

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson (SBN 257074)
rclarkson@clarksonlawfirm.com
Bahar Sodaify (SBN 289730)
bsodaify@clarksonlawfirm.com
Alan Gudino (SBN 326738)
agudino@clarksonlawfirm.com
Ryan D. Ardi (SBN 348738)
rardi@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050
Fax: (213) 788-4070

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ELIZABETH KERMANI, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

MONDELEZ GLOBAL LLC,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

1. VIOLATION OF UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)
2. VIOLATION OF FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)
3. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *et seq.*)
4. BREACH OF IMPLIED WARRANTY
5. UNJUST ENRICHMENT
6. NEGLIGENT FAILURE TO WARN

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Page No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION..... 1

JURISDICTION..... 6

VENUE..... 6

PARTIES 6

FACTUAL ALLEGATIONS 9

 A. Background..... 9

 B. Plaintiff and Reasonable Consumers Were Misled by the Material
 Omission..... 20

 C. No Adequate Remedy at Law 22

CLASS ACTION ALLEGATIONS 27

CAUSES OF ACTION..... 31

COUNT ONE..... 31

 “Unfair” Prong..... 33

 “Fraudulent” Prong..... 35

 “Unlawful” Prong 36

COUNT TWO..... 38

COUNT THREE 39

COUNT FOUR 41

COUNT FIVE 43

COUNT SIX 44

PRAYER FOR RELIEF 46

DEMAND FOR JURY TRIAL 47

1 Plaintiff Elizabeth Kermani (“Plaintiff”), individually and on behalf of all
 2 others similarly situated, by and through her attorneys, brings this class action
 3 complaint against Defendant Mondelez Global LLC. (“Defendant” or “Mondelez”).
 4 Plaintiff’s allegations are based upon personal knowledge as to herself and her own
 5 acts, and upon information and belief as to all other matters based on investigation
 6 conducted by and through Plaintiff’s attorneys. Plaintiff believes that substantial
 7 additional evidentiary support exists for the allegations set forth herein, after a
 8 reasonable opportunity for discovery.

9 INTRODUCTION

10 1. **Synopsis.** Compared to other types of chocolate, dark chocolate is
 11 considered a healthier chocolate rich in antioxidants and other beneficial compounds.
 12 Consumers who purchase dark chocolate therefore believe they are consuming
 13 healthier chocolate. However, a recent study revealed that certain dark chocolate
 14 products, including Defendant’s Green & Black’s Organic Dark Chocolate 70%
 15 Cacao and Hu Organic Simple Dark Chocolate 70% Cacao, contain alarming levels
 16 of dangerous heavy metals that can pose serious health risks to consumers. The study
 17 found that just one ounce of Defendant’s Green & Black’s Organic Dark Chocolate
 18 70% Cacao contains a staggering 181% of California’s daily maximum allowable
 19 dose level (MADL) for cadmium and 143% of the MADL for lead; Defendant’s Hu
 20 Organic Simple Dark Chocolate 70% Cacao contains a shocking 210% of California’s
 21 daily maximum allowable dose level (MADL) for lead and 56% of the MADL for
 22 cadmium.¹ Lead and cadmium are toxic heavy metals that are unsafe for consumption
 23 because they can cause various health issues in adults and children. Yet, to increase
 24 its profits and gain an unfair advantage over its competitors, Defendant sells the
 25 Products without disclosing the heavy metal content contained therein, deliberately
 26

27 ¹ “Lead and Cadmium Could Be in Your Dark Chocolate” (Dec. 15, 2022),
 28 Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

1 leading reasonable consumers, including Plaintiff, to believe the Products are safe for
2 consumption when they are not. A true and accurate depiction of the label and
3 packaging for Defendant’s Green & Black’s Organic Dark Chocolate 70% Cacao and
4 Hu Organic Simple Dark Chocolate 70% Cacao is depicted below as “**Exhibit 1**” and
5 “**Exhibit 2.**”

6 **Exhibit 1.** Green & Black’s Organic Dark Chocolate 70% Cacao



Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2. Hu Organic Simple Dark Chocolate 70% Cacao



1 2. **The Product(s).** The Products at issue include the Green & Black’s
2 Organic Dark Chocolate 70% Cacao, Hu Organic Simple Dark Chocolate 70% Cacao,
3 and all other substantially similar dark chocolate products manufactured or sold by
4 Defendant to consumers in California and the United States that materially omit the
5 contents of lead and cadmium therein.

6 3. **The Deception.** Defendant has misled reasonable consumers, including
7 Plaintiff, into believing the Products are safe for consumption when they are not. A
8 December 2022 Consumer Reports study measured the amount of heavy metals in
9 dark chocolates, including the Products, against California’s daily MADL for lead
10 (0.5 micrograms) and cadmium (4.1 micrograms).² The study found that Defendant’s
11 Products “contain cadmium and lead—two heavy metals linked to a host of health
12 problems in children and adults,” in amounts such that “eating just an ounce a day
13 would put an adult over a level that public health authorities and Consumer Reports’
14 experts say may be harmful” *Id.* The study also found that just an ounce of the
15 Green & Black’s Organic Dark Chocolate 70% Cacao contained a staggering amount
16 of cadmium, measuring at 181% of California’s MADL for cadmium, and a
17 significant amount of lead, measuring at 143% of the MADL for lead. *Id.* This Product
18 contains 3.17 ounces of chocolate per bar. (*See Ex. 1, supra.*) The study also found
19 that just an ounce of the Hu Organic Simple Dark Chocolate 70% Cacao contained a
20 staggering amount of lead, measuring at 210% of California’s MADL for lead, and a
21 significant amount of cadmium, measuring at 56% of the MADL for cadmium. *Id.*
22 This Product contains 2.1 ounces of chocolate per bar. (*See Ex. 2, supra.*) Exposure
23 to lead and cadmium can have detrimental effects on humans. Lead and cadmium can
24 accumulate in the body over time and cause a range of health issues, including
25

26
27 _____
28 ² “Lead and Cadmium Could Be in Your Dark Chocolate” (Dec. 15, 2022),
Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

1 developmental toxicity, male reproductive toxicity, and female reproductive toxicity.³
2 Frequent, long-term exposure to even small amounts of heavy metals can also lead to
3 “nervous system problems, hypertension, immune system suppression, kidney
4 damage, and reproductive issues.”⁴ Defendant’s failure to disclose its Products’
5 alarming lead and cadmium content places consumers in jeopardy of developing
6 illnesses.

7 4. **Duty to Disclose and Materiality of Material Omission.** Defendant had
8 a duty to warn consumers about the risks associated with consuming its Products,
9 because Defendant knew or should have known that its Products contain heavy metals
10 toxic to humans. Defendant’s failure to disclose the heavy metal content in its
11 Products is a material omission because the information is relevant to consumers’
12 decision-making process. Lead and cadmium are known to have adverse effects on
13 humans, and this information could influence consumers’ decisions to purchase the
14 Products. Plaintiff and other consumers like her would not have purchased the
15 Products had they known the Products contained harmful lead and cadmium.

16 5. **Primary Dual Objectives.** Plaintiff brings this action individually and in
17 a representative capacity on behalf of those similarly situated consumers who
18 purchased the Products during the relevant Class Period (Class and/or Subclass
19 defined *infra*), for dual primary objectives: **One**, Plaintiff seeks, on her behalf and on
20 behalf of the Class/Subclass, injunctive relief to stop Defendant’s unlawful
21 manufacture, marketing, and sale of the Products with the material omission about
22 lead and cadmium to avoid or mitigate the risk of deceiving the public into believing
23 the Products are safe for consumption, by requiring that Defendant change its business

24 ³ California Office of Environmental Health Hazard Assessments, *Lead and Lead*
25 *Compounds*, OEHHA, [https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-](https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds)
26 [compounds](https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds); California Office of Environmental Health Hazard Assessments,
Cadmium, OEHHA, <https://oehha.ca.gov/proposition-65/chemicals/cadmium>.

27 ⁴ “Lead and Cadmium Could Be in Your Dark Chocolate” (December 15, 2022),
28 Consumer Reports, [https://www.consumerreports.org/health/food-safety/lead-and-](https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/)
[cadmium-in-dark-chocolate-a8480295550/](https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/).

1 practices, which may include one or more of the following: inclusion of a disclaimer
2 on the Products' labels and/or packaging, modification of the Products' formulation
3 be it a change in ingredients or their sourcing and manufacturing processes, and/or
4 discontinuance of the Products' manufacture, marketing, and/or sale. **Two**, Plaintiff
5 seeks, on Plaintiff's behalf and on behalf of the Class/Subclass, a monetary recovery
6 of the full price that Plaintiff and consumers paid for the Products, which should have
7 disclosed the heavy metal content in them, as consistent with permissible law
8 (including, for example, damages, restitution, disgorgement, and any applicable
9 penalties/punitive damages solely as to those causes of action so permitted).

10 JURISDICTION

11 6. This Court has subject matter jurisdiction over this action pursuant to the
12 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (i) there are 100 or
13 more class members, (ii) there is an aggregate amount in controversy exceeding
14 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because
15 at least one plaintiff and defendant are citizens of different states. This Court also has
16 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

17 VENUE

18 7. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action
19 because a substantial part of the events, omissions, and acts giving rise to the claims
20 herein occurred in this District. Plaintiff is a citizen of California, resides in this
21 District, and purchased the Products within this District. Moreover, Defendant
22 receives substantial compensation from sales in this District, and Defendant's
23 material omissions had a substantial effect in this District.

24 PARTIES

25 8. **Plaintiff Kermani.** The following is alleged based upon personal
26 knowledge:

27 a. **Residence.** Plaintiff is a resident of California.

