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NORTHERN DISTRICT OF CALIFORNIA

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CV 11 5188 MEJ

**TAMAR DAVIS LARSEN AND ARAN
EISENSTAT, on behalf of themselves and all
others similarly situated,**

Plaintiffs,

v.

TRADER JOE'S COMPANY,

Defendant.

CASE NO.:

CLASS ACTION

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

DEMAND FOR JURY TRIAL

1 Plaintiffs, by their attorneys, bring this class action against Defendant Trader Joe's Company
2 ("Defendant" or "Trader Joe's"), on their own behalf and on behalf of all others similarly situated,
3 and allege as follows based upon information and belief and the investigation of their counsel:

4 INTRODUCTION

5 1. This is a class action brought on behalf of Plaintiffs and a nationwide class of
6 consumers who, from October 24, 2007 through the present ("Class Period"), purchased Trader Joe's
7 food products labeled as "All Natural" and "100% Natural"¹ even though they contain one or more
8 of the following synthetic ingredients: ascorbic acid, potassium carbonate, sodium acid
9 pyrophosphate, sodium citrate, xanthan gum, and vegetable mono- and diglycerides. Each of these
10 ingredients is a recognized synthetic chemical or ingredient by federal regulations.² See 7 C.F.R. §
11 205.605(b).

12 2. Throughout the Class Period, Trader Joe's prominently makes the claim "All Natural"
13 on the labels of its food products, cultivating a wholesome and healthful image in an effort to
14 promote the sale of these products, even though its food products were actually not "All Natural."
15 While the "All Natural" food products' labels did disclose that they contain ascorbic acid, cocoa
16 processed with alkali, sodium acid pyrophosphate, sodium citrate, xanthan gum, and vegetable
17 mono- and diglycerides, the labels did not disclose that these ingredients were synthetic. In light of
18 the food labels' "All Natural" and representations, a reasonably prudent consumer would certainly
19 not normally expect the food products to include synthetic or artificial ingredients. Indeed, as a
20 result of this false and misleading labeling, Defendant was able to sell these purportedly "All
21 Natural" and products to thousands of unsuspecting consumers in California and throughout the
22 United States and to profit handsomely from these transactions.

23
24
25 ¹ Trader Joe's has used both the terms "All Natural" and "100% Natural" on its products containing
26 synthetic ingredients. Hereinafter, Plaintiffs will refer collectively to those two claims by use of the
27 term "All Natural."

28 ² As used throughout this Complaint, Trader Joe's foods or food products include the products
identified in paragraph 24 of this Complaint.

1 3. Plaintiffs allege that Trader Joe's conduct gives rise to common law fraud, violates
2 the unlawful, unfair, and fraudulent prongs of California's Business and Professions Code sections
3 17200, *et seq.* (the "UCL"), violates California's Business and Professions Code sections 17500, *et*
4 *seq.* (the "FAL"), and violates the Consumers Legal Remedies Act of the California Civil Code §§
5 1750, *et seq.* (the "CLRA"). Plaintiffs also allege that Trader Joe's conduct is grounds for restitution
6 on the basis of quasi-contract/unjust enrichment.

7 4. Trader Joe's has its headquarters in Monrovia, California, and manages and directs its
8 nationwide sales and business operations from its offices in California. It has distribution centers in
9 San Jose, California, and in Stockton, California. Trader Joe's has major manufacturing, storage and
10 distribution facilities in California, from which Trader Joe's operates and directs the majority, or at
11 least a substantial proportion, of its nationwide sales and business operations. It is therefore believed
12 and averred that a substantial portion of the misleading labeling and related misconduct at issue in
13 this Complaint occurred, were conducted and/or were directed and emanated from California,
14 including, but not limited to: a) the design of Trader Joe's products' packaging; b) the review,
15 approval and revision of the products and labeling; and c) selection and integration of ingredients for
16 the products.

