

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

Thomas Ferrante, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

Trader Joe’s Company, and T.A.C.T.  
Holding, Inc.,

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Thomas Ferrante (hereinafter “Plaintiff”), individually on behalf of all others similarly situated, by his attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

**NATURE OF THE ACTION**

1. This action seeks to remedy the deceptive and misleading business practices of Trader Joe’s Company, and T.A.C.T. Holding, Inc. (hereinafter “Defendants”) with respect to the marketing and sale of Defendants Trader Joe’s dark chocolate products throughout the state of New York and throughout the country. Defendant’s products include the following: (1) Trader Joe’s Dark Chocolate 72% Cacao; and (2) Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cacao (hereinafter the “Products”).

2. Defendants fail to disclose on the Products’ packaging that the Products contain lead and cadmium. Lead is a dangerous and harmful chemical when consumed, especially by pregnant women and children. Scientists agree that there is no level of lead that is safe. According to the Mayo Clinic, “[l]ead poisoning occurs when lead builds up in the body, often over months

or years. Even small amounts of lead can cause serious health problems. Children younger than 6 years are especially vulnerable to lead poisoning, which can severely affect mental and physical development. At very high levels, lead poisoning can be fatal.”<sup>1</sup>

3. Cadmium is also a dangerous and harmful chemical when consumed. Cadmium is used in many products, including batteries, pigments, metal coatings, and plastics, and it is found in cigarette smoke. Exposure to even low levels of cadmium in air, food, water, and tobacco smoke over time may build up cadmium in the kidneys and cause kidney disease and fragile bones. Cadmium is also considered a cancer-causing agent.

4. Consumer Reports Magazine and independent testing discovered that many of them contained high levels of the dangerous chemicals cadmium and lead.<sup>2</sup> Using the California’s Maximum Allowable Dose Level (MADLs) for lead (0.5 Micrograms) and cadmium (4.1mcg), Consumer Reports Magazine found that Trader Joe’s Dark Chocolate 72% Cocoa product contained 192% of the MADL of lead; and Trader Joe’s The Dark Chocolate Lover’s Chocolate 85% Cocoa product contained 127% of the MADL of lead and 229% of the MADL of cadmium.<sup>3</sup> California’s MADLs (otherwise known as Proposition 65) is a regulatory standard for chemicals causing reproductive toxicity.<sup>4</sup>

5. Defendants’ marketing and advertising campaign includes the one place that every consumer looks when purchasing a product – the packaging and labels themselves.

6. Defendants’ advertising and marketing campaign for the Products is false, deceptive, and misleading because it does not disclose the high levels of lead and cadmium in the Products. High levels of lead and cadmium in food products is material to reasonable consumers,

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<sup>1</sup> <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717>

<sup>2</sup> <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>

<sup>3</sup> *Id.*

<sup>4</sup> <https://oehha.ca.gov/proposition-65/general-info/current-proposition-65-no-significant-risk-levels-nrsls-maximum>

because these chemicals pose serious health risk, even in small dosages. Additionally, the lead and cadmium levels in the Products could not be known before purchasing them, and may not be determined without extensive and expensive scientific testing. Accordingly, consumers rely on Defendants to be truthful regarding the ingredients, including the existence of lead and cadmium, in the Products.

7. On the other hand, Defendants knew and could not be unaware of the existence of lead and cadmium in the Products. Defendants source the ingredients and manufacture the Products, and have exclusive knowledge of the quality control testing on the Products and the ingredients contained therein.

8. Plaintiff and those similarly situated (“Class Members”) relied on Defendants’ misrepresentations and omissions that the Products contained only dark chocolate ingredients when purchasing the Products.

9. Plaintiff and Class Members paid a premium for the Products based upon Defendants’ marketing and advertising campaign. Given that Plaintiff and Class Members paid a premium for the Products based on Defendants’ misrepresentations and omissions, Plaintiff and Class Members suffered an injury in the amount of the premium paid.

10. Defendants’ conduct violated and continues to violate, *inter alia*, New York General Business Law §§ 349 and 350. Defendants also breached and continue to breach their warranties regarding the Products. In addition, Defendants have been and continue to be unjustly enriched. Accordingly, Plaintiff brings this action against Defendants on behalf of himself and Class Members who purchased the Products during the applicable statute of limitations period (the “Class Period”).

**JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. section 1332(d), in that: (1) this is a class action involving more than 100 class members; (2) Plaintiff is a citizen of New York, Defendant Trader Joe’s Company is a citizen of the state of California, and Defendant T.A.C.T. Holdings, Inc. is a citizen of the state of California; and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interests and costs.

12. This Court has personal jurisdiction over Defendants because Defendants conduct and transact business in the state of New York, contract to supply goods within the state of New York, and supply goods within the state of New York.