28 b. **Purchase Details.** Plaintiff purchased Defendant's Green & Black's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Organic Dark Chocolate 70% Cacao and Hu Organic Simple Dark Chocolate 70% Cacao for approximately \$5.50 for the Green & Black’s Organic Dark Chocolate 70% Cacao and approximately \$7.00 for the Hu Organic Simple Dark Chocolate 70% Cacao at a Erewhon store in Los Angeles, California, in or around Winter 2022.

- c. **Reliance on Material Omission.** In making her purchase, Plaintiff relied upon the Products’ labeling, packaging, and advertising. Plaintiff believed the Products could be safely consumed because the Products did not contain any warning or disclosure about the lead and cadmium content therein.
- d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that the Products contained lead or cadmium or that it was unsafe for consumption.
- e. **No Warning.** Plaintiff did not see any disclaimer, qualifier, or other explanatory statement or information on the Products’ labels or packaging that suggested that the Products contained lead and cadmium or that it was not safe for consumption. Defendant had exclusive knowledge of this information but nevertheless failed to inform consumers.
- f. **Causation/Damages.** Plaintiff would not have purchased the Products if the heavy metal content contained in it had been disclosed, and had Plaintiff known that the Products were not safe for consumption.
- g. **Desire to Repurchase.** Plaintiff continues to see the Products available for sale and desires to purchase it again if she could be sure about the contents of the Products.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff is not personally familiar with the science behind the Products as she does not possess any specialized knowledge, skill, experience,

1 or education in chocolate products, similar to and including the
2 Products, and she has no way of determining whether the Products
3 contain heavy metals.

4 i. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on
5 the Products' true contents.

6 9. **Plaintiff's Future Harm.** Defendant continues to market and sell the
7 Products without disclosing the heavy metals contained in them. Plaintiff wants to
8 purchase the Products in the future if she can be sure about the content in the Products.
9 However, Plaintiff is an average consumer who is not sophisticated in, for example,
10 dark chocolate products, similar to and including the Products, and she cannot
11 determine if harmful heavy metals, such as lead and cadmium, are present in
12 Defendant's Products. Since Plaintiff would like to purchase the Products again—
13 despite the fact that the Products currently fail to disclose the heavy metals contained
14 in them—Plaintiff would likely and reasonably, but incorrectly, assume the Products
15 are safe for consumption if no appropriate warning is placed on the Products' labels.
16 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that
17 Defendant has fixed the Products such that Plaintiff may buy them again, believing
18 they no longer contain harmful heavy metals. In this regard, Plaintiff is currently and,
19 in the future, deprived of the ability to rely on the Products' labeling and packaging.

20 10. **Defendant Mondelez.** Defendant is a Delaware corporation with its
21 principal place of business in Chicago, Illinois. Defendant was doing business in the
22 state of California at all relevant times, including the Class Period. Directly and
23 through its agents, Defendant has substantial contacts with and receives substantial
24 benefits and income from and through the state of California, as well as the United
25 States of America. Defendant is an owner, manufacturer, and/or distributor of the
26 Products, and created and/or authorized the labeling to market the Products.
27 Defendant and its agents promoted, marketed, and sold the Products at issue
28 throughout the United States and, in particular, within this state and judicial district.

1 The unfair, unlawful, deceptive, and misleading labeling on the Products was
 2 prepared, authorized, ratified, and/or approved by Defendant and its agents to deceive
 3 and mislead consumers in the state of California and the United States into purchasing
 4 the Products. Additionally, Defendant knew about the heavy metal content in the
 5 Products but failed to disclose that information to consumers. The information was
 6 material, and Defendant had a duty to disclose the information, because the
 7 information could influence a consumer's purchasing decision, and it therefore
 8 created an unreasonable safety risk to consumers.

9 FACTUAL ALLEGATIONS

10 A. Background

11 11. **History of Chocolate.** Chocolate is derived from *Theobroma cacao*, also
 12 known as the cacao tree or cocoa tree.⁵ The cacao/cocoa tree is native to Central and
 13 South America and grows upwards to 30 feet.⁶ It produces a pod-like fruit which
 14 contains about 40 to 50 beans once matured.⁷ All forms of chocolates are derived
 15 from cacao beans. To create chocolate, the cacao beans are separated from the pod
 16 and the pulp within the pod.⁸ The beans are then fermented, dried, and roasted.⁹ The

17
 18
 19
 20 ⁵ “*Theobroma cacao* L. (Malvaceae),” UNIVERSITY OF OXFORD,
 21 [https://herbaria.plants.ox.ac.uk/bol/plants400/Profiles/ST/Theo#:~:text=Theobroma%20cacao%20is%20the%20Latin,his%20Species%20Plantarum%20\(1753\).](https://herbaria.plants.ox.ac.uk/bol/plants400/Profiles/ST/Theo#:~:text=Theobroma%20cacao%20is%20the%20Latin,his%20Species%20Plantarum%20(1753).)

22 ⁶ “*Theobroma cacao*,” MISSOURI BOTANICAL GARDEN,
 23 [https://www.missouribotanicalgarden.org/PlantFinder/PlantFinderDetails.aspx?taxonid=287263.](https://www.missouribotanicalgarden.org/PlantFinder/PlantFinderDetails.aspx?taxonid=287263)

24 ⁷ Frank Robles, “About The Cacao Tree,” CHOCOLATE,
 25 [https://www.chocolate.org/blogs/chocolate-blog/about-the-cacao-tree.](https://www.chocolate.org/blogs/chocolate-blog/about-the-cacao-tree)

26 ⁸ “Harvesting & Post-harvest processing,” ICCO Secretariat
 27 INTERNATIONAL COCOA ORGANIZATION, [https://www.icco.org/harvesting-post-harvest-new/.](https://www.icco.org/harvesting-post-harvest-new/)

28 ⁹ Veronika Barišić, et al., “The Chemistry behind Chocolate Production,” NATIONAL
 LIBRARY OF MEDICINE, (Aug. 30, 2019),
[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6749277/.](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6749277/)

1 roasted beans are next crushed, allowing for the removal of their outer hulls.¹⁰ The
 2 nibs that remain are ground to form a paste-like chocolate liquor.¹¹ This chocolate
 3 liquor is the starting point of all chocolate products.¹² It is mixed with other
 4 ingredients, including sugar, milk, additional cacao fat or butter (cacao bean contain
 5 cacao fat/butter), and various spices, which, when blended with emulsifiers, create
 6 the final chocolate product consumers purchase.¹³

7 12. Chocolate’s popularity made chocolate a commodity. The industrial
 8 revolution allowed companies like Cadbury, Nestle and Hershey to mass-produce
 9 chocolate products.¹⁴ Mass-production resulted in lower prices, meaning greater
 10 percentages of the population began enjoying chocolate products.¹⁵ Today chocolate
 11 is a \$130 billion global industry, and Americans spend roughly \$22 billion a year on
 12 chocolate products.¹⁶

13 13. On average, each American consumes nearly twelve pounds of chocolate
 14

15 _____
 16 ¹⁰ “How is Chocolate Made?” SCIENCE OF COOKING,
 17 [https://www.scienceofcooking.com/chocolate/how-is-chocolate-](https://www.scienceofcooking.com/chocolate/how-is-chocolate-made.htm#:~:text=GRINDING%20OF%20NIB,flows%20out%20in%20liquid%20form.)
 18 [made.htm#:~:text=GRINDING%20OF%20NIB,flows%20out%20in%20liquid%20form.](https://www.scienceofcooking.com/chocolate/how-is-chocolate-made.htm#:~:text=GRINDING%20OF%20NIB,flows%20out%20in%20liquid%20form.)

19 ¹¹ *Id.*

20 ¹² *Id.*

21 ¹³ *Id.*

22 ¹⁴ “More Chocolate, More Quickly!: Changes in Chocolate Consumption brought
 23 about by the Industrial Revolution,” WORD PRESS, (Mar. 24, 2020),
 24 [https://chocolateclass.wordpress.com/2020/03/24/more-chocolate-more-quickly-](https://chocolateclass.wordpress.com/2020/03/24/more-chocolate-more-quickly-changes-in-chocolate-consumption-brought-about-by-the-industrial-revolution/)
 25 [changes-in-chocolate-consumption-brought-about-by-the-industrial-revolution/.](https://chocolateclass.wordpress.com/2020/03/24/more-chocolate-more-quickly-changes-in-chocolate-consumption-brought-about-by-the-industrial-revolution/)

26 ¹⁵ *Id.*

27 ¹⁶ Govind Bhutada, “Cocoa’s bittersweet supply chain in one visualization,” WORLD
 28 ECONOMIC FORUM, (Nov. 4, 2020),
[https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-](https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-bar-africa-exports/)
[bar-africa-exports/](https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-bar-africa-exports/); Linda Searing, “The Big Number: \$22 billion a year on
 chocolate. Is that healthy?” THE WASHINGTON POST, (Feb. 10, 2018),
[https://www.washingtonpost.com/national/health-science/the-big-number22-billion-](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html)
[a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html)
[372e2047c935_story.html.](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html)

1 per year.¹⁷ This appetite for chocolate is warranted. Not only is chocolate tasty, but
 2 studies show that it has positive physical effects on humans, which is why the product
 3 has been sought after for thousands of years.¹⁸ Chemicals in chocolate have been
 4 shown to trigger euphoria, the same endorphins that trigger the “in love” feeling in
 5 humans, which is why chocolate is unsurprisingly the go-to Valentine’s Day gift.¹⁹ In
 6 surveys measuring flavors, chocolate consistently remains the favorite.²⁰ Chocolate’s
 7 ability to increase alertness and energy is well-documented, which is why chocolate
 8 has been standard issue to U.S. servicemen since George Washington.²¹ The effects
 9 of chocolate are so well-known, it has been an integral part of the cultural psyche
 10 since the Aztecs.²² Even modern examples like the 1971 film *Willy Wonka & the*
 11 *Chocolate Factory* and the 2000 film *Chocolate* reference chocolate’s cultural impact.
 12 Diners would be hard-pressed to see a dessert menu that did not contain at least one
 13 chocolate dessert.

