The Dark Chocolate Lover’s Chocolate 85% Cacao bars, purchasers of these food  
26 products were deprived of the benefit of their bargain since the items they purchased  
27 were worth less than they would have been if they were free from heavy metals. Had  
28 purchasers of the Trader Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s

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1 The Dark Chocolate Lover’s Chocolate 85% Cacao bars been aware of the high levels  
2 of lead and cadmium, they would have either not bought them or would have paid less  
3 for them.

4 168. Trader Joe’s violations caused ascertainable injury to Plaintiff Komessar  
5 and the Illinois Class, as well as to the general public. Trader Joe’s unlawful acts and  
6 practices alleged herein negatively affect the public interest, and there are no  
7 countervailing benefits to consumers that outweigh the harm caused by Trader Joe’s  
8 conduct.

9 169. Pursuant to 815 Ill. Comp. Stat. § 505/10a(a), Plaintiff Komessar and the  
10 Illinois Class seek monetary relief against Trader Joe’s in the amount of a full refund,  
11 actual damages, as well as punitive damages because Trader Joe’s acted with fraud  
12 and/or malice and/or was grossly negligent.

13 170. Plaintiff Komessar and the Illinois Class also seek an order enjoining  
14 Trader Joe’s unfair and/or deceptive acts or practices under 815 Ill. Comp. Stat.  
15 § 505/7, punitive damages, and attorneys’ fees, and any other just and proper relief  
16 available under 815 Ill. Comp. Stat. §§ 505/1 *et seq.* the Court deems necessary to  
17 protect the public from further violations of the Illinois CFA.

18 **THIRTEENTH CLAIM FOR RELIEF**

19 **Unjust Enrichment**

20 ***(On Behalf of All Plaintiffs and the Nationwide Class)***

21 171. Plaintiffs, individually and on behalf of the Nationwide Class,  
22 incorporate by reference all the allegations contained in the preceding paragraphs of  
23 this Class Action Complaint as if fully set forth herein.

24 172. Plaintiffs and Nationwide Class Members conferred non-gratuitous  
25 benefits on Trader Joe’s by purchasing the Trader Joe’s Dark Chocolate 72% Cacao  
26 bars and the Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao bars  
27 which were worthless or otherwise overpriced. Trader Joe’s appreciated, accepted,  
28 and retained such benefits conferred by Plaintiffs and members of the Nationwide

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1 Class with knowledge and awareness that they were receiving falsely and  
2 misleadingly advertised dark chocolate bars which failed to state these Trader Joe’s  
3 private label products were contaminated with heavy metals lead and cadmium.

4 173. Retention of such benefits under the circumstances is accordingly unjust  
5 and inequitable. Trader Joe’s profited from its unlawful, unfair, misleading, and  
6 deceptive practices at the expense of Plaintiffs and members of the Nationwide Class.  
7 Absent Trader Joe’s misleading and deceptive representations regarding the Trader  
8 Joe’s Dark Chocolate 72% Cacao bars and the Trader Joe’s The Dark Chocolate  
9 Lover’s Chocolate 85% Cacao bars, Plaintiffs and each member of the Nationwide  
10 Class would not have purchased the products at issue or would have paid substantially  
11 less for such food products. As such, Plaintiffs and other members of the Nationwide  
12 Class conferred an improper windfall upon Trader Joe’s, which knew of the windfall  
13 and has unjustly retained such benefits.

14 174. As a direct and proximate result of Trader Joe’s unjust enrichment, under  
15 principles of equity and good conscience, Plaintiffs and the Nationwide Class are  
16 entitled to full disgorgement and restitution of all amounts by which Trader Joe’s was  
17 enriched through its unlawful or wrongful conduct.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs, on behalf of themselves and the Nationwide Class  
20 and Subclasses, request that the Court order the following relief and enter judgment  
21 against Trader Joe’s as follows:

22 A. An Order certifying the proposed Nationwide Class and Subclasses under  
23 Federal Rule of Civil Procedure 23;

24 B. An Order appointing Plaintiffs to represent the Nationwide Class and  
25 Subclasses;

26 C. A declaration that Trader Joe’s engaged in the illegal conduct alleged  
27 herein;

28

SCHUBERT JONCKHEER & KOLBE LLP  
2001 Union St., Suite 200  
San Francisco, CA 94123  
(415) 788-4220

1 D. An Order that Trader Joe’s be permanently enjoined from its improper  
2 activities and conduct described herein;

3 E. A Judgment awarding Plaintiffs and the Nationwide Class and  
4 Subclasses restitution and disgorgement of all compensation obtained by Trader Joe’s  
5 from its wrongful conduct;

6 F. A Judgment awarding Plaintiffs and the Nationwide Class and  
7 Subclasses compensatory damages and punitive damages, where available, in an  
8 amount to be proven at trial;

9 G. Prejudgment and post-judgment interest at the maximum allowable rate;

10 H. An Order awarding Plaintiffs and the Nationwide Class and Subclasses  
11 reasonable litigation expenses, costs, and attorneys’ fees;

12 I. An Order awarding such other injunctive and declaratory relief as is  
13 necessary to protect the interests of Plaintiffs and the Nationwide Class and  
14 Subclasses; and

15 J. An Order awarding such other and further relief as the Court deems  
16 necessary, just, and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs demand a trial by jury for all claims and issues so triable.

19  
20 Dated: May 9, 2023

By: /s/ Dustin L. Schubert

21 Robert C. Schubert (S.B.N. 62684)

22 Dustin L. Schubert (S.B.N. 254976)

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27 dschubert@sjk.law

28 *Counsel for Plaintiffs and the Putative Classes*

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Louis Tarantino

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

(c) Attorneys (Firm Name, Address, and Telephone Number) SCHUBERT JONCKHEER & KOLBE LLP 2001 Union Street, Suite 200, San Francisco, California 94123 Telephone: (415) 788-4220

DEFENDANTS

Trader Joe's Company

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

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

Attorneys (If Known)

'23CV0853 L KSC

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

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, 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. s. 1332(d)(2) (the Class Action Fairness Act) Brief description of cause: Diversity suit under CAFA for violation of state warranty and consumer protection laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE District Judge Ruth Bermudez Montenegro DOCKET NUMBER 3:23-cv-00061-RBM-KSC

DATE 05-09-2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Dustin L. Schubert

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE