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12 *Attorneys for Plaintiff and the Proposed Class*

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 MARK HAYDEN individually, and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 BOB'S RED MILL NATURAL FOODS,
21 INC.,

22 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

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2 1. Defendant Bob’s Red Mill Natural Foods, Inc. (“Defendant” or “Bob’s Red
3 Mill”) sells two flaxseed products called Bob’s Red Mill Whole Ground Flaxseed Meal and
4 Bob’s Red Mill Golden Flaxseed Meal (the “Products”). Defendant represents that the Products
5 are healthy and made with non-toxic ingredients. Specifically, Defendant includes the following
6 statements on the labels of the Products: “To Your Good Health,” “You Can See Our Quality,”
7 “Non-GMO,” and that consumption of Omega3 fatty acids in the Products “will promote good
8 health.”

9 2. Unfortunately, Defendant misleads consumers about the health benefits and
10 quality of the Products and fails to disclose that the Products contain unsafe and unlawful levels
11 of cadmium— a known human carcinogen that is linked to a myriad of health issues.

12 3. On January 12, 2023, the website ConsumerLabs.com published results of testing
13 performed on various flaxseed products. Those test results revealed that the Bob’s Red Mill
14 Whole Ground Flaxseed Meal tested positive for 6.1 micrograms of cadmium and that the Bob’s
15 Red Mill Whole Golden Flaxseed Meal product tested positive for 5.5 micrograms of cadmium.¹
16 In California, products that test positive for more than 4.1 micrograms of cadmium must display
17 a Proposition 65 warning label. However, Defendant fails to disclose the high levels of cadmium
18 in the Products thereby deceiving consumers.

19 4. Worse yet, a company spokesperson for Bob’s Red Mill seemingly admitted that
20 Defendant does not test the Products for heavy metals like cadmium. The spokesperson said,
21 “Bob’s Red Mill Products comply with all applicable laws and regulations, those laws and
22 regulations do not require us to conduct our own testing for heavy metals.”²

23 5. Plaintiff Mark Hayden (“Plaintiff”) now brings this action seeking redress for
24 Defendant’s false adverting and deceptive conduct.

25
26 _____
27 ¹ Tod Cooperman, *Whole, Ground, Milled, and Cracker Flaxseed Review*,
28 CONSUMERLABS.COM, available at <https://www.consumerlab.com/reviews/flaxseed-whole-ground-and-milled/flaxseed-food/?search=Bob%27s%20Red%20Mill#whatIfound> (last visited July 28, 2023).

² *Id.*

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JURISDICTION AND VENUE

1
2 6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
3 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed
4 class; (2) members of the proposed class have a different citizenship from Defendant; and (3)
5 the claims of the proposed class members exceed \$5,000,000 in the aggregate, exclusive of
6 interest and costs.

7 7. This Court has personal jurisdiction over Defendant because Defendant conducts
8 and transacts business in the State of California, contracts to supply goods within the State of
9 California, and supplies goods within the State of California. Defendant, on its own and through
10 its agents, is responsible for the formulation, ingredients, manufacturing, labeling, marketing,
11 and sale of the Products in California, specifically in this district. The marketing of the Products,
12 including the decision of what to include and not include on the labels, emanates from
13 Defendant. Thus, Defendant has intentionally availed itself of the markets within California
14 through its advertising, marketing, and sale of the Products to consumers in California, including
15 Plaintiff. The Court also has specific jurisdiction over Defendant as it has purposefully directed
16 activities towards the forum state, Plaintiff’s claims arise out of those activities, and it reasonable
17 for Defendant to defend this lawsuit because it has sold harmful Products to Plaintiff and
18 members of the Class in California. By distributing and selling the Products in California,
19 Defendant has intentionally expressly aimed conduct at California which caused harm to
20 Plaintiff and the Class which Defendant knows is likely to be suffered by Californians.

21 8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
22 Defendant engages in continuous and systematic business activities within the State of
23 California. Venue is further proper pursuant to 28 U.S.C. §1391(b) because a substantial part of
24 the events or omissions giving rise to the claim occurred in this District because Plaintiff
25 purchased one of the Products within this District. Venue is also proper in this District pursuant
26 to Cal. Civ Code. § 1780(c) because Defendant is doing business in this District, and Plaintiff
27 purchased a Product at issue in this District.

PARTIES

9. Defendant Bob’s Red Mill Natural Foods, Inc. is an Oregon corporation that maintains its principal place of business at 13521 SE Pheasant Ct., Milwaukie, Oregon 97222. Throughout the Class Period defined herein, Defendant was the manufacturer and distributor of the Products.