14 **14. Health Benefits of Dark Chocolate.** Dark chocolate has been widely
 15 considered to be the healthier option among other chocolate types. This is because

16 ¹⁷ Linda Searing, “The Big Number: \$22 billion a year on chocolate. Is that
 17 healthy?” THE WASHINGTON POST, (Feb. 10, 2018),
 18 https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html.

19 ¹⁸ Donatella Lippi, “Chocolate in History: Food, Medicine, Medi-Food,” NATIONAL
 20 LIBRARY OF MEDICINE, (May 5, 2013),
 21 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3708337/>.

22 ¹⁹ *Id.*; Chris Kilham, “Chocolate: The Love Drug. . .And Why It’s Good for You.”
 23 FOX NEWS, (Oct. 23, 2015), <https://www.foxnews.com/health/chocolate-the-love-drug-and-why-its-good-for-you>.

24 ²⁰ “Chocolate is America's favorite ice cream flavor, survey says,” CBS
 25 MINNESOTA, (July 15, 2022) <https://www.cbsnews.com/minnesota/news/america-favorite-ice-cream-flavor-chocolate/>.

26 ²¹ Sean Jacobson, “Chocolate is a Fighting Food! – Chocolate bars in the Second
 27 World War,” NATIONAL MUSEUM OF AMERICAN HISTORY, (Oct. 24, 2016),
 28 <https://americanhistory.si.edu/blog/chocolate-bars-second-world-war>.

²² “The Development of Chocolate,” WORLD PRESS, (Mar. 15, 2019),
<https://chocolateclass.wordpress.com/2019/03/15/the-development-of-chocolate/>.

1 dark chocolate contains high concentrations of cocoa flavonoids, which are potent
 2 antioxidants. Among its many benefits, dark chocolate is known to positively affect
 3 heart health. Studies have shown that dark chocolate has the potential to reduce the
 4 risk of heart disease because it can help improve blood flow and lower blood
 5 pressure.²³ Dark chocolate can also have positive effects on cognitive function. One
 6 study found that consuming cocoa flavonoids can help improve memory and
 7 attention, especially among elderly participants with mild cognitive impairments.²⁴
 8 Other studies have suggested that dark chocolate can have anti-inflammatory
 9 properties which can help reduce the risk of chronic diseases such as diabetes and
 10 cancer.²⁵ While other studies have found that the flavonoids in dark chocolate can
 11 improve mood and lower symptoms of anxiety and depression.²⁶

12 **15. Consumer Demand for Dark Chocolate.** For consumers, dark chocolate
 13 has become increasingly popular and sought after because of its perceived health
 14 benefits.²⁷ The cacao bean is one of the best-known sources of dietary polyphenols,
 15 constituting approximately 10% of a whole bean’s dry weight.²⁸ The antioxidant

17 ²³ “The Neuroprotective Effects of Cocoa Flavanol and its Influence on Cognitive
 18 Performance,” National Library of Medicine (Feb. 5, 2013),
 19 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3575938/>.

20 ²⁴ *Id.*

21 ²⁵ “The Effects of Cocoa on the Immune System,” National Library of Medicine
 22 (June 4, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3671179/>.

23 ²⁶ “The Neuroprotective Effects of Cocoa Flavanol and its Influence on Cognitive
 24 Performance,” National Library of Medicine (Feb. 5, 2013),
 25 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3575938/>.

26 ²⁷ “United States Chocolate Market – Growth, Trends, Covid-19 Impact, and
 27 Forecasts (2023-2028” Mordor Intelligence,
 28 [https://www.mordorintelligence.com/industry-reports/united-states-chocolate-](https://www.mordorintelligence.com/industry-reports/united-states-chocolate-market)
[market](https://www.mordorintelligence.com/industry-reports/united-states-chocolate-market); “Phenolic and Theobromine Contents of Commercial Dark, Milk and White
 Chocolates on the Malaysian Market” (Jan. 14, 2009), National Library of
 Medicine, <https://ncbi.nlm.nih.gov/pmc/articles/PMC6254055/>.

²⁸ “Chocolate, ‘Food of the Gods’: History, Science, and Human Health” (Dec. 6,
 2019), National Library of Medicine,
<https://ncbi.nlm.nih.gov/pmc/articles/PMC6950163/>.

1 properties of polyphenols are known to have positive effects on the cardiovascular
 2 system, the central nervous system, the intestinal system, and the immune system.²⁹
 3 Dark chocolate in particular contains a higher percentage of cocoa and thus has higher
 4 phenolic antioxidant compounds when compared to other chocolate varieties. *Id.*

5 **16. Heavy Metals in Chocolate.** Despite chocolate’s popularity and health
 6 benefits, researchers, manufacturers, and chocolate companies have known about the
 7 high levels of lead and cadmium in cocoa/chocolate products.³⁰ During the late 1970s,
 8 after seeing high concentrations of lead in foods and human populations, researchers
 9 began to focus on the source of lead in cocoa, the main ingredient in chocolate
 10 products. *Id.* Regarding milk chocolate products, the Food and Drug Administration
 11 reported in its 2000 Total Diet Survey (TDS), that the “average lead content for milk
 12 chocolate candy bars (27 ng/g) was the fourth highest reported for all food items.” *Id.*
 13 The 20th Australian TDS showed that “milk chocolate had the second highest value
 14 of 65 foods, with a mean value of 21 ng/g and a maximum value of 40 ng/g,” whereas
 15 the 1997/1998 New Zealand TDS found that “lead concentration in chocolate biscuits
 16 (15 ng/g) was 3-fold greater than those of cracker (5.2 ng/g) and plain sweet biscuits
 17 (5.2 ng/g).” *Id.* A 2005 study shows that cocoa-based chocolates sold in India, Dahiya
 18 had an “average lead concentration of 1.92 µg/g (range, 0.05-8.3 µg/g),” and another
 19 1999 study found the “average lead content of cocoa powders sold in Nigeria to be
 20 310 ng/g with a range of 80-850 ng/g.” *Id.*

21 **17.** Lead and cadmium concentrations in dark chocolate are higher than those
 22 in milk chocolate, due to the higher amounts of cocoa solids. In a 2013 study,
 23 researchers found that “there was a linear correlation between the level of trace
 24

25 ²⁹ “Cocoa and Dark Chocolate Polyphenols: From Biology to Clinical Applications”
 26 (June 9, 2017), National Library of Medicine,
 27 <https://ncbi.nlm.nih.gov/pmc/articles/PMC5465250/>.

28 ³⁰ Rankin, Charley W. “Lead contamination in cocoa and cocoa products: isotopic
 evidence of global contamination” (Oct. 2005), Environmental Health Perspective,
<https://pubmed.ncbi.nlm.nih.gov/16203244/>.

1 elements in chocolate and the cocoa solids content.”³¹ Specifically, “lead was found
2 to be correlative to the cocoa solids content in all brands” evaluated. *Id.* For example,
3 the “distribution of trace metals in cocoa powder” was 103 ng/g for lead and 125 ng/g
4 for cadmium. In another 2014 study, the concentrations of cadmium and lead ranged
5 from “<1.7-107.6 and <21-138.4 ng/g, respectively, and the highest concentrations of
6 cadmium and lead were found in dark chocolates.”³² This study also found that a
7 “linear correlation exists between the cocoa content and the concentration of cadmium
8 ($R^2=0.907$) and lead ($R^2=0.955$),” where the R^2 value “indicates the percentage of the
9 variance” between two variables, meaning a value closer to 1, demonstrates a higher
10 level of correlation. *Id.* This means that dark chocolate with 47-85% cocoa solids
11 concentrations had higher lead and cadmium concentrations. Cocoa solids are the
12 biggest sources of lead and cadmium in cocoa products, so dark chocolate products
13 that have a high concentration of cocoa solids have higher concentrations of lead and
14 other heavy metals.

15 18. Based on the prevailing research on lead and cadmium, Defendant knew
16 or should have known that its chocolates have excessive levels of these heavy metals.
17 Yet, Defendant failed to disclose to consumers the heavy metal content contained in
18 its Products. This information is material to consumers because it influences their
19 decision about whether to purchase the Products. This is especially true when the
20 Products contain significant levels of both lead and cadmium, which are toxic heavy
21 metals that can affect consumers’ health and safety. Defendant’s failure to disclose
22 this information created a substantial and unreasonable health and safety risk to
23 consumers.

24
25 ³¹ Yanus, Rinat Levi, et al. “Trace elements in cocoa solids and chocolate: An
26 ICPMS study,” (May 16, 2013), *Talanta*,
<https://www.sciencedirect.com/science/article/abs/pii/S0039914013008473>.

27 ³² Villa, Javier E. L., et al. “Cadmium and Lead in Chocolates Commercialized in
28 Brazil,” (Aug. 15, 2014), *Journal of Agricultural and Food Chemistry*,
<https://pubs.acs.org/doi/abs/10.1021/jf5026604>.

