

FITZGERALD MONROE FLYNN PC

JACK FITZGERALD (SBN 257370)

jfitzgerald@fmfpc.com

MELANIE (PERSINGER) MONROE (SBN 275423)

mmonroe@fmfpc.com

TREVOR FLYNN (SBN 253362)

tflynn@fmfpc.com

CAROLINE S. EMHARDT (SBN 321222)

cemhardt@fmfpc.com

2341 Jefferson Street, Suite 200

San Diego, California 92110

Phone: (619) 215-1741

SACKS WESTON LLC

ANDREW B. SACKS (*pro hac vice*)

asacks@sackslaw.com

JOHN K. WESTON (*pro hac vice*)

jweston@sackslaw.com

1845 Walnut Street, Suite 1600

Philadelphia, PA 19103

Phone: 215-925-8200

Fax: 267-639-5422

Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EVA GRAUSZ, on behalf of herself, all
others similarly situated, and the general
public,

Plaintiff,

v.

THE HERSHEY COMPANY,

Defendant.

Case No: 23-cv-00028-AJB-SBC

THIRD AMENDED COMPLAINT

Judge: Hon. Anthony J. Battaglia

1 Pursuant to Fed. R. Civ. P. 15(a)(2) and the Court’s January 25, 2024 Order (Dkt. No.
2 41), Plaintiff Eva Grausz, on behalf of herself, all others similarly situated, and the general
3 public, by and through her undersigned counsel, files this Third Amended Complaint against
4 The Hershey Company (“Hershey”), and alleges the following upon her own knowledge, or
5 where she lacks personal knowledge, upon information and belief, including the investigation
6 of her counsel.

7 **INTRODUCTION**

8 1. Hershey, the ubiquitous American confectionary company, manufactures and
9 sells various dark chocolate products under the Hershey’s and Lily’s brand names.

10 2. Lead and cadmium are heavy metals and their presence in food, alone or
11 combined, in the amounts found in the Products, can increase the risk of various
12 physiological diseases, including irreversible damage to brain development, liver, kidneys,
13 bones, and other health problems. With respect to lead specifically, experts agree that no
14 amount of it is considered safe.

15 3. Independent lab testing has found that the Hershey’s dark chocolate bars
16 challenged here¹ contain cadmium and lead—two heavy metals linked to a host of health
17 problems in children and adults—in amounts such that eating just an ounce a day would put
18 an adult over a level that public health authorities and experts say may be harmful for at least
19 one of those heavy metals.

20 4. Further, experts tasked with investigating the cause of, and potential solutions
21 to, heavy metals in chocolates have identified the business practices of dark chocolate sellers,
22 like Hershey, as one of the primary reasons for the dangerous levels of heavy metals. Indeed,
23 the methods used in storing and processing the cacao often greatly increases the amount of
24 lead and cadmium in dark chocolates—far above the levels that might be present in the cocoa
25

26 ¹ As challenged here, these include Hershey’s Special Dark Mildly Sweet Chocolate, Lily’s
27 Extra Dark Chocolate 70% Cocoa, Lily’s Extremely Dark Chocolate 85% Cocoa, Lily’s
28 Original Dark Chocolate Stevia Sweetened 55% Cocoa Non GMO, and Lily’s Sea Salt Extra
Dark Chocolate 70% - Stevia Sweetened [the “Products”].

1 beans themselves prior to processing. While many companies across the industry have made
2 changes to business practices and adopted methods to limit heavy metals in their dark
3 chocolate products, the testing alleged herein demonstrates that Hershey has failed to
4 sufficiently adopt practices to prevent the accumulation of high levels of heavy metals.

5 5. Due to Hershey's acts and omissions concerning the presence of lead and
6 cadmium, consumers who purchased the Products suffered economic injury since they cost
7 more than they would have cost had the truth about the Products been known.

8 6. Ms. Grausz brings this action against Hershey on behalf of herself, similarly-
9 situated Class Members, and the general public to enjoin Hershey from continuing its unfair,
10 unlawful, and deceptively business practices regarding the Products, and to recover
11 compensation for injured Class Members.

12 **JURISDICTION & VENUE**

13 7. This Court has original jurisdiction over this action under 28 U.S.C. §
14 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the
15 sum or value of \$5,000,000, exclusive of interest and costs, and at least one member of the
16 class of plaintiffs is a citizen of a State different from Hershey. In addition, more than two-
17 thirds of the members of the class reside in states other than the state in which Hershey is a
18 citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28
19 U.S.C. § 1332(d) do not apply.

20 8. The Court has personal jurisdiction over Hershey as a result of Hershey's
21 substantial, continuous and systematic contacts with the State, and because Hershey has
22 purposely availed itself of the benefits and privileges of conducting business activities within
23 the State, including by marketing, distributing, and selling the Products in California.

24 9. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §
25 1391(b) and (c), because Hershey resides (*i.e.*, is subject to personal jurisdiction) in this
26 district, and because a substantial part of the events or omissions giving rise to the claims
27 occurred in this district.

1 **PARTIES**

2 10. Plaintiff Eva Grausz is a citizen of California and is a resident of San Diego
3 County, California.

4 11. Defendant Hershey is a Delaware corporation with its principal place of
5 business in Hershey, Pennsylvania.

6 **FACTS**

7 **I. Toxic Lead and Cadmium are Present in the Products**

8 12. Each of the Products challenged in this lawsuit contain levels of lead and/or
9 cadmium which, when consumed, increase the risk of disease.