17 5. Plaintiffs also seek injunctive and declaratory relief based upon Trader Joe's conduct
18 asserted in this Complaint. As of the date of this Complaint, retail stores in California and
19 throughout the United States are selling Trader Joe's food products labeled as "All Natural," even
20 though they contain synthetic ingredients. Moreover, even if Trader Joe's elects to remove the "All
21 Natural" representations from the labels, Trader Joe's is not presently enjoined from putting the "All
22 Natural" representation back on its labels at any time it so decides, even if its food products still
23 contain synthetic or artificial ingredients. Accordingly, Plaintiffs seek declaratory and injunctive
24 relief to ensure that Trader Joe's removes any and all of the "All Natural" representations from
25 labels on its food products available for purchase, and to prevent Defendant from making the "All
26 Natural" representations on its food labels in the future as long as the food products continue to
27 contain synthetic or artificial ingredients.

28

1 **PARTIES**

2 6. Plaintiff Tamar Davis Larsen is currently a resident of Berkeley, California. From at
3 least 2004 to the present, Ms. Larsen was domiciled in California, residing first in Oakland and then
4 in Berkeley, California. Ms. Larsen is and, throughout the entire class period asserted herein, has
5 been, very concerned about and tries to avoid consuming foods that are not natural, such as foods
6 using synthetic or artificial chemical ingredients. For this reason, Ms. Larsen is willing to and has
7 paid a premium for foods that are all natural and has refrained from buying their counterparts that
8 were not all natural. During the Class Period, she purchased on average, one box of Joe-Joe's
9 Chocolate Vanilla Creme Cookies every four months from the Trader Joe's located on College
10 Avenue in Oakland, California. In the past year, she has purchased Trader Joe's Fresh Pressed
11 Apple Juice approximately every four months, also from the Trader Joe's in Oakland, and may have
12 purchased other Trader Joe's "All Natural" products from this store during the Class Period. Based
13 on the "All Natural" representation on the Trader Joe's "All Natural" products labels, Ms. Larsen
14 believed that the Trader Joe's "All Natural" products she purchased were all natural and relied on
15 this representation in making her purchases. However, the Trader Joe's "All Natural" products Ms.
16 Larsen purchased contained synthetic ingredients. While touting its products as "All Natural," the
17 labels that Ms. Larsen relied on neither disclosed that synthetic ingredients were used in the
18 products. Ms. Larsen not only purchased the Trader Joe's "All Natural" products because the label
19 said it was "All Natural," but she paid more money for the Trader Joe's "All Natural" products she
20 purchased than she would have had to pay for other similar products that were not all natural in that
21 they contained synthetic or artificial ingredients. Had Ms. Larsen known the truth that Trader Joe's
22 "All Natural" products were not all natural, she would not have purchased Trader Joe's "All
23 Natural" products, but would have purchased other brands that were truly all natural or, if one was
24 not available, would have purchased other non-natural products that were less expensive than Trader
25 Joe's "All Natural" products. Ms. Larsen did not receive the "All Natural" products she bargained
26 for when she purchased Trader Joe's "All Natural" products, and has lost money as a result in the
27 form of paying a premium for Trader Joe's products because they were purportedly "All Natural,"
28 rather than paying the lesser amount for non-natural alternatives.

1 7. Plaintiff Aran Eisenstat is currently a resident of Ventura County, California. From at
2 least October 5, 2007 to the present, Mr. Eisenstat was domiciled in California. Mr. Eisenstat is and,
3 throughout the entire class period asserted herein, has been, very concerned about and tries to avoid
4 consuming foods that are not natural. For this reason, Mr. Eisenstat is willing to and has paid a
5 premium for foods that are all natural and has refrained from buying their counterparts that were not
6 all natural. During the Class Period, Mr. Eisenstat purchased Trader Joe's Joe-Joe's Chocolate
7 Sandwich Cream Cookies at least five times from the Trader Joe's stores in Agoura Hills, California
8 and Thousand Oaks, California. Based on the "All Natural" representation on the Trader Joe's
9 labels, Mr. Eisenstat believed that the products he purchased were all natural and relied on this
10 representation in making his purchases. However, the Trader Joe's "All Natural" products Mr.
11 Eisenstat purchased contained synthetic ingredients. While touting its products as "All Natural," the
12 labels that Mr. Eisenstat relied on did not disclose that synthetic ingredients were used in these
13 products. Mr. Eisenstat not only purchased Trader Joe's "All Natural" products because the labels
14 said they "All Natural," but he paid more money for the products he purchased than he would have
15 had to pay for other similar products that were not all natural. Had Mr. Eisenstat known the truth
16 that Trader Joe's products were not all natural, he would not have purchased Trader Joe's products,
17 but would have purchased other brands that were truly all natural or, if one was not available, would
18 have purchased other non-natural products that were less expensive than Trader Joe's products. Mr.
19 Eisenstat did not receive the "All Natural" products he bargained for when he purchased Trader
20 Joe's "All Natural" products, and has lost money as a result in the form of paying a premium for
21 these products because they were purportedly all natural, rather than paying the lesser amount for
22 non-natural alternatives.