1 **19. Sources of Lead and Cadmium.** Lead does not appear in cacao beans
 2 naturally; rather, lead is introduced in various ways from the soil where the cacao
 3 beans are grown and the water used for irrigation to the equipment used to process
 4 the beans.³³ These sources can include the “burning of leaded gasoline and diesel fuel,
 5 from leaded paint, the burning of plastics and/or garbage, the operation of smelters
 6 and other industrial processes, use of fertilizers, and emissions from coal-fired power
 7 plants,” which all spread lead to the soil and air.³⁴ The lead particles in the soil and
 8 air then penetrate the cacao beans during the outdoor harvesting, drying, and
 9 fermenting processes, and they remain on the wet cacao beans throughout other
 10 manufacturing steps. *Id.* Lead can also be present in metal equipment like the mixers
 11 and grinders used to process the beans. Much like lead, cadmium is introduced
 12 through the soil as it is absorbed by the roots of the cacao trees and deposited in parts
 13 of the fruits. *Id.* Cadmium levels are influenced by the pH of the soil, metals from
 14 fertilizers, and other inputs like water. *Id.*

15 **20. Harmful Health Effects of Lead and Cadmium.** Defendant’s Products
 16 contain heavy metals, and Defendant knows this, but it nevertheless sells the Products
 17 without warning consumers that the lead and cadmium in them can seriously impact
 18 consumers’ health, especially in young children.

19 **21.** Young children are big consumers of chocolates, and thus “may be at risk
 20 of exceeding the daily limit of lead” since “one 10g cube of dark chocolate may
 21 contain as much as 20% of the daily lead oral limit.”³⁵ Children are disproportionately

22 ³³ Rankin, Charley W. “Lead contamination in cocoa and cocoa products: isotopic
 23 evidence of global contamination” (Oct. 2005), Environmental Health Perspective,
 24 <https://pubmed.ncbi.nlm.nih.gov/16203244/>.

25 ³⁴ Behar, Andrew. “New Report Details Simple, Safe, and Low-Cost Solutions to
 26 Reduce Levels of Lead and Cadmium in Chocolate” (Aug. 17, 2022), As You Sow,
 27 [https://www.asyousow.org/blog/2022/8/17/new-report-explains-simple-safe-and-](https://www.asyousow.org/blog/2022/8/17/new-report-explains-simple-safe-and-low-cost-solutions-to-reduce-levels-of-lead-and-cadmium-in-chocolate)
 28 [low-cost-solutions-to-reduce-levels-of-lead-and-cadmium-in-chocolate](https://www.asyousow.org/blog/2022/8/17/new-report-explains-simple-safe-and-low-cost-solutions-to-reduce-levels-of-lead-and-cadmium-in-chocolate).

³⁵ Yanus, Rinat Levi, et al. “Trace elements in cocoa solids and chocolate: An
 ICPMS study,” (May 16, 2013), Talanta,
<https://www.sciencedirect.com/science/article/abs/pii/S0039914013008473>.

1 affected by heavy metal consumption, because children have a high digestive tract
2 absorption factor. *Id.* Children, ages 2-6 years old, have an absorption factor of 30-
3 75% compared to 11% absorption by adults. *Id.* Thus, children are more affected by
4 lead and cadmium in chocolate products, as they absorb a higher percentage of these
5 heavy metals. This is especially concerning as children are a target group for
6 chocolate manufacturers.

7 22. Lead has been linked to various negative health effects. Lead can be
8 absorbed and stored in human bodies, organs, and tissues.³⁶ Short-term exposure to
9 high amounts of lead can lead to encephalopathy. *Id.* Encephalopathy is a term for
10 any disease of the brain that alters brain function or structure.³⁷ Encephalopathy may
11 quickly develop to “seizures, coma, and death from cardiorespiratory arrest.”³⁸ In
12 pregnant women, exposure to lead can affect the unborn child, and children “born to
13 parents exposed to excess lead levels are more likely to have birth defects, mental
14 retardation, behavioral disorders or die during the first year of childhood.” *Id.*
15 Furthermore, lead exposure can cause miscarriages, stillbirths, and infertility in both
16 men and women. *Id.* Long-term exposure to lead can result in severe damage to blood-
17 forming, nervous, urinary and reproductive systems.³⁹ Common symptoms of chronic

18 ³⁶ “Substance Data Sheet for Occupational Exposure to Lead” (May 31, 1991),
19 United States Department of Labor, [https://www.osha.gov/laws-
20 regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%
21 20portion%20of%20the,the%20blood%20and%20other%20tissues](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%20portion%20of%20the,the%20blood%20and%20other%20tissues).

22 ³⁷ “Encephalopathy” National Institute of Neurological Disorders and Stroke,
23 [https://www.ninds.nih.gov/health-
24 information/disorders/encephalopathy#:~:text=Encephalopathy%20is%20a%20term
25 %20for,Metabolic%20or%20mitochondrial%20dysfunction](https://www.ninds.nih.gov/health-information/disorders/encephalopathy#:~:text=Encephalopathy%20is%20a%20term%20for,Metabolic%20or%20mitochondrial%20dysfunction).

26 ³⁸ “Substance Data Sheet for Occupational Exposure to Lead” (May 31, 1991),
27 United States Department of Labor, [https://www.osha.gov/laws-
28 regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%
29 20portion%20of%20the,the%20blood%20and%20other%20tissues](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%20portion%20of%20the,the%20blood%20and%20other%20tissues).

30 ³⁹ “Substance Data Sheet for Occupational Exposure to Lead” (May 31, 1991),
31 United States Department of Labor, [https://www.osha.gov/laws-
32 regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%
33 20portion%20of%20the,the%20blood%20and%20other%20tissues](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%20portion%20of%20the,the%20blood%20and%20other%20tissues).

1 overexposure include: “loss of appetite, metallic taste in the mouth, anxiety,
2 constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache,
3 nervous irritability, muscle and joint pain or soreness, fine tremors, numbness,
4 dizziness, hyperactivity, and colic, which can cause severe abdominal pain. *Id.*
5 Although exposure to lead is harmful to people of all ages, it typically affects children
6 more than adults because children tend to show signs of severe lead toxicity at lower
7 levels than adults.⁴⁰ In fact, any level of lead can have toxic manifestations because
8 breathing in, swallowing, or absorbing lead particles results in a high level of lead
9 remaining in the body, stored in bones, blood, and tissues, for months and even
10 years.⁴¹ Therefore, no amount of lead exposure is truly safe, making Defendant’s
11 Products especially dangerous as they contain a significant level of lead, 143% and
12 210% of the MADL; amounts that can cause drastic and severe adverse health effects
13 especially with repeated consumption.

14 23. Like lead, cadmium causes harmful health effects. Cadmium is an
15 element classified as a transition metal that is primarily used for commercial purposes
16 and is produced by refining zinc ores.⁴² Consuming food or water with high cadmium
17 levels severely irritates the stomach, which can lead to vomiting and diarrhea.⁴³ In
18 severe cases, exposure to cadmium can cause death. *Id.* Long-term exposure to low
19 levels of cadmium can lead to a build-up of cadmium in the kidneys, which can
20 eventually damage the kidneys when the build-up becomes large enough, and it can

21 _____
22 ⁴⁰ “Toxicology Profile for Lead” (Aug. 2020), U.S. Department for Health and
23 Human Services: Agency for Toxic Substances and Disease Registry,
<https://www.atsdr.cdc.gov/ToxProfiles/tp13.pdf>.

24 ⁴¹ “Lead Poisoning” (Jan. 21, 2022), Mayo Clinic,
25 [https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-
causes/syc-20354717](https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717).

26 ⁴² “What is Cadmium” (Dec. 10, 2013), U.S. Department for Health and Human
27 Services: Agency for Toxic Substances and Disease Registry,
<https://www.atsdr.cdc.gov/csem/cadmium/What-is-Cadmium.html>.

28 ⁴³ “Toxicology Profile for Cadmium” (Sept. 2012), U.S. Department of Health and
Human Services, <https://www.atsdr.cdc.gov/ToxProfiles/tp5.pdf>.

1 cause bones to become fragile and break easily. *Id.* Lab animals have been studied to
2 confirm these effects, but current research suggests that young children are more
3 easily susceptible to cadmium exposure, and so negative health effects are more
4 severe for children. *Id.* Similarly to lead, exposure to cadmium even at the lowest
5 levels can have harmful effects over time as cadmium builds up in the kidneys,
6 stomach, and bones with each exposure.⁴⁴ Defendant's Products contain cadmium at
7 181% and 56% of the MADL, resulting in significant exposure to cadmium.

8 **24. Defendant Was Put On Notice That Its Chocolate Contained**
9 **Harmful Heavy Metals.** In 2016, As You Sow, a California-based consumer
10 advocacy group, performed a study of the heavy metal content of cocoa products.⁴⁵
11 The group sent samples of 50 different chocolate products to a third-party lab and
12 discovered that more than half of these samples contained lead and cadmium. The
13 levels at which cadmium and lead were present exceeded California's daily MADL,⁴⁶
14 which is based on California's Proposition 65 safe harbor levels of 0.5 micrograms
15 for lead and 4.1 micrograms for cadmium.⁴⁷ The study purposefully did not disclose
16 the exact levels contained within specific products, in hopes that manufacturers would
17 partner with As You Sow to address the high levels of lead and cadmium in their
18 respective product lines. Ultimately, Defendant and other manufacturers agreed to
19 regularly test their chocolate products and to include warning labels on those that
20 exceeded lead and cadmium threshold levels agreed upon by As You Sow and the
21 manufacturers.⁴⁸ As You Sow's efforts effectively put Defendant on notice that it had

22 ⁴⁴ "Cadmium Factsheet" (April 7, 2017), Centers for Disease Control and
23 Prevention, https://www.cdc.gov/biomonitoring/Cadmium_FactSheet.html.