10 13. Consumer Reports' testing of the Hershey's Special Dark Mildly Sweet showed
11 it contained 1.325µg of lead per ounce. The same testing of the Lily's Extra Dark Chocolate
12 70% Cocoa showed 0.72µg of lead per ounce.² According to Consumer Reports' testing,
13 Lily's Extremely Dark Chocolate 85% Cocoa contained 0.715µg of lead and 4.14µg of
14 cadmium.³

15 14. Similarly, Lily's Original Dark Chocolate 55% Cocoa and Lily's Sea Salt Extra
16 Dark Chocolate 70% were tested by other independent, certified labs and reported by As
17 You Sow in February and March 2022. The Original Dark contained 1.1µg and the Sea Salt
18 Extra Dark contained 0.7µg.⁴

19 15. The Hershey Special Dark and Lily's Extra Dark 70% were also tested in March
20 2022 and showed similar levels of toxic lead.⁵



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22
23 ² *Lead and Cadmium Could Be in Your Dark Chocolate*, CONSUMER REPORTS (December 15,
24 2022), at <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550>.

25 ³ *Id.*

26 ⁴ *Toxins in Chocolate*, AS YOU SOW, <https://www.asyousow.org/environmental-health/toxic-enforcement/toxic-chocolate> (last visited Mar. 24, 2023) (hereinafter "*Toxins in Chocolate*").

27 ⁵ *Id.*

16. Not only has independent testing confirmed the Products contain lead and cadmium, Hershey has known as much for at least the last eight years. In 2014, Hershey was put on notice that at least some of its dark chocolate products, including at least some of the Products at issue here, contained unsafe amounts of cadmium, lead, or both. Hershey was provided with testing certificates from independent experts confirming the high levels of heavy metals in the Hershey Products. Nevertheless Hershey has failed to take steps to effectively reduce or remove the heavy metals from the Products. For example, the Hershey Special Dark was tested as recently as March 2022 and contained *four times* more lead than it had in 2014 when it was first tested.⁶

	Company	Product	Test Date	Lead (µg/serving)
	The Hershey Company	Hershey's Special Dark Mildly Sweet Chocolate Bar	03/2022	2.4
	The Hershey Company	Hershey's Special Dark Mildly Sweet Chocolate Bar	07/2014	0.6

17. Hershey could have, but failed to, take effective steps to limit or remove lead in the Products. According to experts, “lead seems to get into cacao after beans are harvested. The researchers found that the metal was typically on the outer shell of the cacao bean, not in the bean itself. Moreover, lead levels were low soon after beans were picked and removed from pods but increased as beans dried in the sun for days. During that time, lead-filled dust and dirt accumulated on the beans.” A committee of experts formed to look at ways to reduce lead found in chocolate bars concluded, in part, that the lead “contamination in chocolate products [occurs] during *post-harvest processing* and not from the uptake of [lead] in the nib.”⁷ Those same experts recommend that reducing the lead in the products will come from

⁶ *Id.*

⁷ Timothy Ahn, et al., *Expert Investigation Related to Cocoa and Chocolate Products: Final Report* (Mar. 28, 2022), available at <https://tinyurl.com/239zv83d>.

1 changes to “agricultural, *manufacturing*, [and/or] *business practices*”⁸ and, therefore,
 2 reducing (or perhaps even eliminating) toxic heavy metals in the Products is not
 3 unreasonable.

4 18. A report from the *Seattle Times* further notes that “lead levels are influenced by
 5 where and how the cacao beans are handled by humans *after* harvest.”⁹

6 19. That Hershey is responsible for the lead and cadmium being present at such
 7 unreasonably dangerous levels in its Products is also manifest in the fact that *many* brands
 8 of dark chocolate bars test at levels far below that of the Hershey Products. For example,
 9 Mast Organic Dark Chocolate, with an 80% cocoa content, tested at only .07µg of lead per
 10 serving, nearly 20x less than the 1.325µg of lead in Hershey’s Special Dark Mildly Sweet.
 11 Similarly, by way of example, Ghirardelli Intense Dark Chocolate 86% Cacao tested at 1.6µg
 12 cadmium per ounce, compared to the 4.14µg of cadmium in Lily’s Extremely Dark
 13 Chocolate 85% Cocoa.

14 20. In short, Hershey knew its Products had unsafe levels of toxic heavy metals and
 15 could have implemented changes to its business practices, to eliminate, or at least
 16 significantly reduce, toxic heavy metal contamination in the Products it sold to Plaintiff and
 17 the public. But Hershey failed to take the steps necessary to do so.

18 **II. The Lead and Cadmium in the Product Increase the Risk of Disease**

19 21. Lead affects almost every organ and system in the body and accumulates over
 20 time, leading to severe health risks and toxicity, including inhibiting neurological function,
 21 anemia, kidney damage, seizures, and in extreme cases, coma and death.¹⁰ Even “extremely
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24 _____
 25 ⁸ *Id.* (emphasis added).

26 ⁹ Vonnai Phair, *How heavy metals get into dark chocolate bars*, SEATTLE TIMES (Feb. 10,
 2023), at <https://tinyurl.com/mw58v97k> (emphasis added).

27 ¹⁰ Wani AL, et al., *Lead toxicity: a review*, INTERDISCIP TOXICOL. (June 2015), available at
 28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4961898> (hereafter “*Lead toxicity*”).

1 low” levels of lead exposure have been “found to reduce the cognitive capacity of children”¹¹
2 when the exposure is consistent and “prolonged intake of even [] low level[s] of lead is
3 hazardous to human beings.”¹²

4 22. “Once in the bloodstream, lead is primarily distributed among three
5 compartments – blood, mineralizing tissue, and soft tissues. The bones and teeth of adults
6 contain more than 95% of total lead in the body.”¹³ However, in times of stress, “the body
7 can mobilize lead stores, thereby increasing the level of lead in the blood,” making repeated
8 exposure, even at low levels, particularly sinister, since it is capable of accruing and then
9 lying in wait to be released into the blood at unexpected times.¹⁴

10 23. Along with bones, teeth and blood, many other tissues store lead in the body,
11 including the brain, spleen, kidneys, liver, and lungs.¹⁵ Lead has been conclusively found to
12 have no positive physiological role in the body, “while its harmful effects are manifold.”¹⁶
13 The effects of lead have been well studied also at the cellular level and “heavy metals,
14 including lead, create reactive radicals which damage cell structures, including DNA and
15 cell membrane.”¹⁷

20 ¹¹ HL Needleman, et al., *The Long-Term Effects of Exposure to Low Doses of Lead in*
21 *Childhood—An 11-Year Follow-up Report*, N. ENGL. J. MED. 322:83–88 (1990).

