

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

LUKE GRALIA, KAMILA HARKAVY,  
SARAH SHERMAN, and CRYSTAL  
RODRIGUEZ, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

LINDT & SPRÜNGLI (USA), INC.,

Defendant.

Case No. 1:23-cv-01186-AMD-RER

JASON GOLDTSEIN, LYNN MINCK, and  
MICHELLE STURGIS, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

LINDT & SPRÜNGLI (USA), INC.,

Defendant.

Case No. 1:23-cv-03014-NRM-CLP

TARA NEWMAN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LINDT & SPRÜNGLI (NORTH AMERICA),  
INC.,

Defendant.

Case No. 1:23-cv-03641-ENV-JRC

AMANDA HOWARD, individually and on behalf of all others similarly situated,

Plaintiff,

v.

LINDT & SPRÜNGLI (USA), INC.,

Defendant.

Case No. 1:23-cv-03484-AMD-RER

JAMES TETTENHORST, individually and on behalf of all others similarly situated,

Plaintiff,

v.

LINDT & SPRÜNGLI (USA), INC.,

Defendant.

Case No. 1:23-cv-03552-NGG-NMH

**NOTICE OF MOTION AND UNOPPOSED MOTION  
BY PLAINTIFFS FOR CONSOLIDATION OF ACTIONS**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiffs Luke Gralia, Kamila Harkavy, Sarah Sherman, Crystal Rodriguez, Jason Goldstein, Lynn Minck, Michelle Sturgis, Amanda Howard, and James Tettenhorst will move this Court at the United States Courthouse located at 225 Cadman Plaza East, Brooklyn, New York 11201, before the Honorable Ann M. Donnelly, for an order consolidating *Gralia et al. v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-01186 (E.D.N.Y.) with *Goldstein v. Lindt & Sprüngli (USA), Inc.*, Case No. Case No. 1:23-cv-03014 (E.D.N.Y.); *Howard v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-03484 (E.D.N.Y.); *Newman v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-03641 (E.D.N.Y.); and *Tettenhost v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-03552 (E.D.N.Y.) before this Court pursuant to Federal Rule of Civil Procedure 42(a).

Should the Motion be granted, Plaintiffs respectfully request that every pleading filed in the consolidated action bear the following caption:

IN RE LINDT & SPRÜNGLI DARK CHOCOLATE LITIGATION
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Case No. 1:23-cv-01186-AMD-RER

This Motion is unopposed and supported by the Memorandum of Law filed contemporaneously herewith, any oral arguments to be made at the hearing on this motion, and all other papers, documents or exhibits on file to be filed in this action.

### **INTRODUCTION**

Plaintiffs Luke Gralia, Kamila Harkavy, Sarah Sherman, Crystal Rodriguez, Jason Goldstein, Lynn Minck, Michelle Sturgis, Amanda Howard, and James Tettenhorst (collectively “Plaintiffs”) move for an order under Federal Rule of Civil Procedure 42(a) consolidating *Gralia et al. v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-01186 (E.D.N.Y.) with *Goldstein v. Lindt & Sprüngli (USA), Inc.*, Case No. Case No. 1:23-cv-03014 (E.D.N.Y.); *Howard v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-03484 (E.D.N.Y.); *Newman v. Lindt & Sprüngli (North America), Inc.*, Case No. 1:23-cv-03641 (E.D.N.Y.); and *Tettenhost v. Lindt & Sprüngli (USA), Inc.*, Case No. 1:23-cv-03552 (E.D.N.Y.) (together, the “Actions”).<sup>1</sup> The Actions should be consolidated before this Court, which presides over the first-filed *Gralia* case. Defendant does not oppose this motion.

All five cases involve claims regarding Defendant’s manufacturing, distribution, and sale of its Lindt Excellence 70% and 85% Cocoa Dark Chocolate products (the “Products”) that contain dangerously high levels of lead or cadmium, neurotoxic impurities that have been linked

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<sup>1</sup> The plaintiff in *Khalili v. Lindt & Sprüngli (USA), Inc.*, Case No. 2:23-cv-2543 (C.D. Cal.), which was voluntarily dismissed without prejudice in lieu of a stipulated motion to transfer, will also be added to the forthcoming consolidated complaint.

to a variety of health problems, especially in young children and pregnant adults, and involve essentially the same sets of facts. As such, consolidation of cases in this Court involving the Products will streamline the litigation and allow all the cases to be litigated together before one judge.

### **RELEVANT BACKGROUND**

The Lindt Excellence 70% and 85% Cocoa dark chocolate bars are two types of dark chocolate products manufactured, distributed, and sold by Defendant. The Products discussed herein contain lead or cadmium, neurotoxic impurities that are especially dangerous for pregnant people and young children. Frequent exposure to lead in adults, for example, can lead to nervous system problems, hypertension, immune system suppression, kidney damage, and reproductive issues. The Products are not designed to contain lead or cadmium, and in fact no amount of lead or cadmium is acceptable such as the Products manufactured by Defendant. The presence of lead or cadmium in the Products renders them adulterated and misbranded, and therefore illegal to sell under both federal and state law. As a result, the Products are unsafe and illegal to sell under federal law, and therefore worthless. *See* 21 U.S.C. §§ 331(a), 352; *see also Debernardis v. IQ Formulations, LLC*, 942 F.3d 1076, 1085 (11th Cir. 2019); *In re Valsartan, Losartan, & Irbesartan Prod. Liab. Litig.*, 2021 WL 222776, at \*16 (D.N.J. Jan. 22, 2021).