24 ⁴⁵ Kounang, Nadia. "Is There Lead in Your Chocolate?" CNN. Cable News
25 Network (Mar. 25, 2016) <https://www.cnn.com/2016/03/25/health/chocolate-lead-test/index.html>.

26 ⁴⁶ *Id.*

27 ⁴⁷ "Proposition 65," California Office of Environmental Health Hazard Assessment,
28 OEHHA, <https://oehha.ca.gov/proposition-65>.

⁴⁸ *As You Sow v. Trader Joe's Company, et al.*, No CGC-15-548791 (Consent
Judgment, Feb. 15, 2018).

1 a duty to test its Products for the presence of heavy metals and subsequently remove
 2 them, or adequately disclose to consumers that these heavy metals were present in
 3 their Products and posed serious health risks to consumers. Yet, as Consumer
 4 Reports' recent study reveals, the Products contain harmful levels of heavy metals
 5 and fail to include any warning to consumers about their existence.⁴⁹

6 25. By failing to inform consumers that its Products contain lead and
 7 cadmium, Defendant deceptively labels and advertises its Products as if they are safe
 8 for consumption when they are not. Through its omission, Defendant exposes the
 9 consuming public to increased health risks posed by these harmful heavy metals.
 10 Defendant knew of the Products' heavy metal content and the associated health risks
 11 and yet it failed, and continues to fail, to disclose this material information to
 12 consumers, breaching its duty to disclose and thereby seriously impacting the health
 13 of consumers.

14 26. **Creating Safe Dark Chocolate Products Is Possible.** According to As
 15 You Sow, lead can be reduced in chocolate products by improving agricultural,
 16 manufacturing, and business practices, including: (1) preventing the introduction of
 17 lead during bean fermentation and drying, (2) preventing the introduction of lead
 18 during the transportation of whole wet beans, and (3) establishing bean
 19 cleaning/winnowing quality assurance practices for reduce lead amounts.⁵⁰ Levels of
 20 cadmium can be reduced by: (1) planting new orchards in regions with low levels of
 21 cadmium, and (2) using soil amendments to increase soil pH. *Id.* According to
 22 Consumer Reports' December 2022 study that measured the amount of heavy metals

23 _____
 24 ⁴⁹ "Lead and Cadmium Could Be in Your Dark Chocolate" (Dec. 15, 2022),
 25 Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

26 ⁵⁰ Anh, Timothy, et al. "Expert Investigation Related to Cocoa and Chocolate
 27 Products: Final Report" (Mar. 28, 2022). As You Sow,
 28 https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/62fd592790137e31288a1698/1660770607858/AsYouSow_ChocolateFullReport_FIN_20220817.pdf.

1 in dark chocolates against California’s MADL,⁵¹ researchers found that “while most
2 of the chocolate bars in CR’s tests had concerning levels of lead, cadmium, or both,
3 five of them were relatively low in both” meaning that it is “possible for companies
4 to make products with lower amounts of heavy metals-and for consumers to find safer
5 products that they enjoy.”⁵²

6 **B. Plaintiff and Reasonable Consumers Were Misled by the Material**
7 **Omission**

8 27. **Material Omission on the Products’ Labels.** Defendant manufactures,
9 markets, advertises, labels, packages, and sells the Products. Defendant deceives
10 consumers by failing to disclose that the Products contain cadmium and lead, placing
11 consumers at risk of serious health conditions. Reasonable consumers have no way
12 of knowing, nor do they have a reason to know or believe, that the Products pose
13 threats to their health. Defendant’s failure to disclose this information is material
14 because consumers would not purchase the Products if the lead and cadmium content
15 in the Products were clearly disclosed.

16 28. **Consumers Reasonably Believe the Products are Safe for**
17 **Consumption.** Plaintiff and other reasonable consumers perceive and reasonably
18 expect food products that are sold in the marketplace to be safe for human
19 consumption. Plaintiff and other reasonable consumers were unaware of the lead and
20 cadmium content of the Products and reasonably believed the Products to be safe for
21 consumption. Defendant failed to inform consumers about the lead and cadmium
22 contained in the Products, furthering consumer deception about the safeness of the
23 Products.

24
25 ⁵¹ “Lead and Cadmium Could Be in Your Dark Chocolate” (Dec. 15, 2022),
26 Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

27 ⁵² “Lead and Cadmium Could Be in Your Dark Chocolate” (Dec. 15, 2022),
28 Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 29. **The Products are Not Safe For Consumption.** As outlined *supra*, lead
2 and cadmium, *at any concentration*, pose serious health risks when consumed.
3 Defendant’s Products Green & Black’s Organic Dark Chocolate 70% Cacao, Hu
4 Organic Simple Dark Chocolate 70% Cacao contain 181% and 56% of the MADL
5 for cadmium and 143% and 210% of the MADL for lead, per ounce. These
6 concentrations of heavy metals pose serious health risks to consumers, even for those
7 that ingest only one serving of the Products. Here, the Products are 3.1 oz with 3
8 servings per bar and 2.1 oz with 2 servings per bar.

9 30. **Deception.** Defendant’s failure to disclose material information
10 regarding the inclusion of lead and cadmium in the Products was deceptive since it
11 misled consumers, including Plaintiff, to believe the Products are safe for
12 consumption when they are not.

13 31. **Omission and Obligation to Disclose.** As set forth herein, Defendant
14 omits the presence of harmful heavy metals in its Products, leading consumers into
15 purchasing the Products without knowing they are consuming dangerous heavy
16 metals that they likely would not have otherwise willingly consumed. Defendant has
17 an obligation to disclose the presence of heavy metals in its Products, because this
18 information is material to consumers and Defendant knows or should know about the
19 heavy metals contained in its Products.

20 32. **Material.** Information about the presence of heavy metals in Defendant’s
21 Products is material to reasonable consumers, including Plaintiff, because it has the
22 potential to influence their decision to purchase the Products, as set forth herein.
23 Plaintiff would not have purchased the Products had Defendant disclosed that the
24 Products contain heavy metals.

25 33. **Reliance.** Reasonable consumers, including Plaintiff, reasonably relied
26 on the Products’ labeling, which failed to disclose that the Products contained heavy
27 metals, in deciding to purchase the Products, as set forth herein.

28 34. **Falsity.** The Products’ representation as dark chocolate safe for

1 consumption is false and deceptive because the Products are not safe for
2 consumption—meaning the Products contain harmful heavy metals which cause
3 severe health issues to consumers.

4 **35. Consumers Lack Knowledge of Deception/Fraudulence.** Consumers,
5 including Plaintiff, who purchased the Products, did not know, and had no reason to
6 know, at the time of purchase, that the Products contained heavy metals.

7 **36. Defendant’s Knowledge.** Defendant knew, or should have known, that
8 its Products contain lead and cadmium, and its failure to inform consumers about
9 those heavy metals in its Products was misleading and unlawful. Defendant
10 intentionally and deliberately omitted this information to cause Plaintiff and similarly
11 situated consumers to purchase the Products. Defendant, as the manufacturer, had
12 exclusive control over how the Products were marketed and labeled, and Defendant
13 readily and easily could have remedied the deception by disclosing to consumers that
14 its Products contain lead and cadmium. Defendant is and was, at all times, required
15 to ensure its Products were safe for consumption, when selling the Products anywhere
16 in the United States. Thus, Defendant knew, or should have known, at all relevant
17 times, that the Products’ labels were deceptive, and reasonable consumers like
18 Plaintiff were being misled into buying the Products because they lacked Defendant’s
19 knowledge about the heavy metals contained in the Products.

20 **37. Detriment.** Plaintiff and similarly situated consumers would not have
21 purchased the Products if they had known the Products contain harmful metals and,
22 therefore, the Products were not safe for consumption as claimed, promised,
23 warranted, advertised, and represented. Accordingly, based on Defendant’s material
24 omissions, reasonable consumers, including Plaintiff, purchased the Products to their
25 detriment.

26 **C. No Adequate Remedy at Law**

27 **38. No Adequate Remedy at Law.** Plaintiff and members of the Class are
28 entitled to equitable relief as no adequate remedy at law exists.

1 a. **Broader Statutes of Limitations.** The statutes of limitations
2 for the causes of action pled herein vary. The limitations
3 period is four years for claims brought under the UCL, which
4 is one year longer than the statutes of limitations under the
5 FAL and CLRA. In addition, the statutes of limitations vary
6 for certain states' laws for breach of warranty and unjust
7 enrichment/restitution, between approximately 2 and 6 years.
8 Thus, California Subclass members who purchased the
9 Products more than 3 years prior to the filing of the complaint
10 will be barred from recovery if equitable relief were not
11 permitted under the UCL. Similarly, Nationwide Class
12 members who purchased the Products prior to the furthest
13 reach-back under the statute of limitations for breach of
14 warranty, will be barred from recovery if equitable relief were
15 not permitted for restitution/unjust enrichment.