22 ¹² *Lead toxicity, supra* n.10.

23 ¹³ *Id.*

24 ¹⁴ Centers for Disease Control and Prevention ATSSDR Environmental Health and Medicine
25 Education, *What is the Biological Fate of Lead in the Body?* (June 12, 2019), available online
at https://www.atsdr.cdc.gov/csem/leadtoxicity/biologic_fate.html.

26 ¹⁵ RC Dart, et al., *MEDICAL TOXICOLOGY* (Lippincot, Williams & Wilkins, 3rd ed. 2004).

27 ¹⁶ *Id.*

28 ¹⁷ MJ Kosnett, *POISONING AND DRUG OVERDOSE* (McGraw Hill Professional, 5th ed. 2006).

1 24. In particular, “young children and pregnant women especially should avoid
2 exposure to lead.”¹⁸ Children are at particular risk when it comes to lead exposure because
3 it can harm a child’s brain development, resulting in learning and behavioral problems.¹⁹

4 25. Exposure puts children at risk for lowered IQ, behavioral problems (such as
5 attention deficit hyperactivity disorder (ADHD)), type 2 diabetes, and cancer, among other
6 health issues. Heavy metals also pose risks to adults.

7 26. Because “[l]ead is a neurotoxin” it is particularly “dangerous for children”
8 because “it affects kids’ developing brains and nervous systems” and “[e]ven small amounts
9 of lead exposure add up over time, increasing risk of developmental effects.”²⁰ Thus, because
10 the body has such difficulty expelling lead, and it builds over time, the amount of lead in the
11 Hershey Products constitutes an unreasonable safety risk for children.

12 27. In short, “[r]esearch shows no lead exposure is safe for children.”²¹

13 28. In adults, exposure to lead may cause anemia, weakness, and kidney and brain
14 damage.²² Lead affects almost every organ and system in the body and accumulates over
15 time, leading to severe health risks and toxicity, including inhibiting neurological function,
16 anemia, kidney damage, seizures, and in extreme cases, coma, and death.²³ Lead can also
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20 ¹⁸ *Toxins in Chocolate*, *supra* n.4.

21 ¹⁹ Center for Food Safety, <https://www.centerforfoodsafety.org>.

22 ²⁰ LEAD POISONING, C.S. Mott Children’s Hospital, University of Michigan Health,
23 <https://www.mottchildren.org/posts/your-child/lead-poisoning>.

24 ²¹ Columbia University Irving Medical Center, *Lead and Children: No Amount of Lead is*
25 *Safe* (Oct. 6, 2022), <https://www.cuimc.columbia.edu/news/lead-poison-and-children-no-amount-lead-safe>.

26 ²² Centers for Disease Control and Prevention, *ToxFAQs™ for Lead* (Aug. 7, 2020), at
27 <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=93&toxid=22#>.

28 ²³ *Id.*

1 cross the fetal barrier during pregnancy, exposing the mother and developing fetus to serious
2 risks, including reduced growth and premature birth.²⁴

3 29. According to the United Nations Children's Fund, known globally as UNICEF,
4 “[l]ead is a highly poisonous element that is responsible for nearly 1.5 per cent of annual
5 global deaths – almost as many deaths as from HIV and AIDS, and more than from malaria”
6 and, in fact, “the impact of lead on adults is so large that over 900,000 premature deaths per
7 year are attributed to lead exposure.”²⁵

8 30. Cadmium, likewise, poses a serious safety risk to consumers because it can
9 cause cancer and is a known teratogen, an agent which causes malformation of an embryo.
10 Exposure to cadmium can affect the kidneys, lungs, and bones.²⁶

11 31. There may be no safe level of exposure to a carcinogen, so all contact should
12 be reduced to the lowest possible level.²⁷ Cadmium is considered a class 1 carcinogen by the
13 World Health Organization.²⁸ Even at low exposure, cadmium can cause nausea, vomiting,
14 diarrhea and abdominal pain. And, because cadmium builds up in the body, even at low
15 dosage, repeated exposure can cause liver and kidney damage, anemia, and loss of smell.
16 According to the Centers for Disease Control and Prevention, “exposure to low levels of
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20 ²⁴ Centers for Disease Control and Prevention, *Pregnant Women* (July 21, 2022),
21 <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm>.

22 ²⁵ UNICEF, *7 things to know about lead exposure*, <https://www.unicef.org/stories/7-things-know-about-lead-exposure>.

23 ²⁶ *Cadmium*, BETTER HEALTH CHANNEL, <https://tinyurl.com/4r8frd7z> (last visited Mar. 24,
24 2023).

25 ²⁷ New Jersey Department of Health, *Hazardous Substance Fact Sheet*, NJ.GOV (Dec. 2007),
26 *available at* <https://www.nj.gov/health/eoh/rtkweb/documents/fs/0305.pdf>.

27 ²⁸ United Nations Environment Programme, *Lead and Cadmium*, UNEP.ORG,
28 <https://www.unep.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/lead-and-cadmium> (last visited Mar. 24, 2023).