10. Plaintiff Mark Hayden is a resident of Alameda County, California. Plaintiff purchased the Bob’s Red Mill Organic Whole Ground Flaxseed Meal during the class period. Plaintiff relied on Defendant’s deceptive labeling claims as set forth below.

FACTUAL ALLEGATIONS

THE LABELS OF THE PRODUCTS LEAD REASONABLE CONSUMERS TO BELIEVE THAT THE PRODUCTS ARE HEALTHY AND MADE WITH NON-TOXIC INGREDIENTS

11. Defendant is the manufacturer of various whole-grain food products. Bob’s Red Mill was established in 1978 by Bob and Charlee Moore³ and bills itself as the “nation’s leading miller of diverse whole-grain foods.”⁴

12. Defendant manufactures two flaxseed products called Bob’s Red Mill Whole Ground Flaxseed Meal and Bob’s Red Mill Golden Flaxseed Meal.⁵ Defendant manufactures both organic versions and non-organic versions of the Products. The labels for each of these products give reasonable consumers the impression that the Products are healthy and made with quality ingredients and do not contain unlawful levels of heavy metals. For example, the front labels on each of the Products state: “To Your Good Health,” “You Can See Our Quality,” “Non-GMO,” and “Gluten Free.” The net-effect or net-impression of the Products’ labeling on

³ *Bob and Charlee Moore - The Heart of Bob's Red Mill*, available at <https://www.bobsredmill.com/bobs-way/meet-bob-and-charlee-moore> (last visited July 28, 2023).

⁴ Shelly Strom, *Taking Red Mill global*, PORTLAND BUSINESS JOURNAL, available at <https://www.bizjournals.com/portland/stories/2005/02/21/story4.html> (last visited July 28, 2023).

⁵ Defendant manufactures organic versions and non-organic versions of both Products.

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1 consumers is that the Products do not contain any potentially harmful ingredients like high levels
2 of cadmium.

3 13. The front labels for each of the organic versions of the Products are shown below.

4 Bob's Red Mill Organic Whole Ground Flaxseed Meal (front label)



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Bob's Red Mill Organic Golden Flaxseed Meal (front label)



1 14. The front labels for each of the non-organic versions of the products are shown
2 below.

3 Bob's Red Mill Whole Ground Flaxseed Meal (front label)



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Bob's Red Mill Golden Flaxseed Meal (front label)



1 15. The back labels of the Products further re-enforces the impression that the
2 Products are healthy, made with high quality ingredients, and do not contain unlawful levels of
3 cadmium. For example, the back labels state the following (with emphasis added):

4
5 Milling flaxseeds is like opening a treasure chest. **Flaxseeds contain a wealth of**
6 **nutrients**, but as whole seeds most of these nutritional treasures are locked away.
7 Milling the seeds into meal **gives your body access to the amazing nourishment**
8 stored within. In order to maintain the integrity of the wholesome nutrients in the
9 flaxseed oil, the seeds must be milled with great care. That is why **we don't make**
10 **compromises or cut corners**. Our proprietary flax milling machine keeps the meal
11 cool, which preserves the freshness of those precious oils. Its not the fastest way,
12 but it's the right way, and its absolutely worth the time and effort. **The result is a**
13 **flaxseed meal with optimal nutrition** and a fresh nutty flavor you won't find
14 anywhere else.

15
16 **There is a general agreement among experts of all sorts that folks should**
17 **consume more omega-3 fatty acids to promote good health**. Two tablespoons of
18 Bob's Red Mill Flaxseed Meal contains 2430 mg of ALA per serving, which is
19 187% of the Daily Value for ALA (1.3g). What's more, each serving provides 3
20 grams of fiber. **It's no wonder so many nutritionists urge you to add flaxseed to**
21 **your daily diet**. I added a tablespoon to my oatmeal every morning, and I truly
22 believe there is no better way to start the day.

23
24 **To your good health,**

25 Bob Moore

26 16. The back labels of both Products (including the organic and non-organic
27 versions) are substantially similar. An example of the back label of one of the Products is shown
28 below.