16 b. **Broader Scope of Conduct.** In addition, the scope of
17 actionable misconduct under the unfair prong of the UCL is
18 broader than the other causes of action asserted herein. It
19 includes, for example, Defendant's overall unfair material
20 omission about the lead and cadmium contained in its
21 Products, in order to gain an unfair advantage over competitor
22 products and to take advantage of consumers' desire for
23 products that comport with the required disclosures. The UCL
24 also creates a cause of action for violations of law (such as
25 statutory or regulatory requirements and court orders related
26 to similar representations and omissions made on the type of
27 products at issue). Thus, Plaintiff and Class members may be
28 entitled to restitution under the UCL, while not entitled to

1 damages under other causes of action asserted herein (e.g., the
2 FAL requires actual or constructive knowledge of the falsity;
3 the CLRA is limited to certain types of plaintiffs (an
4 individual who seeks or acquires, by purchase or lease, any
5 goods or services for personal, family, or household
6 purposes) and other statutorily enumerated conduct).
7 Similarly, unjust enrichment/restitution is broader than
8 breach of warranty. For example, in some states, breach of
9 warranty may require privity of contract or pre-lawsuit notice,
10 which are not typically required to establish unjust
11 enrichment/restitution. Thus, Plaintiff and Class members
12 may be entitled to recover under unjust
13 enrichment/restitution, while not entitled to damages under
14 breach of warranty, because they purchased the products from
15 third-party retailers or did not provide adequate notice of a
16 breach prior to the commencement of this action.

17 **c. Injunctive Relief to Cease Misconduct and Dispel**
18 **Misperception.** Injunctive relief is appropriate on behalf of
19 Plaintiff and members of the Class because Defendant
20 continues to sell the Products without disclosing that the
21 Products contain harmful heavy metals. Injunctive relief is
22 necessary to prevent Defendant from continuing to engage in
23 the unfair, fraudulent, and/or unlawful conduct described
24 herein and to prevent future harm—none of which can be
25 achieved through available legal remedies (such as monetary
26 damages to compensate past harm). Further, injunctive relief,
27 in the form of affirmative disclosures, is necessary to dispel
28 the public misperception about the Products that has resulted

1 from years of Defendant’s unfair, fraudulent, and unlawful
2 marketing efforts. Such disclosures would include, but are
3 not limited to, publicly disseminated statements providing
4 accurate information about the Products’ true nature; and/or
5 requiring prominent qualifications and/or disclaimers on the
6 Products’ front label concerning the Products’ true nature. An
7 injunction requiring affirmative disclosures to dispel the
8 public’s misperception and prevent the ongoing deception
9 and repeat purchases based thereon, is also not available
10 through a legal remedy (such as monetary damages). In
11 addition, Plaintiff is *currently* unable to accurately quantify
12 the damages caused by Defendant’s future harm, because
13 discovery and Plaintiff’s investigation have not yet
14 completed, rendering injunctive relief all the more necessary.
15 For example, because the court has not yet certified any class,
16 the following remains unknown: the scope of the class, the
17 identities of its members, their respective purchasing
18 practices, prices of past/future Products’ sales, and quantities
19 of past/future Products’ sales.

20 d. **Public Injunction.** Further, because a “public injunction” is
21 available under the UCL, damages will not adequately
22 “benefit the general public” in a manner equivalent to an
23 injunction.

24 e. **California vs. Nationwide Class Claims.** Violations of the
25 UCL, FAL, and CLRA are claims asserted on behalf of
26 Plaintiff and the California Subclass against Defendant, while
27 breach of warranty, unjust enrichment/restitution, and
28 negligent failure to warn are asserted on behalf of Plaintiff

1 and the Nationwide Class. Dismissal of farther-reaching
2 claims, such as restitution, would bar recovery for non-
3 California members of the Class. In other words, legal
4 remedies available or adequate under the California-specific
5 causes of action (such as the UCL, FAL, and CLRA) have no
6 impact on this Court’s jurisdiction to award equitable relief
7 under the remaining causes of action asserted on behalf of
8 non-California putative class members.

9 f. **Procedural Posture—Incomplete Discovery & Pre-**
10 **Certification.** Lastly, this is an initial pleading in this action,
11 and discovery has not yet commenced and/or is at its initial
12 stages. No class has been certified yet. No expert discovery
13 has commenced and/or completed. The completion of
14 fact/non-expert and expert discovery, as well as the
15 certification of this case as a class action, are necessary to
16 finalize and determine the adequacy and availability of all
17 remedies, including legal and equitable, for Plaintiff’s
18 individual claims and any certified class or subclass. Plaintiff
19 therefore reserves her right to amend this complaint and/or
20 assert additional facts that demonstrate this Court’s
21 jurisdiction to order equitable remedies where no adequate
22 legal remedies are available for either Plaintiff and/or any
23 certified class or subclass. Such proof, to the extent necessary,
24 will be presented prior to the trial of any equitable claims for
25 relief and/or the entry of an order granting equitable relief.
26
27
28

1 **CLASS ACTION ALLEGATIONS**

2 39. **Class Definition.** Plaintiff brings this class action pursuant to Federal
3 Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others
4 similarly situated, and as members of the Classes defined as follows:

5 All residents of the United States who, within the applicable
6 statute of limitations, purchased the Product(s) for purposes other
7 than resale (“Nationwide Class”); and

8 All residents of California who, within four years prior to the
9 filing of this Complaint, purchased the Product(s) for purposes
10 other than resale (“California Subclass”).

11 (“Nationwide Class” and “California Subclass,” collectively, “Class”).

12 40. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant,
13 its assigns, successors, and legal representatives; (ii) any entities in which Defendant
14 has controlling interests; (iii) federal, state, and/or local governments, including, but
15 not limited to, their departments, agencies, divisions, bureaus, boards, sections,
16 groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this
17 matter and person within the third degree of consanguinity to such judicial officer.

18 41. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves
19 the right to amend or otherwise alter the class definition presented to the Court at the
20 appropriate time in response to facts learned through discovery, legal arguments
21 advanced by Defendant, or otherwise.

22 42. **Numerosity:** Members of the Class are so numerous that joinder of all
23 members is impracticable. Upon information and belief, the Nationwide Class
24 consists of tens of thousands of purchasers (if not more) dispersed throughout the
25 United States, and the California Subclass likewise consists of thousands of
26 purchasers (if not more) dispersed throughout the state of California. Accordingly, it
27 would be impracticable to join all members of the Class before the Court.

28 43. **Common Questions Predominate:** There are numerous and substantial
questions of law or fact common to all members of the Class that predominate over
any individual issues. Included within the common questions of law or fact are:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by advertising and selling the Products;
- b. Whether Defendant’s conduct of advertising and selling the Products while omitting that they contain harmful heavy metals constitutes an unfair method of competition, or unfair or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- c. Whether Defendant used deceptive omissions in connection with the sale of the Products in violation of Civil Code section 1750, *et seq.*;
- d. Whether Defendant represented that the Products have characteristics or quantities that they do not have in violation of Civil Code section 1750, *et seq.*;
- e. Whether Defendant advertised the Products with intent not to sell them as advertised in violation of Civil Code section 1750, *et seq.*;
- f. Whether Defendant’s labeling and advertising of the Products are misleading in violation of Business and Professions Code section 17500, *et seq.*;
- g. Whether Defendant knew or by the exercise of reasonable care should have known its labeling and advertising was and is misleading in violation of Business and Professions Code section 17500, *et seq.*;
- h. Whether Defendant’s conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- i. Whether Defendant’s conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendant’s conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Defendant’s conduct constitutes breach of warranty;
- l. Whether Defendant was negligent in its failure to warn consumers about the heavy metals contained in the Products;
- m. Whether Plaintiff and the Class are entitled to injunctive relief; and
- n. Whether Defendant was unjustly enriched by its unlawful conduct.

44. **Typicality:** Plaintiff’s claims are typical of the claims of the Class Members she seeks to represent because Plaintiff, like the Class Members purchased Defendant’s misleading and deceptive Products. Defendant’s unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant’s conduct. Plaintiff’s and Class Members’ claims arise from the same practices and course of conduct and are based on the same legal theories.

45. **Adequacy:** Plaintiff is an adequate representative of the Class she seeks to represent because her interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members’ interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

46. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 joinder of all members of the Class is impracticable and no other group method of
2 adjudication of all claims asserted herein is more efficient and manageable for at least
3 the following reasons:

- 4 a. The claims presented in this case predominate over any
5 questions of law or fact, if any exist at all, affecting any
6 individual member of the Class;
- 7 b. Absent a Class, the members of the Class will continue to
8 suffer damage and Defendant’s unlawful conduct will
9 continue without remedy while Defendant profits from and
10 enjoy its ill-gotten gains;
- 11 c. Given the size of individual Class Members’ claims, few, if
12 any, Class Members could afford to or would seek legal
13 redress individually for the wrongs Defendant committed
14 against them, and absent Class Members have no substantial
15 interest in individually controlling the prosecution of
16 individual actions;
- 17 d. When the liability of Defendant has been adjudicated, claims
18 of all members of the Class can be administered efficiently
19 and/or determined uniformly by the Court; and
- 20 e. This action presents no difficulty that would impede its
21 management by the Court as a class action, which is the best
22 available means by which Plaintiff and Class Members can
23 seek redress for the harm caused to them by Defendant.

24 47. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of
25 the Class, the prosecution of separate actions by individual members would create a
26 risk of inconsistent or varying adjudications with respect to individual members of
27 the Class, which would establish incompatible standards of conduct for Defendant.
28

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

48. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

49. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

COUNT ONE

Violation of California Unfair Competition Law

(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(On Behalf of the California Subclass)

50. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

51. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products within the applicable statute of limitations.

52. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.”

53. **False Advertising Claims.** Defendant, in its advertising, labeling, and packaging of the Products, made fraudulent omissions regarding the quality and characteristics of the Products—specifically, Defendant failed to inform consumers that its Products contain heavy metals lead and cadmium.

54. **Defendant’s Deliberately Fraudulent Marketing Scheme.** Defendant does not have any reasonable basis for failing to inform consumers about the

1 dangerous heavy metals in its Products because the consumption of the Products may
2 result in various health issues in adults and children. Defendant knew and continues
3 to know that the Products are not safe for consumption, though Defendant
4 intentionally advertised and marketed the Products to deceive reasonable consumers
5 into believing that they are safe for consumption when they are not.