1 cadmium in . . . food . . . over time may build up cadmium in the kidneys and cause kidney
2 disease and fragile bones” and is indisputably “considered a cancer-causing agent.”²⁹

3 32. Like with lead, “children are more susceptible than adults to exposure from low
4 doses of cadmium over time.”³⁰

5 **III. The Cadmium in the Lily’s Extremely Dark Chocolate 85% Constitutes an**
6 **Unreasonable Risk of Harm**

7 33. The Center for Disease Control Agency for Toxic Substances and Disease
8 Registry has established Minimal Risk Levels for various toxins, which states cadmium can
9 be taken in orally chronically without risk of adverse health effects only if that amount is
10 less than 0.0002 mg/kg/day of cadmium based solely on its renal effects.³¹ This is based on
11 a metanalysis, including at least one study showing that “An MRL (Minimum Risk of Level)
12 of 0.1µg has been derived for chronic-duration oral exposure (≥1 year) to cadmium.”³²

13 34. Applying this Centers for Disease Control ATSDR standard, if a 58 kg person
14 (128 pounds) ate just *one* bar of Lily’s Extremely Dark Chocolate 85% (2.8 oz product,
15 containing 4.14µg of cadmium per ounce, or 11.6µg of total cadmium), they would be over
16 the CDC minimum risk level for renal disease from consuming that product alone, if they
17 eat it regularly. *Id.*; *see also id.* ¶ 13. Of course, some consumers may eat more than one bar
18 per day *and*, as Hershey acknowledges, may be exposed to other foods containing cadmium.

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20 ²⁹ Centers for Disease Control and Prevention, *Cadmium Factsheet* (Apr. 7, 2017),
21 <https://tinyurl.com/y4f2kku7>.

22 ³⁰ *Toxins in Chocolate*, *supra* n.4.

23 ³¹ *What Are the U.S. Standards for Cadmium Exposure?*, U.S. Department of Health and
24 Human Services, Public Health Service Agency for Toxic Substances and Disease Registry
25 (“ATSDR”), *available online at* [https://www.atsdr.cdc.gov/csem/cadmium/Safety-](https://www.atsdr.cdc.gov/csem/cadmium/Safety-Standards.html)
26 [Standards.html](https://www.atsdr.cdc.gov/csem/cadmium/Safety-Standards.html) (“Progress Check” asking “Guidelines issued by U.S. agencies are designed
27 to protect human health and include which of the following?” and noting that one of the
28 correct answers is the amount of cadmium that “can be taken orally chronically without risk
of adverse health effects” is “0.0002 mg/kg/day of cadmium based on its renal effects”).

³² TOXICOLOGICAL PROFILE FOR CADMIUM, ATSDR (Sept. 2012), *available at*
<https://www.atsdr.cdc.gov/toxprofiles/tp5.pdf>, at p. 30.

1 See Dkt. No. 35, Hershey’s Mot. to Dismiss SAC at 1 (cadmium is “present in practically all
2 foods.”).

3 35. Because “[m]ost of the cadmium that enters your body goes to your kidney and
4 liver and can remain there for many years,” those who repeatedly consume the Lily’s
5 Extremely Dark are exposed to an unreasonable risk of harm in that eating just one bar per
6 day regularly will result in sufficient the cadmium build up in the kidneys and liver, resulting
7 in levels that actually exceed the minimum risk levels for renal disease.

8 **IV. Reasonable Consumers Do Not Expect Unsafe Levels of Heavy Metals in the**
9 **Products; Hershey Nevertheless Failed to Disclose the Presence of Lead or**
10 **Cadmium in the Products**

11 36. The global dark chocolate market has witnessed significant growth in recent
12 years and is expected to continue growing into 2023.³³

13 37. The growth of dark chocolate sales is premised, in part, on highly publicized
14 studies purportedly showing that eating a small amount of dark chocolate regularly can
15 benefit your health. This is thought to be because dark chocolate is rich in disease-fighting
16 antioxidants and in theory it can help reduce blood pressure and lower the risk of heart
17 disease.³⁴

18 38. Among consumers, “[t]he preference for dark chocolate over milk chocolates
19 on accounts its health benefits continues to remain intact,” especially as demand for healthy
20 products, generally, increases.³⁵ Thus, the safety and health effects of the Products are
21 material facts to reasonable consumers.

24 ³³ *Dark Chocolate Market Outlook (2023-2033)*, PERSISTENCE MARKET RESEARCH (Dec.
25 2022), available at [https://www.persistencemarketresearch.com/market-research/dark-](https://www.persistencemarketresearch.com/market-research/dark-chocolate-market.asp)
26 [chocolate-market.asp](https://www.persistencemarketresearch.com/market-research/dark-chocolate-market.asp).

27 ³⁴ Scripps.org, *Is Dark Chocolate Healthy?*, at [https://www.scripps.org/news_items/5317-is-](https://www.scripps.org/news_items/5317-is-dark-chocolate-healthy)
28 [dark-chocolate-healthy](https://www.scripps.org/news_items/5317-is-dark-chocolate-healthy) (Feb. 6, 2023).

³⁵ *Id.*

1 39. Given the negative effects of toxic lead and cadmium on human development,
2 especially in embryos and children, and on adult health, the presence of toxic heavy metals
3 in the Products presents a safety risk to consumers and is a material fact to reasonable
4 consumers, including Plaintiff and members of the Class.

5 40. As a household name, Hershey has earned significant public trust and
6 confidence from consumers that its foods are safe and fit for regular consumption.

7 41. Hershey holds itself out as worthy of that trust and has specifically held itself
8 out as making premium dark chocolate products. For example, Hershey states on its website
9 of the Lily’s Extremely Dark product: “We wanted to harness the best of Extremely Dark
10 Chocolate and this is it.”³⁶

11 42. Hershey has also expressed to the public its “commitment to better sweets.”³⁷

12 43. Hershey also touts its safety standards and how it vets its ingredient sources,
13 and highlights the public trust that it has garnered as a result, writing:³⁸

14 Hershey has some of the highest food safety production standards in the industry and we are proud that
15 consumers trust our products. We go beyond simply complying with national and international standards, and
16 every part of our manufacturing process is subject to rigorous auditing and oversight.

17 We have a comprehensive set of food safety and quality programs that serve as a solid foundation for our
18 Supplier Quality Management System. We rely on our suppliers to embrace these programs and implement a
19 culture of excellence, and we are committed to pursuing continuous improvements in food safety.