13. Venue is proper because Plaintiff and many Class Members reside in the Eastern District of New York, and throughout the state of New York. A substantial part of the events or omissions giving rise to the Classes’ claims occurred in this district.

**PARTIES**

**Plaintiff**

14. Plaintiff Thomas Ferrante is an individual consumer who, at all times material hereto, was a citizen of New York State. Plaintiff resided in Nassau County, New York. Plaintiff purchased the Products in Nassau County, New York multiple times during the Class Period. Prior to purchasing the Products, Plaintiff read the Products’ labels.

15. Plaintiff purchased the Products in reliance on Defendants’ representation that the Products contained only the dark chocolate ingredients and were safe for consumption. Plaintiff believes that products that advertise as dark chocolate do not contain lead and cadmium. If the Products did not contain lead and cadmium, Plaintiff would purchase the Products in the immediate future.

16. Had Defendants disclosed that the Products contained lead and cadmium, Plaintiff would not have been willing to pay the same amount for the Products and/or would not have been willing to purchase the Products. Plaintiff purchased and paid more for the Products than he would have had he known the truth about the Products. The Products Plaintiff received were worth less than the Products for which he paid. Plaintiff was injured in fact and lost money as a result of Defendants' improper conduct.

**Defendants**

17. Defendant, Trader Joe's Company, is a California corporation with its principal place of business in Monrovia, California. Trader Joe's Company is authorized to do business in New York. Trader Joe's Company is a subsidiary of the T.A.C.T. Holdings, Inc. conglomerate and distributes its products, including the Products, throughout the United States.

18. Defendant, T.A.C.T. Holdings, Inc., is a California corporation with its principal place of business in Monrovia, California. T.A.C.T. Holdings, Inc. is the manufacturer and/or distributor of the Product and is the parent and holding company of Trader Joe's Company.

19. Defendants manufacture, market, advertise, and distribute the Products throughout the United States. Defendants created and/or authorized the false, misleading, and deceptive advertisements, packaging, and labeling for the Products.

**FACTUAL BACKGROUND**

20. Consumers have become increasingly concerned about the effects of unhealthy chemicals in food products that they and their family members consume. Companies, such as Defendants, have capitalized on consumers' desire for safe products, and indeed consumers are willing to pay, and have paid, a premium for such food products.

21. Consumers lack the meaningful ability to test or independently ascertain or verify

















Plaintiff and the New York Subclass Members are entitled to monetary, statutory damages of \$50 per unit sold, compensatory, treble and punitive damages, restitution, and disgorgement of all moneys obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL § 350**  
**(On Behalf of Plaintiff and the New York Subclass Members)**

51. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

52. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

False advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in this state is hereby declared unlawful.

53. N.Y. Gen. Bus. Law § 350a(1) provides, in part, as follows:

The term 'false advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representation made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual . . .

54. Defendants' labeling and advertisements contain untrue and materially misleading statements concerning Defendants' Products inasmuch as they misrepresent the existence of lead and cadmium in the Products. By misrepresenting the true contents of the Products, Defendants' marketing and labeling misleads a reasonable consumer.

55. Defendants had exclusive knowledge of the lead and cadmium levels in the

Products.

56. Defendants' misrepresentations and omissions were material because consumers are concerned with the safety of food that purchase, and the ingredients therein.

57. Plaintiff and the New York Subclass Members have been injured inasmuch as they relied upon the labeling, packaging, and advertising and paid a premium for the Products which—contrary to Defendants' representation—do not disclose the existence of lead and cadmium in the Products. Accordingly, Plaintiff and the New York Subclass Members received less than what they bargained and/or paid for.

58. Defendants' advertising and products' labeling induced Plaintiff and the New York Subclass Members to buy Defendants' Products.

59. Defendants made their untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

60. Defendants' material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the Products were and continue to be exposed to Defendants' material misrepresentations.

61. As a result of Defendants' recurring, "unlawful" deceptive acts and practices, Plaintiff and New York Subclass Members are entitled to monetary, statutory damages of \$500 per unit sold, compensatory, treble and punitive damages, restitution, and disgorgement of all moneys obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

**THIRD CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY**  
**(On Behalf of Plaintiff and All Class Members)**

62. Plaintiff repeats and realleges each and every allegation contained in the foregoing

paragraphs as if fully set forth herein.

63. Defendants are merchants and were at all relevant times involved in the manufacturing, distributing, and/or selling of the Products.

64. The Products is considered a “good” under the relevant laws.

65. UCC section 2-314 provides that for goods to be merchantable must (a) pass without objection in the trade under the contract description; (b) in the case of fungible goods, are of fair average quality within the description; (c) are fit for the ordinary purposes for which such goods are used; and (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved.

66. Defendants breached the implied warranty of merchantability because the Products had lead and cadmium. Food products are not expected to have lead and cadmium.