Dark chocolate is often touted as being a healthier alternative to milk chocolate, however, a December 2022 report by Consumer Reports revealed that certain dark chocolate bars, including the Products, had high enough levels of lead and cadmium that “eating just an ounce a day would put an adult over a level that public health authorities and [Consumer Reports’] experts say may

be harmful.”<sup>2</sup> Heavy Metals in foods pose a significant safety risk to consumers because they can cause cancer and often irreversible damage to brain development as well as other serious health problems. The Food and Drug Administration (“FDA”) and the World Health Organization (“WHO”) have declared cadmium and lead “dangerous to human health.”<sup>3</sup> The FDA has acknowledged that “exposure to these [heavy metals] are likely to have the most significant impact on public health” and has prioritized them in connection with its Toxic Elements Working Group to look at reducing the risks associated with human consumption of heavy metals.<sup>4</sup>

As a result of the attention this report garnered, many actions were initiated within a short period of time, with the *Gralia* action being first-filed. Plaintiffs’ Counsel have self-organized and spoken with Defendant and now seek to consolidate the pending litigations in this Court.

## ARGUMENT

### **I. THE COURT SHOULD CONSOLIDATE THE MATTERS**

Pursuant to Fed. R. Civ. P. 42(a), the Actions should be consolidated because they involve common questions of law and fact. District courts have “broad discretion to determine whether consolidation is appropriate,” and they “have taken the view that considerations of judicial economy favor consolidation.” *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284–85 (2d Cir.1990); *see also* 8 MOORE’S FED. PRAC. § 42.10[1][a], at 42-9 (3d ed. 1998) (The standard for

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<sup>2</sup> Kevin Loria, *Lead and Cadmium Could be in Your Dark Chocolate*, CONSUMER REPORTS (December 15, 2022), <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

<sup>3</sup> *Staff Report: Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, Feb. 4, 2021 (“House Report”) at 2, <https://oversight.democrats.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (last accessed May 11, 2023).

<sup>4</sup> Smith, Martyn T. (2010). Advances in Understanding Lead or cadmium Health Effects and Susceptibility. *Annual Review of Public Health*. 2010 Vol. 31:133-148 (<https://www.annualreviews.org/doi/full/10.1146/annurev.publhealth.012809.103646>)

consolidation “is an expansive one, allowing consolidation of the broad range of cases brought in federal court.”). Under Fed. R. Civ. P. 42, a court may consolidate multiple actions that “involve a common question of law or fact.” *Chitturi v. Kingold Jewelry, Inc.*, 2020 WL 8225336, at \*2 (E.D.N.Y., 2020) (quoting Fed. R. Civ. P. 42(a)(2)). In exercising its discretion, the court must consider:

[W]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

*Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990).

Here, consolidation is appropriate because there are overlapping putative classes with nearly identical claims for relief. As such, there is no risk for prejudice or confusion as one consolidated complaint can be prepared on behalf of the class. Courts within the Second Circuit routinely consolidate cases involving overlapping classes and claims for relief. *See Delre v. Perry*, 288 F.R.D. 241, 246-47 (E.D.N.Y. 2012) (“The Plaintiffs both bring class action lawsuits on behalf of the same class and raise almost identical claims against the same Defendant. Moreover, both cases involve the same set of facts with respect to the development, marketing and sale of the Sinus Buster Products and allege that the Defendant made a series of false and misleading claims that were material and important to a consumer’s purchasing decision. As such, as these cases involve almost identical questions of law and fact as well as almost identical parties, it appears that consolidation will economize both judicial resources and the resources of the parties.”); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 288 F.R.D. 26, 35-36 (S.D.N.Y. 2012) (“Both claims involve putative class actions that seek relief on behalf of similar classes, asserted against some of the same Defendant, arising out of the same series of events,

and assert claims under federal securities laws. To reject consolidation, would unnecessarily create two distinct and parallel securities litigation cases with different plaintiffs and different leadership.”); *Endress v. Gentiva Health Servs., Inc.*, 278 F.R.D. 78, 82 (E.D.N.Y. 2011) (consolidating five cases brought on behalf of the “same class”); *In re HSBC Bank USA, N.A., Debit Card Overdraft Fee Litig.*, 2013 WL 3816597, at \*9 (E.D.N.Y. July 22, 2013) (granting consolidation where the “Plaintiffs br[ought] class action lawsuits on behalf of similar classes and raise almost identical claims against the same Defendant”); *Hoffman v. Ighodaro*, 2016 WL 5812666, at \*1 (S.D.N.Y. Sept. 28, 2016) (“Consolidation is favored where the same class of plaintiffs asserts the same claims and allegations against the same Defendant.”).

### **CONCLUSION**

Given the clear factual and legal overlap between the Actions, the conservation of judicial resources by consolidating the cases, and the lack of prejudice to any party, the Actions should be consolidated before this Court, which presides over the first-filed case.

Dated: June 9, 2023

Respectfully submitted,

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