20 Hershey also sources 100 percent of ingredients from suppliers approved through the Hershey Supplier Quality
21 Management Program, which is defined and executed in compliance with applicable Global Food Safety
22 Initiative (GFSI) standards and regulatory requirements.

23 ³⁶ *Extremely Dark Chocolate Style Bar*, LILYS.COM, [https://www.lilys.com/products/lilys-](https://www.lilys.com/products/lilys-extremely-dark-chocolate-style-candy-bar-2-8-oz.html)
24 [extremely-dark-chocolate-style-candy-bar-2-8-oz.html](https://www.lilys.com/products/lilys-extremely-dark-chocolate-style-candy-bar-2-8-oz.html) (last visited Mar. 24, 2023).

25 ³⁷ *Our Story*, LILYS.COM, <https://www.lilys.com/our-story.html> (last visited Mar. 24, 2023).

26 ³⁸ *Food Safety—Partners in Quality*, THEHERSHEYCOMPANY.COM,
27 <https://tinyurl.com/4jdj8way> (last visited Mar. 24, 2023). Plaintiff does not concede the truth
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1 44. Hershey knew that if, instead of boasting to the public about its rigorous safety
2 standards and how it only sources the safest ingredients possible, it revealed to the public its
3 actual business practices and/or the presence of unsafe levels of toxic heavy metals in its
4 Products, Plaintiff and the Class Members would be unwilling to purchase the Products or
5 would pay less for them.

6 45. Understanding consumers would be unwilling to purchase the Products or
7 would pay less for the Products if they knew that the Products contained toxic amounts of
8 heavy metals, Hershey concealed this fact from Plaintiff and the Class Members and did not
9 disclose the presence of, or risk of presence of, unsafe levels of toxic heavy metals on the
10 label of the Products.

11 46. Hershey knew or should have known that Plaintiff and the Class members
12 would rely upon the packages of the Products and intended for them to do so but failed to
13 disclose the presence of unsafe levels of toxic heavy metals. That is, the consumer-facing
14 messages on the Products' packaging that Defendant chose failed to make any reference to
15 lead or cadmium. Indeed, nowhere on the Products' packaging is there any disclosure of the
16 inclusion (or possible inclusion) of lead or cadmium.

17 47. Hershey knew or should have known that it owed consumers a duty of care to
18 adequately test for lead, cadmium, and other heavy metals, particularly considering that it
19 was provided notice of independent expert testing of some of its dark chocolate bars,
20 repeatedly, between 2014 and 2022. Had Hershey done so, it would have known that its
21 Products contained unsafe levels of toxic heavy metals. Alternatively, Hershey *did* know that
22 its Products contained unsafe levels of toxic heavy metals and purposely hid that fact from
23 consumers.

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of Hershey's statements, but alleges only that this is what Hershey communicates to the
public. For example, Plaintiff actually *disputes* that Hershey has "some of the highest food
safety production standards in the industry," and that it is "committed to pursuing continuous
improvements in food safety." Moreover, Plaintiff has no information on which to gauge
whether Hershey is truthful in its claims about whether and how it sources its ingredients.

1 48. Additionally, Hershey knew or should have been aware that a reasonable
2 consumer would consume the Products regularly, and possibly multiple Products daily,
3 leading to repeated exposure to both lead and cadmium, which each independently
4 accumulate in the body and its systems over time, exacerbating the negative effects over
5 time, even if each individual exposure is “low.” Thus, the cumulative effect of consuming
6 the Hershey Products multiple times renders the amount of lead and cadmium unreasonably
7 dangerous to consumers.

8 49. Hershey knew or should have known it could control the levels of lead and
9 cadmium in the Products by properly monitoring for heavy metal presence, sourcing
10 ingredients with less heavy metals, or none at all, adjusting its formulation to reduce or
11 eliminate heavy metals, or improve its manufacturing process to eliminate introduction of
12 lead caused by Hershey itself. In fact, Hershey tacitly admitted as much to journalists,
13 including at Reuters, that it is now (following the Consumer Reports article) “looking to
14 reduce ‘trace’ amounts of lead and cadmium in its chocolate,” and that it “would love to
15 eradicate it completely and continue[s] to look for opportunities in the process” to do so.³⁹
16 In sum, Hershey has known about the problem for almost a decade, but has only recently
17 started looking for ways to reduce the lead and cadmium, and knows that, with effort, it
18 *could* eradicate the heavy metals completely—but has not done so.

19 50. Prior to purchasing the Products, Plaintiff and the Class members were exposed
20 to, saw, read, and understood the labels of the Products, and relied upon the same in
21 purchasing the Products, but Hershey failed to disclose the presence of heavy metals.

22 51. As a result of Hershey’s concealment of the fact that the Products contained
23 toxic heavy metals, including lead and cadmium, Plaintiff and the Class members reasonably
24 believed the Products were free from substances that would negatively affect children’s
25 development as well as their own health.

26 ³⁹ DiNapoli, J., *Hershey looking to remove lead, cadmium from chocolate -CFO*, REUTERS
27 (Mar. 23, 2023), available at [https://www.reuters.com/business/retail-consumer/hershey-
28 looking-eradicate-lead-cadmium-chocolate-cfo-2023-03-22](https://www.reuters.com/business/retail-consumer/hershey-looking-eradicate-lead-cadmium-chocolate-cfo-2023-03-22).

1 52. Plaintiff and the Class members purchased the Hershey Products in reliance
2 upon Hershey’s labels. Had Plaintiff and the Class members known that the Products
3 contained unsafe levels of toxic heavy metals, rendering them unsafe for consumption, they
4 would not have been willing to purchase the Products or would have paid less for them.

5 53. Therefore, as a direct and proximate result of Hershey’s omissions concerning
6 the Products, Plaintiff and the Class Members purchased the Products and paid more than
7 they were worth.