23 8. Trader Joe's, a privately held company, is a grocery chain with about 360 stores in
24 about 29 states, approximately half of which are located in California. It was started as a Los
25 Angeles convenience store chain called Pronto Markets in 1958, changed its name to Trader Joe's
26 Company in 1967, and was bought in 1979 by two Germans, Karl and Theo Albrecht, who also
27 founded the ALDI food chain. Trader Joe's is incorporated in California and maintains its
28 headquarters at 800 S. Shamrock Avenue, Monrovia, CA 91016.

1 **BACKGROUND**

2 12. Although the Food and Drug Administration (“FDA”) does not directly regulate the
3 term “natural,” the FDA has established a policy defining the outer boundaries of the use of that term
4 by clarifying that a product is not natural if it contains color, artificial flavors, or synthetic
5 substances. <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and
6 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>. Specifically, the FDA states:
7 “the agency will maintain its policy (Ref. 32) regarding the use of ‘natural,’ as meaning that nothing
8 artificial or synthetic (including all color additives regardless of source) has been included in, or has
9 been added to, a food that would not normally be expected to be in the food.” 58 Fed. Reg. 2302,
10 2407 (Jan. 6, 2003).

11 13. Congress has defined “synthetic” to mean “a substance that is formulated or
12 manufactured by a chemical process or by a process that chemically changes a substance extracted
13 from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to
14 substances created by naturally occurring biological processes.” 7 U.S.C. § 6502(21).

15 14. **Potassium carbonate (a/k/a “Cocoa Processed with Alkali”)**. Unsweetened baking
16 Cocoa is typically rendered in one of two forms: Unalkalized cocoa or a version known as alkalized
17 or Dutch-process cocoa. Unalkalized cocoa is light in color and somewhat acidic with a strong
18 chocolate flavor. Alkalized cocoa is processed with an alkali to neutralize its acidity making it
19 slightly milder in taste, with a deeper and warmer color than unalkalized cocoa. In order for cocoa
20 to be used in its alkalized form, a Dutching or alkalization takes place during the processing of the
21 cocoa beans. During this process an alkali—usually either potassium carbonate or sodium
22 carbonate⁵—is suspended in water to neutralize acids and alter the pH level of the beans. This
23 alkalizing agent darkens the cocoa, makes it milder in flavor and increases its dispersability. The
24 FDA requires that “when any optional alkali ingredient” is used, “the name of the food shall be
25 _____

26 ⁵ Besides the commonly used potassium carbonate and sodium carbonate, there are other less
27 commonly used alkali substances approved for use in processing cocoa not listed herein that are
28 identified at 21 C.F.R. § 163.112(b)(1). Significantly, sodium carbonate and sodium bicarbonate
appear to be the only “safe and suitable” non-synthetic alkali substances approved for use in
alkalizing cocoa. *Id.* Compare 7 C.F.R. § 205.605.

1 accompanied by the statement 'Processed with alkali', or 'Processed with -----', the blank being
2 filled in with the common or usual name of the specific alkali ingredient used in the food." 21
3 C.F.R. § 163.112(c)(1). Trader Joe's foods that list the ingredient as "Cocoa Processed with Alkali"
4 without identifying the alkalizing agent are processed with potassium carbonate, a recognized
5 synthetic ingredient by regulation.⁶ 7 C.F.R. § 205.605(b). Significantly, the other commonly used
6 alkali in making alkalized cocoa—sodium carbonate—is a recognized non-synthetic, natural
7 substance. 7 C.F.R. § 205.605(a).