6 **55. Misleading Advertising and Omission Cause Purchase of Products.**

7 Defendant's labeling and advertising of the Products led to, and continues to lead to,
8 reasonable consumers, including Plaintiff, believing that the Products are truly safe
9 for consumption as there is no disclaimer or indication that the Products contain
10 harmful heavy metals.

11 **56. Injury in Fact.** Plaintiff and the California Subclass have suffered injury

12 in fact and have lost money or property as a result of and in reliance upon Defendant's
13 false advertising and material omission—namely Plaintiff and the California Subclass
14 lost the money they paid for the Products.

15 **57. Conduct Violates the UCL.** Defendant's conduct, as alleged herein,

16 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.
17 The UCL prohibits unfair competition and provides, in pertinent part, that "unfair
18 competition shall mean and include unlawful, unfair or fraudulent business practices
19 and unfair, deceptive, untrue or misleading advertising." Cal. Bus & Prof. Code §
20 17200. In addition, Defendant's use of various forms of advertising media to
21 advertise, call attention to, or give publicity to the sale of goods or merchandise that
22 are not as represented in any manner constitutes unfair competition, unfair, deceptive,
23 untrue or misleading advertising, and an unlawful business practice within the
24 meaning of Business and Professions Code Sections 17200 and 17531, which
25 advertisements have deceived and are likely to deceive the consuming public, in
26 violation of Business and Professions Code Section 17200.

27 **58. No Reasonably Available Alternatives/Legitimate Business Interests.**

28 Defendant failed to avail itself of reasonably available, lawful alternatives to further

1 its legitimate business interests.

2 59. **Business Practice.** All of the conduct alleged herein occurred and
3 continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of
4 a pattern, practice and/or generalized course of conduct, which will continue daily
5 until Defendant voluntarily alters its conduct or Defendant is otherwise ordered to do
6 so.

7 60. **Injunction.** Pursuant to Business and Professions Code Sections 17203
8 and 17535, Plaintiff and the California Subclass seek an order from this Court
9 enjoining Defendant from continuing to engage, use, or employ its practice of
10 omitting material information regarding the heavy metal content of its Products.
11 Plaintiff and the members of the California Subclass also seek an order requiring
12 Defendant to disclose such information, and/or to precluding Defendant from selling
13 the Products.

14 61. **Causation/Restitution.** As a direct and proximate result of Defendant’s
15 misconduct in violation of the UCL, Plaintiff and the California Subclass were
16 harmed in the amount of the purchase price they paid for the Products. Plaintiff and
17 the California Subclass have suffered and continue to suffer economic losses and
18 other damages including, but not limited to, the amounts paid for the Products, and
19 any interest that would have accrued on those monies, in an amount to be proven at
20 trial. Accordingly, Plaintiff seeks restitution, and/or disgorgement of ill-gotten gains
21 to compensate Plaintiff and the California Subclass for said monies, as well as
22 injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future harm
23 that will result.

24 **“Unfair” Prong**

25 62. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when
26 “any injury it causes outweighs any benefits provided to consumers and the injury is
27 one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto*
28 *Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 63. **Injury.** Defendant’s action of omitting material information does not
2 confer any benefit to consumers; rather, doing so causes injuries to consumers, who
3 do not receive Products commensurate with their reasonable expectations, receive
4 Products of lesser standards than what they reasonably expected to receive, and are
5 exposed to increased health risks. Consumers cannot avoid any of the injuries caused
6 by Defendant’s deceptive labeling and omissions of the Products. The injuries caused
7 by Defendant’s deceptive labeling and advertising outweigh any benefits.

8 64. **Balancing Test.** Some courts conduct a balancing test to decide if a
9 challenged activity amounts to unfair conduct under California Business and
10 Professions Code Section 17200. They “weigh the utility of the defendant’s conduct
11 against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada,*
12 *N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

13 65. **No Utility.** Defendant’s conduct of omitting material information has no
14 utility and rather harms purchasers. Thus, the utility of Defendant’s conduct is vastly
15 outweighed by the gravity of harm.

16 66. **Legislative Declared Policy.** Some courts require that “unfairness must
17 be tethered to some legislative declared policy or proof of some actual or threatened
18 impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735
19 (9th Cir. 2007).

20 67. **Unfair Conduct.** Defendant’s labeling and advertising of the Products,
21 as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unfair
22 conduct. Defendant knew or should have known of its unfair conduct. Defendant’s
23 omissions constitute an unfair business practice within the meaning of California
24 Business and Professions Code Section 17200.

25 68. **Reasonably Available Alternatives.** There existed reasonably available
26 alternatives to further Defendant’s legitimate business interests, other than the
27 conduct described herein. Defendant could have disclosed that its Products contain
28 heavy metals or it could have removed the heavy metals from the Products.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 sections regarding those causes of action.

2 82. **Additional Violations.** Defendant’s conduct in making the deceptive
3 omissions described herein constitutes a knowing failure to adopt policies in
4 accordance with and/or adherence to applicable laws, as set forth herein, all of which
5 are binding upon and burdensome to their competitors. This conduct engenders an
6 unfair competitive advantage for Defendant, thereby constituting an unfair, fraudulent
7 and/or unlawful business practice under California Business & Professions Code
8 sections 17200-17208. Additionally, Defendant’s omission of material facts, as set
9 forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, and 1711
10 , as well as the common law.

11 83. **Unlawful Conduct.** Defendant’s packaging, labeling, and advertising of
12 the Products, as alleged herein, are deceptive, misleading, and unreasonable, and
13 constitute unlawful conduct. Defendant knew or should have known of its unlawful
14 conduct.

15 84. **Reasonably Available Alternatives.** Defendant had reasonably
16 available alternatives to further its legitimate business interests, other than the conduct
17 described herein. Defendant could have refrained from selling the Products, or it
18 could have disclosed the heavy metal content in the Products, or implemented
19 measures to prevent harmful heavy metals in its Products.

20 85. **Business Practice.** All the conduct alleged herein occurs and continues
21 to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern
22 or generalized course of conduct.

23 86. **Injunction.** Pursuant to Business and Professions Code Section 17203,
24 Plaintiff and the California Subclass seek an order from this Court enjoining
25 Defendant from continuing to engage, use, or employ its practice of omitting material
26 information regarding the heavy metal content of its Products.

27 87. **Causation/Restitution.** Plaintiff and the California Subclass have
28 suffered injury in fact and have lost money as a result of Defendant’s unlawful

1 conduct. Plaintiff and the California Subclass paid an unwarranted premium for the
2 Products. Plaintiff and the California Subclass would not have purchased the Products
3 if they had known that Defendant purposely deceived consumers into believing that
4 the Products are safe for consumption. Accordingly, Plaintiff seeks restitution and/or
5 disgorgement of ill-gotten gains pursuant to the UCL.

6 **COUNT TWO**

7 **Violation of California False Advertising Law**

8 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

9 ***(On Behalf of the California Subclass)***

10 88. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
11 reference all allegations contained in this complaint, as though fully set forth herein.

12 89. **California Subclass.** Plaintiff brings this claim individually and on
13 behalf of the California Subclass who purchased the Products within the applicable
14 statute of limitations.

15 90. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof.
16 Code section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading
17 advertising[.]”

18 91. **Material Omission Disseminated to Public.** Defendant violated section
19 17500 when it sold the Products to the public without disclosing the heavy metals
20 contained in them. This conduct was deceptive because the Products’ labeling omits
21 material information regarding the heavy metal content of its Product. The omissions
22 were material because they are likely to mislead a reasonable consumer into
23 purchasing the Products.

24 92. **Knowledge.** Defendant knew or should have known that its failure to
25 disclose information relating to the heavy metals contained in its Products was
26 misleading and in violation of § 17500.

27 93. **Intent to sell.** Defendant’s conduct was specifically designed to induce
28 reasonable consumers, like Plaintiff and the California Subclass, to purchase the

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Products.

94. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products and increased health risks from consuming the heavy metals in the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future harm that will result.

COUNT THREE

Violation of California Consumers Legal Remedies Act

(Cal. Civ. Code §§ 1750, et seq.)

(On Behalf of the California Subclass)

95. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

96. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

97. **CLRA Standard.** The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.”

98. **Goods/Services.** The Products are “goods,” as defined by the CLRA in California Civil Code §1761(a).

99. **Defendant.** Defendant is a “person,” as defined by the CLRA in

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

California Civil Code §1761(c).

100. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as defined by the CLRA in California Civil Code §1761(d).

101. **Transactions.** The purchase of the Products by Plaintiff and members of the California Subclass are “transactions” as defined by the CLRA under California Civil Code section 1761(e).

102. **Violations of the CLRA.** Defendant violated the following sections of the CLRA by selling the Products to Plaintiff and the California Subclass without disclosing that the Products contain lead and cadmium:

- a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have.”
- b. Section 1770(a)(7) by representing that the Products “are of a particular standard, quality, or grade . . . [when] they are of another.”
- c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as advertised.”

103. **Knowledge.** Defendant’s uniform and material omissions regarding the Products were likely to deceive, and Defendant knew or should have known that its omissions were misleading.

104. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that Defendant intentionally misled and withheld material information from consumers, including Plaintiff, to increase the sales of the Products.

105. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the California Subclass could not have reasonably avoided such injury. Plaintiff and members of the California Subclass were unaware of the existence of the facts that Defendant suppressed and failed to disclose, and Plaintiff and members of the California Subclass would not have purchased the Products and/or would have purchased them on different terms had they known the truth.

106. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 suffered harm as a result of Defendant’s violations of the CLRA because they
2 purchased the Products without knowing they contained heavy metals. Defendant’s
3 omission of this information was material because a reasonable consumer would
4 consider the information important in deciding whether to purchase the Products.

5 **107. Section 1782(d) Notice Requirement.** Pursuant to California Civil Code,
6 section 1782, on January 12, 2023, Plaintiff, on Plaintiff’s behalf and on behalf of
7 members of the Class, notified Defendant of its alleged violations of the CLRA via
8 U.S. Certified Mail.

9 **108. Causation/Damages (Section 1782(d)).** As a direct and proximate result
10 of Defendant’s misconduct in violation of the CLRA, Plaintiff and members of the
11 California Subclass were harmed in the amount of the purchase price they paid for
12 the Products. Further, Plaintiff and members of the Class have suffered and continue
13 to suffer economic losses and other damages including, but not limited to, the amounts
14 paid for the Products, and any interest that would have accrued on those monies, in
15 an amount to be proven at trial.

16 **109. Injunction.** Given that Defendant’s conduct violated California Civil
17 Code section 1780, Plaintiff and members of the California Subclass are entitled to
18 seek, and do hereby seek, injunctive relief to put an end to Defendant’s violations of
19 the CLRA. Plaintiff has no adequate remedy at law. Without equitable relief,
20 Defendant’s unfair and deceptive practices will continue to harm Plaintiff and the
21 California Subclass.

22 **COUNT FOUR**

23 **Breach of Implied Warranty**

24 ***(On Behalf of the Nationwide Class and California Subclass)***

25 **110. Incorporation by Reference.** Plaintiff re-alleges and incorporates by
26 reference all allegations contained in this complaint, as though fully set forth herein.

27 **111. Nationwide Class & California Subclass.** Plaintiff brings this claim
28 individually and on behalf of the Nationwide Class and California Subclass who

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 purchased the Products within the applicable statute of limitations.

2 112. **Implied Warranty of Merchantability.** By advertising and selling the
3 Products at issue, Defendant, a merchant of goods, made promises and affirmations
4 of fact that the Products are merchantable and conform to the promises or affirmations
5 of fact made on the Products’ packaging and labeling, and through its marketing and
6 advertising, as described herein. This labeling and advertising, combined with the
7 implied warranty of merchantability, constitute warranties that became part of the
8 basis of the bargain between Plaintiff and members of the Class and Defendant---to
9 wit, that the Products, among other things, are safe for consumption.

10 113. **Breach of Warranty.** Contrary to Defendant’s warranties, the Products
11 do not conform to the Products’ representation of being safe for human consumption
12 due to the inclusion of harmful heavy metals and, therefore, Defendant breached its
13 warranties about the Products and their qualities.

14 114. **Causation/Remedies.** As a direct and proximate result of Defendant’s
15 breach of warranty, Plaintiff and members of the Class were harmed in the amount of
16 the purchase price they paid for the Products. Further, Plaintiff and members of the
17 Class have suffered and continue to suffer economic losses and other damages
18 including, but not limited to, the amounts paid for the Products, and any interest that
19 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
20 Plaintiff seeks a monetary award for breach of warranty in the form of damages,
21 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
22 Class for said monies, as well as injunctive relief to enjoin Defendant’s misconduct
23 to prevent ongoing and future harm that will result.

24 115. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
25 cause of action for breach of warranty on behalf of Plaintiff and the Class.
26 Defendant’s unfair, fraudulent, and unlawful conduct described herein constitutes
27 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
28 damages as permitted by law. Defendant’s misconduct is malicious as Defendant

1 acted with the intent to cause Plaintiff and consumers to pay for Products that they
2 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights
3 of Plaintiff and consumers as Defendant was aware of the probable dangerous
4 consequences of its conduct and deliberately failed to avoid misleading consumers,
5 including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times,
6 said conduct was so base, and/or contemptible that reasonable people would look
7 down upon it and/or otherwise would despise such misconduct. Said misconduct
8 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard
9 of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant
10 times, intentionally misrepresented and/or concealed material facts with the intent to
11 deceive Plaintiff and consumers. The wrongful conduct constituting malice,
12 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
13 ratified by officers, directors, and/or managing agents of Defendant.

14 COUNT FIVE

15 **Unjust Enrichment/Restitution**

16 *(On Behalf of the Nationwide Class and California Subclass)*

17 116. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
18 reference all allegations contained in this complaint, as though fully set forth herein.

19 117. **Nationwide Class & California Subclass.** Plaintiff brings this claim
20 individually and on behalf of the Nationwide Class and California Subclass (together,
21 the Class) who purchased the Products within the applicable statute of limitations.

22 118. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products,
23 Plaintiff and members of the Class conferred a benefit on Defendant in the form of
24 the purchase price of the Products.

25 119. **Defendant's Knowledge of Conferred Benefit.** Defendant had
26 knowledge of such benefit and Defendant appreciated the benefit because, were
27 consumers not to purchase the Products, Defendant would not generate revenue from
28 the sales of the Products.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

120. **Defendant’s Unjust Receipt Through Deception.** Defendant’s knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant’s fraudulent, misleading, and deceptive omissions.

121. **Causation/Restitution.** As a direct and proximate result of Defendant’s unjust enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future harm that will result.

COUNT SIX

Negligent Failure to Warn

(On Behalf of the Nationwide Class and California Subclass)

122. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

123. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (together, the Class) who purchased the Products within the applicable statute of limitations.

124. **Defendant’s Manufactured Products.** At all relevant times, Defendant was responsible for designing, constructing, testing, manufacturing, inspecting, distributing, labeling, marketing, advertising, and/or selling the Products. At all relevant times, it was reasonably foreseeable by Defendant that the consumption of the Products, which contained heavy metals, lead and cadmium, involved serious health risks and was unreasonably dangerous to Plaintiff and the Class as the ultimate users of the Products.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1 125. **Knowledge.** Defendant knew, or through the exercise of reasonable care,
2 should have known of the presence of heavy metals in the Products and the inherent
3 dangers associated with consuming the Products as described herein, and knew that
4 Plaintiff and Class Members could not reasonably be aware of those health risks.
5 Defendant failed to exercise reasonable care in providing Plaintiff and the Class with
6 adequate warnings.

7 126. **Defendant Duty To Warn.** Defendant, as the designer, manufacturer,
8 tester, marketer, advertiser, and/or seller of the Products, had a duty to warn Plaintiff
9 and the Class of heavy metals contained in the Products and health risks associated
10 with the consumption of the Products. At minimum, the duty arose for Defendant to
11 warn consumers that the Products contained heavy metals and consumption of the
12 Products could result in health risks and was unreasonably dangerous to consume.

13 127. **Negligent and Breach of Duty.** Defendant was negligent and breached
14 its duty of care by negligently failing to provide warnings to consumers of the
15 Products, including Plaintiff and the Class, about the true nature of the Products, its
16 health risks, and potential dangers. Defendant was negligent and breached its duty of
17 care by concealing the risks of and failing to warn consumers that the Products contain
18 harmful heavy metals.

19 128. **Causation.** Defendant’s failure to provide adequate warning about the
20 potential risks associated with the Products was a direct cause of the Plaintiff’s
21 injuries.

22 129. **Damages.** As a direct and proximate result of Defendant’s conduct,
23 Plaintiff and members of the Class were harmed in the amount of the purchase price
24 they paid for the Products. Further, Plaintiff and members of the Class have suffered
25 and continue to suffer economic losses and other damages including, but not limited
26 to, the amounts paid for the Products, and any interest that would have accrued on
27 those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks
28 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff

1 and the Class for said monies, as well as injunctive relief to enjoin Defendant’s
2 misconduct to prevent ongoing and future harm that will result.

3 **PRAYER FOR RELIEF**

4 130. WHEREFORE, Plaintiff, individually and on behalf of all others
5 similarly situated, prays for judgment against Defendant as follows:

- 6 a. **Certification:** For an order certifying this action as a class
7 action, appointing Plaintiff as the Class Representative, and
8 appointing Plaintiff’s Counsel as Class Counsel;
- 9 b. **Declaratory Relief:** For an order declaring that Defendant’s
10 conduct violates the statutes and laws referenced herein;
- 11 c. **Injunction:** For an order requiring Defendant to immediately
12 cease and desist from selling the unlawful Products in violation
13 of law; enjoining Defendant from continuing to market,
14 advertise, distribute, and sell the Products in the unlawful manner
15 described herein; requiring Defendant to engage in an affirmative
16 advertising campaign to dispel the public misperception of the
17 Products resulting from Defendant’s unlawful conduct; and
18 requiring all further and just corrective action, consistent with
19 permissible law and pursuant to only those causes of action so
20 permitted;
- 21 d. **Damages/Restitution/Disgorgement:** For an order awarding
22 monetary compensation in the form of damages, restitution,
23 and/or disgorgement to Plaintiff and the Class, consistent with
24 permissible law and pursuant to only those causes of action so
25 permitted;
- 26 e. **Punitive Damages/Penalties:** For an order awarding punitive
27 damages, statutory penalties, and/or monetary fines, consistent
28 with permissible law and pursuant to only those causes of action

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

so permitted;

f. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;

g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and

h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Dated: March 27, 2023

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

By:

/s/ Bahar Sodaify
Ryan J. Clarkson, Esq.
Bahar Sodaify, Esq.
Alan Gudino, Esq.
Ryan D. Ardi, Esq.

Attorneys for Plaintiff