8 54. Plaintiff and the Class members were harmed in the form of the monies they
9 paid for the Products which they would not otherwise have paid had they known the truth
10 about the Products. Since the presence of unsafe levels of toxic heavy metals, including lead
11 and cadmium, in the Products renders them unsafe for human consumption, the Products that
12 Plaintiff and the Class members purchased are worthless, or at a minimum are worth less
13 than Plaintiff and the Class paid for them.

14 **V. The Products’ Labeling Violates California and Federal Food Labeling Law**

15 55. The Products’ labeling violates California Health and Safety Code §§ 109875,
16 *et. seq.* (the “Sherman Law”), which has expressly adopted the federal food labeling
17 requirements as its own. *See, e.g., id.* § 110100; *id.* § 110670 (“Any food is misbranded if
18 its labeling does not conform with the requirements for nutrition labeling as set forth in
19 Section 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the regulation adopted pursuant
20 thereto.”).

21 56. First, the labeling and website claims are false and misleading for the reasons
22 described herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food
23 whose “label is false or misleading in any particular.” Hershey accordingly also violated
24 California’s parallel provision of the Sherman Law. *See* Cal. Health & Safety Code §
25 110670.

26 57. Second, Hershey “fail[ed] to reveal facts that are material in light of other
27 representations made or suggested by the statement[s], word[s], design[s], device[s], or any
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1 combination thereof,” in violation of 21 C.F.R. § 1.21(a)(1). Such facts include the
2 detrimental health consequences of consuming the Products given that they contain lead and
3 cadmium, which are unsafe in the amounts present in the Products. In addition, such facts
4 include the detrimental health consequences of consuming the Products, including inhibiting
5 neurological function, anemia, kidney damage, seizures, and in extreme cases, coma and
6 death, which are all material to a consumer choosing a food product.

7 58. Third, Hershey failed to reveal facts that were “[m]aterial with respect to the
8 consequences which may result from use of the article under” both “[t]he conditions
9 prescribed in such labeling,” and “such conditions of use as are customary or usual,” in
10 violation of § 1.21(a)(2). Namely, Hershey failed to disclose the increased risk of serious
11 chronic disease and death that is likely to result from the usual consumption of the dark
12 chocolate Products in the customary and prescribed manners, including regular consumption
13 of the standard serving size.

14 59. Finally, Hershey has also misbranded its Products in violation of the Sherman
15 Law by, *inter alia*, failing to disclose the presence of lead and cadmium on the Products’
16 labels as required by 21 U.S.C. § 343, which states that food is misbranded “unless its label
17 bears . . . the common or usual name of each . . . ingredient.” That is, food manufacturers,
18 like Hershey, are required to list all ingredients in the food, unless those ingredients are
19 subject to an exemption from this requirement. Because the lead and cadmium are not subject
20 to any exemption under applicable law, Hershey misbranded the Products.

21 **VI. Plaintiff’s Purchase, Reliance, And Injury**

22 60. Ms. Grausz regularly purchased Lily’s Extremely Dark Chocolate 85% Cocoa
23 during the Class Period, often making her purchases from Target stores in San Diego.

24 61. When purchasing the Products, Ms. Grausz was seeking chocolate bars she
25 believed to be premium, or of a higher quality, than other confectionaries. Ms. Grausz would
26 have avoided any food she knew contained unsafe levels of toxic heavy metals like lead and
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1 cadmium. She would also have avoided purchasing any food she knew could increase her
2 risk of inhibited neurological function, anemia, kidney damage, seizures, coma, or death.

3 62. Plaintiff acted reasonably in purchasing the Products, whose labels did not
4 disclose the presence of lead or cadmium, or the attendant health risks in consuming the
5 Products.

6 63. By omitting that its Products contain harmful levels of lead or cadmium,
7 Hershey was able to gain a greater share of the snack market, specifically the confectionary
8 and dark chocolate market, than it would have otherwise and to increase the size of the
9 market.

10 64. Plaintiff paid more for the Product, and would only have been willing to pay
11 less, or unwilling to purchase it at all, absent Hershey's omissions regarding the lead and
12 cadmium content described herein.

13 65. Plaintiff would not have purchased the Product if she had known that it was
14 misbranded pursuant to California and FDA regulations, or that they contained toxic lead or
15 cadmium in the amounts found in the Products.

16 66. For these reasons, the Products were worth less than what Plaintiff and the Class
17 Members paid for them.

18 67. Plaintiff and the Class lost money as a result of Hershey's omissions and unfair
19 practices in that they did not receive what they paid for when purchasing the Products.

20 68. Plaintiff still wishes to purchase snack foods, including dark chocolate, and
21 continues to see the Products at stores where she shops. She would purchase the Products in
22 the future if, because of an injunction requiring Hershey to disclose lead or cadmium when
23 present, she could be assured by the absence of a disclosure that the Products no longer
24 contained lead or cadmium. But unless Hershey is enjoined in the manner Plaintiff requests,
25 she may not be able to reasonably determine whether the lead or cadmium in the Products
26 has been addressed by correcting its unfair business practices, or whether the Products
27 continue to contain high levels of lead and/or cadmium.

1 69. Plaintiff’s substantive right to a marketplace free of fraud, where she is entitled
2 to rely with confidence on representations such as those made by Hershey, continues to be
3 violated every time Plaintiff is exposed to the Products’ labels.

4 70. Hershey’s unfair business practices that result in higher concentrations of toxic
5 heavy metals, including lead and cadmium, being present in the Products than are present in
6 the cacao beans from which they are made should also be enjoined. Absent such an
7 injunction, Plaintiff cannot be assured that Hershey has stopped this unfair business practice
8 which unnecessarily concentrates amounts of heavy metals in the Products.

9 71. Plaintiff’s legal remedies are inadequate to prevent these future injuries.

10 **CLASS ACTION ALLEGATIONS**

11 72. While reserving the right to redefine or amend the class definition prior to or as
12 part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23,
13 Plaintiff seeks to represent a class of all persons in the United States, or alternatively in
14 California, who, at any time from January 6, 2019 to the time a class is notified (the “Class
15 Period”), purchased, for personal or household use, and not for resale or distribution, the
16 Products (the “Class”).