67. Defendants have been provided sufficient notice of their breaches of implied warranties associated with the Product. Defendants were put on constructive notice of their breach through media reports, as alleged herein, and upon information and belief through their own product testing and records.

68. Plaintiff and each of the members of the Class were injured because the Product contained lead and cadmium. Defendants thereby breached the following state warranty laws:

- a. Code of Ala. § 7-2-314;
- b. Alaska Stat. § 45.02.314;
- c. A.R.S. § 47-2314;
- d. A.C.A. § 4-2-314;
- e. Cal. Comm. Code § 2314;
- f. Colo. Rev. Stat. § 4-2-314;

- g. Conn. Gen. Stat. § 42a-2-314;
- h. 6 Del. C. § 2-314;
- i. D.C. Code § 28:2-314;
- j. Fla. Stat. § 672.314;
- k. O.C.G.A. § 11-2-314;
- l. H.R.S. § 490:2-314;
- m. Idaho Code § 28-2-314;
- n. 810 I.L.C.S. 5/2-314;
- o. Ind. Code § 26-1-2-314;
- p. Iowa Code § 554.2314;
- q. K.S.A. § 84-2-314;
- r. K.R.S. § 355.2-313;
- s. 11 M.R.S. § 2-314;
- t. Md. Commercial Law Code Ann. § 2-314;
- u. 106 Mass. Gen. Laws Ann. § 2-314;
- v. M.C.L.S. § 440.2314;
- w. Minn. Stat. § 336.2-314;
- x. Miss. Code Ann. § 75-2-314;
- y. R.S. Mo. § 400.2-314;
- z. Mont. Code Anno. § 30-2-314;
- aa. Neb. Rev. Stat. § 2-314;
- bb. Nev. Rev. Stat. Ann. § 104.2314;
- cc. R.S.A. 382-A:2-314;



- dd. N.J. Stat. Ann. § 12A:2-314;
- ee. N.M. Stat. Ann. § 55-2-314;
- ff. N.Y. U.C.C. Law § 2-314;
- gg. N.C. Gen. Stat. § 25-2-314;
- hh. N.D. Cent. Code § 41-02-31;
- ii. II. O.R.C. Ann. § 1302.27;
- jj. 12A Okl. St. § 2-314;
- kk. Or. Rev. Stat. § 72-3140;
- ll. 13 Pa. Rev. Stat. § 72-3140;
- mm. R.I. Gen. Laws § 6A-2-314;
- nn. S.C. Code Ann. § 36-2-314;
- oo. S.D. Codified Laws, § 57A-2-314;
- pp. Tenn. Code Ann. § 47-2-314;
- qq. Tex. Bus. & Com. Code § 2.314;
- rr. Utah Code Ann. § 70A-2-314;
- ss. 9A V.S.A. § 2-314;
- tt. Va. Code Ann. § 8.2-314;
- uu. Wash. Rev. Code Ann. § 6A.2-314;
- vv. W. Va. Code § 46-2-314;
- ww. Wis. Stat. § 402.314; and
- xx. Wyo. Stat. § 34.1-2-314.

69. As a direct and proximate result of Defendants' breach of the express warranty, Plaintiff and Class Members were damaged in the amount of the price they paid for the Products,

in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**  
**UNJUST ENRICHMENT**

**(On Behalf of Plaintiff and All Class Members in the Alternative)**

70. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

71. Plaintiff, on behalf of himself and consumers nationwide, brings a claim for unjust enrichment.

72. Defendants' conduct violated, *inter alia*, state and federal law by manufacturing, advertising, marketing, and selling their Products while misrepresenting and omitting material facts.

73. Defendants' unlawful conduct as described in this Complaint allowed Defendants to knowingly realize substantial revenues from selling their Products at the expense of, and to the detriment or impoverishment of, Plaintiff and Class Members, and to Defendants' benefit and enrichment. Defendants have thereby violated fundamental principles of justice, equity, and good conscience.

74. Plaintiff and Class Members conferred significant financial benefits and paid substantial compensation to Defendants for the Products, which were not as Defendants represented them to be.

75. It is inequitable for Defendants to retain the benefits conferred by Plaintiff and Class Members' overpayments.

76. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

**WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for judgment as follows:

- (a) For an order declaring: (i) this is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Class described herein; and (ii) appointing Plaintiff to serve as representative for the Class and Plaintiff's counsel to serve as Class Counsel;
- (b) Awarding monetary damages and treble damages;
- (c) Awarding statutory damages of \$50 per transaction, and treble damages for knowing and willful violations, pursuant to N.Y. GBL § 349;
- (d) Awarding statutory damages of \$500 per transaction pursuant to N.Y. GBL § 350;
- (e) Awarding punitive damages;
- (f) Awarding Plaintiff and Class Members its costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (g) Granting such other and further relief as the Court may deem just and proper.

Dated: January 4, 2023

Respectfully submitted,

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