8 15. **Ascorbic acid.** Ascorbic acid is an artificial, chemically modified form of Vitamin C
9 used in foods as an antioxidant and as a preservative, and is a recognized synthetic by federal
10 regulation. 7 C.F.R. § 205.605(b). Ascorbic acid is generally produced from corn or wheat starch
11 being converted to glucose, then to sorbitol and then to ascorbic acid through a series of chemical
12 processes and purification steps.

13 16. **Sodium acid pyrophosphate.** Sodium acid pyrophosphate (SAPP) is a recognized
14 synthetic chemical by federal regulation (7 CFR § 205.605(b)) that is often used as a leavening agent
15 in baked goods, in canning seafood to prevent grit from forming, and to prevent discoloration of
16 potatoes and sugar syrups.

17 17. **Sodium citrate.** Sodium citrate is the sodium salt of citric acid made by reacting
18 sodium carbonate with citric acid. It is a recognized synthetic under federal regulation (7 CFR
19 205.605(b)) that is used in food as a preservative and to provide a tart flavor in soft drinks, club
20 soda, juices, and in some sausages.

21 18. **Xanthan gum.** Xanthan gum is a polysaccharide derived from the fermentation of
22 sugars by the *Xanthomonas campestris* bacterium and purification using isopropyl alcohol. Xanthan
23 gum is listed as a synthetic ingredient by federal regulation and is typically used as a thickening or
24 stabilizing agent in beverages, and as an emulsifier in salad dressings. 7 C.F.R. § 205.605(b).

25
26 ⁶ To the extent Trader Joe's may claim some of its products may have to some degree used
27 alkalized cocoa processed with one or more of these less commonly used alkali substances, it is
28 believed and therefore averred by Plaintiff that Trader Joe's foods did not contain alkalized cocoa
processed with one of the non-synthetic alkali substances, and instead contained alkalized cocoa
processed with one of the synthetic alkali substances.

1 contained these ingredients,⁸ those labels did not disclose that these ingredients were synthetic. This
2 omission is significant and material given Trader Joe's "All Natural" representation on the food
3 products labels. Based on the "All Natural" representation, one would normally expect that none of
4 the ingredients in Trader Joe's food products would be synthetic or artificial.

5 24. According to its labels, Trader Joe's food products contain the recognized synthetic
6 ingredients identified herein, as follows:

- 7 a. Joe-Joe's Chocolate Vanilla Creme Cookies (potassium carbonate);
- 8 b. Joe-Joe's Chocolate Sandwich Creme Cookies (potassium carbonate);
- 9 c. Trader Joe's Jumbo Cinnamon Rolls (sodium acid pyrophosphate; xanthan
10 gum; vegetable mono- and diglycerides);
- 11 d. Trader Joe's Buttermilk Biscuits (sodium acid pyrophosphate; xanthan gum);
- 12 e. Trader Joe's Crescent Rolls (sodium acid pyrophosphate; xanthan gum);
- 13 f. Trader Giotto's 100% Natural Fat Free Ricotta Cheese (xanthan gum);
- 14 g. Trader Joe's Fruit Jellies (sodium citrate; ascorbic acid); and
- 15 h. Trader Joe's Fresh Pressed Apple Juice (ascorbic acid).

16 25. The labeling of products as "All Natural" carries implicit health benefits important to
17 consumers – benefits that consumers are often willing to pay a premium for over comparable
18 products that are not "All Natural." Trader Joe's has cultivated and reinforced a corporate image
19 that has catered to this "All Natural" theme and has boldly emblazed this claim on each and every
20 one of its foods identified above, despite the fact Trader Joe's uses synthetic ingredients in the
21 products identified above.
22

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24
25 products identified herein contain additional synthetic or artificial ingredients not identified in this
26 Complaint, Plaintiff reserves the right to amend her allegations to include such additional
27 ingredients.

28 ⁸ The potassium carbonate contained in Trader Joe's food products described herein was not
separately listed on Trader Joe's food labels, but was instead identified on the labels as "Cocoa
Processed with Alkali."