17 73. The members in the proposed Class are so numerous that individual joinder of
18 all members is impracticable, and the disposition of the claims of all Class Members in a
19 single action will provide substantial benefits to the parties and Court.

20 74. Questions of law and fact common to Plaintiff and the Class include:

- 21 a. whether the omissions on the Products labels with respect to lead and/or
22 cadmium content are material, or likely to be material, to a reasonable consumer;
23 b. whether the omissions regarding lead and/or cadmium content were
24 reasonably likely to deceive a reasonable consumer;
25 c. whether Hershey’s conduct violates is unfair;
26 d. whether Hershey’s conduct violates state or federal food statutes or
27 regulations;
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- e. whether Hershey made and breached warranties;
- f. the proper amount of damages, including punitive damages;
- g. the proper amount of restitution;
- h. the proper scope of injunctive relief; and
- i. the proper amount of attorneys' fees.

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

76. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Hershey's conduct. Specifically, all Class Members, including Plaintiff, were subjected to the same unfair, unlawful, and deceptive conduct when they purchased the Products and suffered economic injury because the Products are misrepresented. Absent Hershey's unfair business practices, Plaintiff and Class Members would not have purchased the Products or would have paid less for them.

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

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

79. Hershey has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law

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

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

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

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

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

Fraudulent

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

86. As set forth herein, Hershey’s omissions regarding the toxic lead and cadmium content of the Products is likely to deceive reasonable consumers and the public.

Unlawful

87. As set forth herein, Hershey’s omissions are “unlawful” under the UCL in that they violate at least the following laws:

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

1 88. By violating these laws, Defendant has engaged in unlawful business acts and
2 practices, which constitute unfair competition within the meaning of Business & Professions
3 Code § 17200.

4 89. Because Plaintiff’s claims under the UCL’s “unlawful” prong include only one
5 element—the violation of some predicate law or regulation—and do not require the public
6 be likely to be deceived so that the reasonable consumer test is not an element of those
7 claims, Plaintiff’s legal remedies, which have additional elements including likelihood of
8 deception under the reasonable consumer standard, are inadequate to fully compensate
9 Plaintiff for all of Defendant’s unlawful acts. Because Plaintiff’s losses may not be fully
10 compensated by her legal damages, her legal remedies are inadequate.

11 **Unfair**

12 90. Hershey’s conduct with respect to the labeling, advertising, and sale of the
13 Products was unfair because Hershey’s conduct was immoral, unethical, unscrupulous, or
14 substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh
15 the gravity of the harm to its victims.

16 91. Hershey’s conduct, including during the harvesting, post-harvesting,
17 processing, storing, and ultimate sale of the Products to consumers was unfair because it
18 unnecessarily introduced additional amounts of lead and cadmium into the Products.
19 Specifically, a significant amount of the lead and cadmium found in the Products sold at
20 retail is introduced into the beans after they were picked and removed from pods, and then
21 again between picking, drying, processing, packaging, and sale, even more heavy metals are
22 introduced into the final retail Products sold to Plaintiff and the Class Members. Hershey’s
23 unfair business practices ultimately led to unsafe levels of toxic heavy metals being present
24 in the Products.

25 92. Hershey’s conduct with respect to the labeling, advertising, and sale of the
26 Products was also unfair because it violates public policy as declared by specific
27 constitutional, statutory or regulatory provisions, including but not necessarily limited to the
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1 False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions
2 of the California Sherman Food, Drug, and Cosmetic Law.

3 93. Hershey's conduct with respect to the labeling, advertising, and sale of the
4 Products was and is also unfair because the consumer injury was substantial, not outweighed
5 by benefits to consumers or competition, and not one consumers themselves could
6 reasonably have avoided. Specifically, the increase in profits obtained by Hershey through
7 the misleading labeling does not outweigh the harm to Class Members who were deceived
8 into purchasing the Products unaware that they contain toxic lead or cadmium and are of the
9 type that can increase the risk of poor health. Consumers could not have reasonably avoided
10 the harm because this would have required that they conduct their own research into the lead
11 and/or cadmium content of the Products, which could only feasibly be revealed by laboratory
12 testing, which is not a reasonable expectation. Further, the harm could have easily been
13 avoided by Hershey as it would have cost them only minimally to indicate to consumers that
14 the Products contain unsafe toxic heavy metals, or that these toxins can over time accumulate
15 in the body to the point where poisoning, injury, and/or disease can occur.

16 94. Hershey profited from the sale of the falsely, deceptively, and unlawfully
17 advertised the Hershey Products to unwary consumers.

18 95. Plaintiff and Class Members are likely to continue to be damaged by Hershey's
19 deceptive trade practices, because Hershey continues to disseminate misleading information.
20 Thus, injunctive relief enjoining Hershey's deceptive practices is proper.

21 96. Hershey's conduct caused and continues to cause substantial injury to Plaintiff
22 and other Class Members. Plaintiff suffered injury in fact as a result of Hershey unlawful
23 conduct.

24 97. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
25 enjoining Hershey from continuing to conduct business through unlawful, unfair, and/or
26 fraudulent acts and practices.

1 98. Plaintiff and the Class also seek an order for the restitution of all monies from
2 the sale of the Products, which were unjustly acquired through acts of unlawful competition.

3 99. Because Plaintiff's claims under the "unfair" prong of the UCL sweep more
4 broadly than her claims under the FAL, CLRA, or UCL's "fraudulent" prong, Plaintiff's
5 legal remedies may be inadequate to fully compensate Plaintiff for all of Hershey's
6 challenged behavior. For example, Plaintiff alleges Hershey's conduct during the harvesting,
7 post-harvesting, processing, storing, and ultimate sale of the Products to consumers was
8 unfair because it did not minimize their exposure to heavy metals, Plaintiff has no legal
9 remedies for that conduct.