1
2 31. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs were
3 consumers who purchased Trader Joe's "All Natural" food products in the United States that
4 contained synthetic ingredients during the Class Period. Plaintiffs, therefore, are no different in any
5 relevant respect from any other Class member, and the relief sought is common to the Class.

6 32. Plaintiffs are adequate representatives of the Class because their interests do not
7 conflict with the interests of the Class members they seek to represent, and they have retained
8 counsel competent and experienced in conducting complex class action litigation. Plaintiffs and
9 their counsel will adequately protect the interests of the Class.

10 33. A class action is superior to other available means for the fair and efficient
11 adjudication of this dispute. The damages suffered by each individual Class member likely will be
12 relatively small, especially given the relatively small cost of the food products at issue and the
13 burden and expense of individual prosecution of the complex litigation necessitated by Trader Joe's
14 conduct. Thus, it would be virtually impossible for Class members individually to effectively
15 redress the wrongs done to them. Moreover, even if Class members could afford individual actions,
16 it would still not be preferable to class-wide litigation. Individualized actions present the potential
17 for inconsistent or contradictory judgments. By contrast, a class action presents far fewer
18 management difficulties and provides the benefits of single adjudication, economies of scale, and
19 comprehensive supervision by a single court.

20 34. In the alternative, the Class may be certified because Trader Joe's has acted or
21 refused to act on grounds generally applicable to the Class, thereby making appropriate preliminary
22 and final equitable relief with respect to the Class.

23 **FIRST CAUSE OF ACTION**
24 **(Common Law Fraud)**

25 35. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
26 them as if they were fully written herein.

27 36. Trader Joe's uniformly misrepresented on its food products' labels during the Class
28 Period that the food products were "All Natural," when in fact they contain synthetic ingredients,

1 including, but not limited to: ascorbic acid, potassium carbonate, sodium acid pyrophosphate,
2 sodium citrate, xanthan gum, and vegetable mono- and diglycerides. While Trader Joe's's labels did
3 uniformly disclose during the Class Period that its "All Natural" foods contained these ingredients,⁹
4 the labels uniformly did not disclose during the Class Period that these ingredients are synthetic or
5 disclose generally that the product contained ingredients that are synthetic or artificial.

6 37. Thus, the claim on Trader Joe's labels that the food products were "All Natural"
7 constitutes an affirmative act of concealment and non-disclosure since ascorbic acid, potassium
8 carbonate, sodium acid pyrophosphate, sodium citrate, xanthan gum, and vegetable mono- and
9 diglycerides are synthetic ingredients. Trader Joe's had a duty to disclose this material information
10 in light of its representation on its labels that its food was "All Natural."

11 38. Trader Joe's "All Natural" statements and representations and its affirmative
12 concealments and omissions described herein were material in that there was a substantial likelihood
13 that a reasonable prospective purchaser of its food products would have considered them important
14 when deciding whether or not to purchase the foods.

15 39. Trader Joe's knew or recklessly disregarded that its food products were not "All
16 Natural," and uniformly misrepresented its foods as "All Natural" and affirmatively concealed and
17 omitted the truth with the intent and purpose of inducing consumers (*i.e.*, Plaintiffs and Class
18 members) to purchase its food products.

19 40. Trader Joe's failed to disclose, misrepresented and/or concealed the foregoing
20 material facts from Plaintiffs and the Class knowing that these facts may have justifiably induced
21 them to refrain from purchasing Trader Joe's food products and instead to purchase another
22 manufacturer's products that were actually all natural, or to purchase a less expensive non-natural
23 substitute product.

24 41. As set forth in paragraphs 6 and 7 of this Complaint, Plaintiffs relied on Trader Joe's
25 "All Natural" representations on its food labels as a material basis for her decisions to purchase

26 _____
27 ⁹ Potassium carbonate contained in the alkalized cocoa as described herein was not separately listed
28 on Trader Joe's food labels, but was instead identified on the labels as "Cocoa Processed with Alkali."

1 Trader Joe's food products. Moreover, based on the very materiality of Trader Joe's
2 misrepresentations, concealments and omissions uniformly made on or omitted from its food
3 products' labels, Class members' reliance on those misrepresentations, concealments and omissions
4 as a material basis for their decision to purchase Trader Joe's "All Natural" foods may be presumed
5 or inferred for all Class members.

6 42. Trader Joe's carried out the scheme set forth in this Complaint willfully, wantonly
7 and with reckless disregard for the interests of Plaintiffs and the Class.

8 43. By reason of the foregoing, Plaintiffs and members of the Class have been injured by
9 purchasing foods represented to be "All Natural" which were not, and/or by paying a premium for
10 those supposedly "All Natural" products over less expensive non-natural alternatives. Plaintiffs and
11 the Class are therefore entitled to recover damages, punitive damages, equitable relief such as
12 restitution and disgorgement of profits, and declaratory and injunctive relief.

13 **SECOND CAUSE OF ACTION**
14 **("Unlawful" Business Practices in Violation of**
15 **The Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, et seq.)**

16 44. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
17 them as if they were fully written herein.

18 45. The UCL defines unfair business competition to include any "unlawful, unfair or
19 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal.
20 Bus. Prof. Code § 17200.

21 46. A business act or practice is "unlawful" if it violates any established state or federal
22 law.

23 47. California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), Article 6,
24 Section 110660 provides that: "Any food is misbranded if its labeling is false or misleading in any
25 particular."

26 48. Trader Joe's has violated, and continues to violate the Sherman Law, Article 6,
27 Section 110660, and hence has also violated and continues to violate the "unlawful" prong of the
28 UCL, through its use of the term "All Natural" on the labels of its food products that contained one

1 or more of these synthetic ingredients: ascorbic acid, potassium carbonate, sodium acid
2 pyrophosphate, sodium citrate, xanthan gum, and vegetable mono- or diglycerides. This identical
3 conduct also violates the FDA Policy concerning what is "natural" as set forth in paragraph 12 and
4 throughout this Complaint. This identical conduct also serves as the sole factual basis of each cause
5 of action brought by this Complaint, and Plaintiffs do not seek to enforce any of the state law claims
6 raised herein to impose any standard of conduct that exceeds that which would violate the FDA
7 Policy concerning what is "natural."

8 49. By committing the acts and practices alleged above, Trader Joe's has engaged, and
9 continues to be engaged, in unlawful business practices within the meaning of California Business
10 and Professions Code §§ 17200, *et seq.*

11 50. Through its unlawful acts and practices, Trader Joe's has obtained, and continues to
12 unfairly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause
13 Trader Joe's to restore this money to Plaintiffs and all Class members, to disgorge the profits Trader
14 Joe's made on these transactions, and to enjoin Trader Joe's from continuing to violate the Unfair
15 Competition Law or violating it in the same fashion in the future as discussed herein. Otherwise, the
16 Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is
17 not granted.

18 **THIRD CAUSE OF ACTION**
19 **("Unfair" Business Practices in Violation of**
20 **The Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, *et seq.*)**

21 51. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
22 them as if they were fully written herein.

23 52. The UCL defines unfair business competition to include any "unlawful, unfair or
24 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal.
25 Bus. Prof. Code § 17200.

26 53. A business act or practice is "unfair" under the Unfair Competition Law if the
27 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the
28 harm to the alleged victims.

1 cause Trader Joe's to restore this money to Plaintiffs and members of Class, and to enjoin Trader
2 Joe's from continuing to violate California Business & Professions Code §§17500, *et seq.*, as
3 discussed above. Otherwise, Plaintiffs and those similarly situated will continue to be harmed by
4 Trader Joe's false and/or misleading advertising.

5 67. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an order
6 of this Court ordering Trader Joe's to fully disclose the true nature of its misrepresentations.
7 Plaintiffs additionally request an order requiring Trader Joe's to disgorge its ill-gotten gains and/or
8 award full restitution of all monies wrongfully acquired by Trader Joe's by means of such acts of
9 false advertising, plus interest and attorneys fees so as to restore any and all monies which were
10 acquired and obtained by means of such untrue and misleading advertising, misrepresentations and
11 omissions, and which ill-gotten gains are still retained by Trader Joe's. Plaintiffs and the Class may
12 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
13 granted.

14 68. Such conduct is ongoing and continues to this date. Plaintiffs and the Class are
15 therefore entitled to the relief described below.