10 **SECOND CAUSE OF ACTION**

11 **Violations of the False Advertising Law**

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

13 100. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
14 as if set forth fully herein.

15 101. California's False Advertising Law prohibits any statement in connection with
16 the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code § 17500.

17 102. As set forth herein, the Plaintiff purchased a Product based on the label, which
18 constituted advertising and which omitted the presence of toxic lead and cadmium in the
19 Products.

20 103. Plaintiff and the Class Members paid money for the Hershey Products.
21 However, they did not obtain the full value or any value of the Products due to Hershey's
22 omissions regarding the nature of the Products. Accordingly, Plaintiff and the Class
23 Members suffered an injury in fact and lost money or property as a direct result of Hershey's
24 omissions.

25 104. Hershey's conduct is ongoing and continuing, such that prospective injunctive
26 relief is necessary, especially given Plaintiff's desire to purchase the Products in the future
27 and hope to rely on Hershey's marketing and packaging.

1 105. Plaintiff and members of the Class are entitled to injunctive and equitable relief,
2 and restitution in the amount they spent on the Products.

3 106. Here, equitable relief is appropriate because Plaintiff may lack an adequate
4 remedy at law if, for instance, damages resulting from their purchase of the Products is
5 determined to be an amount less than the premium price of the Products. Without
6 compensation for the full premium price of the Products, Plaintiff would be left without the
7 parity in purchasing power to which they are entitled.

8 107. Injunctive relief is also appropriate, and indeed necessary, to require Hershey
9 to provide full and accurate disclosures regarding the Products so that Plaintiff and Class
10 members can reasonably rely on the Products' packaging as well as those of Hershey's
11 competitors who may then have an incentive to follow Hershey's deceptive practices, further
12 misleading consumers.

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

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

THIRD CAUSE OF ACTION

Violations of the Consumers Legal Remedies Act

Cal. Civ. Code §§ 1750 *et seq.*

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

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

112. Hershey’s false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of the Hershey Products for personal, family, or household purposes by Plaintiff and Class Members, and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

113. Hershey profited from the sale of the falsely, deceptively, and unlawfully advertised Products to unwary consumers.

114. Hershey’s wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA.

115. Pursuant to California Civil Code § 1782, more than 30 days before filing this amended complaint, Plaintiff sent written notice of her claims and of Hershey’s particular violations of the Act to Hershey by certified mail, return receipt requested, but Hershey has failed to implement remedial measures.

1 116. Plaintiff and the Class have suffered harm and seek (a) actual damages resulting
2 from purchases of the Hershey Products sold throughout the Class Period to all Class
3 Members, (b) punitive damages, (c) injunctive relief in the form of modified advertising and
4 a corrective advertising plan, (d) restitution, and (e) attorneys' fees and costs. *See* Cal. Civ.
5 Code § 1782(d).

6 117. In compliance with Cal. Civ. Code § 1780(d), an affidavit of venue was filed
7 with the original complaint. *See* Dkt. No. 1-2.

8 **FOURTH CAUSE OF ACTION**

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

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

12 119. As set forth herein, Hershey manufactured and sold the Products, and prior to
13 the time the Products were purchased by Plaintiff and other Class Members, impliedly
14 warranted that the Products were of merchantable quality and fit for their ordinary use,
15 consumption by consumers, including children.

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

19 121. Hershey impliedly warranted to retail buyers that the Products were
20 merchantable in that they (a) would pass without objection in the trade or industry under the
21 contract description, and (b) were fit for the ordinary purposes for which the Products are
22 used. Defendant breached these implied warranties because the Products were unsafe in that
23 they contained toxic lead and cadmium. Therefore, the Products would not pass without
24 objection in the trade or industry and were not fit for the ordinary purpose for which they are
25 used, which is consumption by consumers, including children.

26 122. Hershey was on notice of this breach as it was aware of the lead and cadmium
27 in the Products, including based on receiving notice in at least 2014.

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

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

7 **FIFTH CAUSE OF ACTION**

8 **Unjust Enrichment**

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

11 126. Hershey’s financial benefits resulting from its unlawful and inequitable conduct
12 are economically traceable to Plaintiff’s and Class Members’ purchases of the Products, and
13 the economic benefits conferred on Hershey are a direct and proximate result of its unlawful
14 and inequitable conduct.

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

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

21 **PRAYER FOR RELIEF**

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

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

- b. An Order requiring Hershey to bear the cost of Class Notice;
- c. An Order compelling Hershey to destroy all misleading and deceptive advertising materials and product labels, and to recall all offending Products;
- d. An Order compelling Hershey to cease its unfair business practices which unnecessarily result in concentrating high levels of heavy metals in the Products;
- e. An Order requiring Hershey to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;
- f. An Order requiring Hershey to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;
- g. An Order requiring Hershey to pay compensatory damages and punitive damages as permitted by law;
- h. An award of attorneys’ fees and costs; and
- i. Any other and further relief that the Court deems necessary, just, or proper.

JURY DEMAND

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

Dated: February 8, 2024

/s/ Trevor Flynn

FITZGERALD MONROE FLYNN PC
JACK FITZGERALD
jfitzgerald@fmfpc.com
MELANIE (PERSINGER) MONROE
mmonroe@fmfpc.com
TREVOR FLYNN
tflynn@fmfpc.com
CAROLINE S. EMHARDT
cemhardt@fmfpc.com
 2341 Jefferson Street, Suite 200
 San Diego, California 92110
 Phone: (619) 215-1741

SACKS WESTON LLC

Andrew B. Sacks (*pro hac vice*)

asacks@sackslaw.com

John K. Weston (*pro hac vice*)

jweston@sackslaw.com

1845 Walnut Street, Suite 1600

Philadelphia, PA 19103

Phone: 215-925-8200

Facsimile: 267-639-5422

Counsel for Plaintiff