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

19 69. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
20 them as if they were fully written herein. This action is brought on behalf of Plaintiffs, the Class and
21 the general public.

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

24 71. Plaintiffs and each member of the proposed Class are "consumers" within the
25 meaning of Civil Code §1761(d).

26 72. The purchases of Trader Joe's "All Natural" food products by consumers constitute
27 "transactions" within the meaning of Civil Code § 1761(e) and the food products offered by Trader
28 Joe's constitute "goods" within the meaning of Civil Code § 1761(a).

1 73. Trader Joe's has violated, and continues to violate, the CLRA in at least the following
2 respects:

- 3 a. in violation of Civil Code §1770(a)(5), Trader Joe's represents that the
4 transaction had characteristics which it did not have;
- 5 b. in violation of Civil Code § 1770(a)(7), Trader Joe's represents that its goods
6 were of a particular standard, quality or grade, which they were not; and
- 7 c. in violation of Civil Code § 1770(a)(9), Trader Joe's advertised its goods with
8 the intent not to provide what it advertised.

9 74. Plaintiffs and the members of the Class request that this Court enjoin Trader Joe's
10 from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above,
11 pursuant to California Civil Code § 1780(a)(2). Unless Trader Joe's is permanently enjoined from
12 continuing to engage in such violations of the CLRA, future consumers of Trader Joe's "All
13 Natural" food products will be damaged by its acts and practices in the same way as have Plaintiffs
14 and the members of the proposed Class.

15 75. Prior to filing their action, pursuant to Civil Code § 1782, on April 1, 2011, Plaintiffs'
16 counsel notified Trader Joe's in writing of particular violations of the CLRA, and demanded that
17 Trader Joe's repair, or otherwise *rectify problems associated with its illegal behavior detailed above*
18 which are in violation of Civil Code § 1770. To the extent that additional violations of § 1770 have
19 been identified since the time of the original notification, Plaintiffs are sending a supplemental letter
20 to Trader Joe's that sets forth these additional violations.

21 76. Trader Joe's responded to the CLRA letter in a letter dated May 5, 2011, stated that it
22 had "decided to remove the 'natural' descriptor" from its Joe-Joe's cookies. Trader Joe's did not
23 indicate when it intended to affect this removal, and, on information and belief, Joe-Joe's cookies
24 including the "All Natural" label continue to be sold. Trader Joe's did not refund monies paid or
25 take any other action to repair or rectify the problems associated with its illegal behavior detailed
26 above, or promise to do so with respect to those persons, such as Plaintiffs and the Class, who
27 purchased Trader Joe's "All Natural" food products since October 2007. Trader Joe's has failed to
28 adequately respond to Plaintiffs' demand within 30 days of Plaintiffs' notice, pursuant to Civil Code

1 1782(b). Accordingly, Plaintiffs hereby request the following damages as provided for in Civil Code
2 1780:

- 3 a. Actual damages in excess of the jurisdictional limits of this Court;
- 4 b. statutory damages allowable under Civil Code § 1780;
- 5 c. punitive damages; and
- 6 d. any other relief which the Court deems proper; and court costs and attorneys'
7 fees.

8 77. With respect to those violations of Civil Code § 1770 as to which notification was not
9 previously sent, if Trader Joe's fails to respond adequately within 30 days of Plaintiffs' supplemental
10 notice, pursuant to Civil Code § 1782(d), Plaintiffs hereby request, and may amend or seek leave to
11 amend the Complaint to request, damages as provided for in Civil Code § 1780:

- 12 a. Actual damages in excess of the jurisdictional limits of this Court;
- 13 b. statutory damages allowable under Civil Code § 1780;
- 14 c. punitive damages; and
- 15 d. any other relief which the Court deems proper; and court costs and attorneys'
16 fees.

17 **SEVENTH CAUSE OF ACTION**
18 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**

19 78. Plaintiffs hereby incorporate by reference each and every allegation contained in the
20 preceding paragraphs of this Complaint as if fully rewritten herein. Plaintiffs plead this Count in the
21 alternative.

22 79. Trader Joe's conduct in enticing Plaintiffs and the Class to purchase its food products
23 through its false and misleading packaging as described throughout this Complaint is unlawful
24 because the statements contained on its product labels are untrue. Trader Joe's took monies from
25 Plaintiffs and Class members for foods promised to be "All Natural," even though the food products
26 it sold are not natural as specified throughout this Complaint. Trader Joe's has been unjustly
27 enriched at the expense of Plaintiffs and Class members as result of its unlawful conduct alleged
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1 herein, thereby creating a quasi-contractual obligation on Trader Joe's to restore these ill-gotten
2 gains to Plaintiffs and the Class.

3 80. As a direct and proximate result of Trader Joe's unjust enrichment, Plaintiffs and
4 Class members are entitled to restitution or restitutionary disgorgement in an amount to be proved at
5 trial.

6 **PRAYER**

7 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the
8 Class, request award and relief as follows:

9 A. An order certifying that this action is properly brought and may be maintained as a
10 class action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be appointed
11 Counsel for the Class.

12 B. Restitution in such amount that Plaintiffs and all Class members paid to purchase
13 Trader Joe's "All Natural" food products or paid as a premium over non-natural alternatives, or
14 restitutionary disgorgement of the profits Trader Joe's obtained from those transactions.

15 C. Compensatory damages.

16 D. Statutory damages allowable under Civil Code § 1780.

17 E. Punitive Damages.

18 F. A declaration and order enjoining Trader Joe's from advertising its products
19 misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other
20 applicable laws and regulations as specified in this Complaint.

21 G. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees
22 and pre and post-judgment interest.

23 H. An order requiring an accounting for, and imposition of, a constructive trust upon, all
24 monies received by Trader Joe's as a result of the unfair, misleading, fraudulent and unlawful
25 conduct alleged herein.

26 I. Such other and further relief as may be deemed necessary or appropriate.

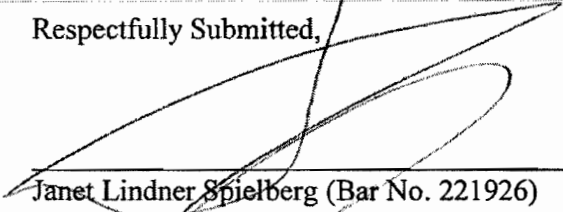
27 **DEMAND FOR JURY TRIAL**

28 Plaintiffs hereby demand a trial by jury on all causes of action and/or issues so triable.

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DATED: October 24, 2011

Respectfully Submitted,



Janet Lindner Spielberg (Bar No. 221926)

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SPIELBERG**

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT 1

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ATTORNEYS FOR PLAINTIFFS

13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 **TAMAR DAVIS LARSEN and ARAN**
 16 **EISENSTAT, on behalf of themselves and all**
 17 **others similarly situated,**

Plaintiff,

v.

20 **TRADER JOE'S COMPANY,**

Defendant.

CASE NO.:

CLASS ACTION

DECLARATION OF TAMAR DAVIS LARSEN PURSUANT TO CIVIL CODE § 1780(d)

24 1. I, Tamar Davis Larsen, submit this declaration pursuant to Cal.Civ.Code § 1780(d) of
 25 the Consumers Legal Remedies Act, which provides that an action seeking damages, an injunction,
 26 restitution, punitive damages or other relief under the CLRA may only be commenced in a county in
 27 which the defendant resides, has its principal place of business, or is doing business, or in the county
 28 where the transaction at issue took place or any substantial portion thereof occurred.

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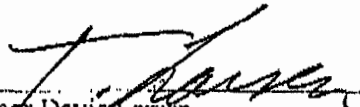
2. I currently reside in Berkeley, California and am a named plaintiff in the Complaint filed in the above-entitled action.

3. Trader Joe's Company is doing business in Alameda County because I have been to its store in Oakland, Alameda County, California and have seen products subject to the Complaint in Trader Joe's store in Oakland, Alameda County, California

4. I purchased Trader Joe's Joe-Joe's Chocolate Vanilla Creme Cookies and Fresh Pressed Apple Juice, which are subjects of the Complaint, in Alameda County, California at a Trader Joe's store located in Oakland, Alameda County, California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9 day of September, 2011, at 1:30 p.m.


Tamar Davis Larsen

ClassAction.org

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