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Example Back Label



Nutrition Facts

About 70 servings per container
Serving size 2 Tbsp (13g)

Amount Per Serving
Calories 70

| | | % Daily Value* |
|---------------------------|-------|----------------|
| Total Fat | 4.5g | 6% |
| Saturated Fat | 0g | 0% |
| Trans Fat | 0g | |
| Polyunsaturated Fat | 3g | |
| Monounsaturated Fat | 1g | |
| Cholesterol | 0mg | 0% |
| Sodium | 0mg | 0% |
| Total Carbohydrate | 4g | 1% |
| Dietary Fiber | 3g | 11% |
| Total Sugars | 0g | |
| Includes 0g Added Sugars | | 0% |
| Protein | 3g | |
| Vitamin D | 0mcg | 0% |
| Calcium | 24mg | 2% |
| Iron | 1mg | 6% |
| Potassium | 113mg | 2% |

*The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENT: Organic Whole Golden Flaxseed.
Distributed by
Bob's Red Mill Natural Foods, Inc.
13521 SE Pheasant Court
Milwaukie, Oregon 97222 U.S.A.
Certified Organic by QAI
Tested and confirmed Gluten Free.
Store in a cool, dry place. Keeps best refrigerated or frozen after opening.



DEAR FRIENDS,

Milling flaxseeds is like opening a treasure chest. Flaxseeds contain a wealth of nutrients, but as whole seeds most of these nutritional treasures are locked away. Milling the seeds into meal gives your body access to the amazing nourishment stored within. In order to maintain the integrity of the wholesome nutrients in the flaxseed oil, the seeds must be milled with great care. That is why we don't make compromises or cut corners. Our proprietary flax milling machinery keeps the meal cool, which preserves the freshness of those precious oils. It's not the fastest way, but it's the right way, and it is absolutely worth the time and effort. The result is flaxseed meal with optimal nutrition and a fresh, nutty flavor you won't find anywhere else.

There is general agreement among experts of all sorts that folks should consume more omega-3 fatty acids to promote good health. Two tablespoons of Bob's Red Mill Flaxseed Meal contains 2430 mg of ALA per serving, which is 187% of the Daily Value for ALA (1.3g). What's more, each serving provides 3 grams of fiber. It's no wonder so many nutritionists urge you to add flaxseed to your daily diet. I add a tablespoon to my oatmeal every morning, and I truly believe there is no better way to start the day.

To your good health,

Bob Moore

Vegan Egg Replacer

Combine 1 Tbsp flaxseed meal and 3 Tbsp water for each egg needed. Let sit for 5 minutes before adding to your recipe.

Find recipes at bobsredmill.com

TESTING REVEALS THAT THE PRODUCTS CONTAIN HIGH LEVELS OF CADMIUM

17. On January 12, 2023, the website ConsumerLabs.com published results of testing performed on various flaxseed products.⁶ Those test results revealed that the Bob’s Red Mill Whole Ground Flaxseed Meal tested positive for 6.1 micrograms of cadmium and that the Bob’s Red Mill Whole Golden Flaxseed Meal product tested positive for 5.5 micrograms of cadmium.

18. ConsumerLab deemed the Bob’s Red Mill Whole Ground Flaxseed Meal and the Bob’s Red Mill Whole Golden Flaxseed Meal products “not approved” because both Products exceeded 4.1 micrograms of cadmium per suggested serving.

19. ConsumerLab utilized 4.1 micrograms of cadmium per suggested serving as the benchmark for whether a product would be approved. This number was chosen because California law provides that 4.1 micrograms per day of cadmium is the maximum allowable daily value of cadmium exposure by oral route pursuant to California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code § 25249.5, *et seq.*⁷ In other words, a food product that exceeds the 4.1 micrograms maximum allowable daily value of cadmium must be labeled as a known carcinogen in accordance with Proposition 65. Despite testing much higher than 4.1 micrograms of cadmium, the Products are not labeled as known carcinogens in accordance with Proposition 65.

20. The Bob’s Red Mill Products also had much higher levels of cadmium than competing flaxseed products, including flaxseed products sold by Barlean’s, Terrasoul Superfoods, and Arrowhead Mills.

21. Below are screenshots of the ConsumerLab test results.

⁶ Tod Cooperman, *Whole, Ground, Milled, and Cracker Flaxseed Review*, CONSUMERLABS.COM, available at <https://www.consumerlab.com/reviews/flaxseed-whole-ground-and-milled/flaxseed-food/?search=Bob%27s%20Red%20Mill#whatIfound> (last visited July 28, 2023).

⁷ See <https://oehha.ca.gov/proposition-65/chemicals/cadmium> (last visited July 28, 2023).


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Test Results by Product: ▼

| Approval Status ^① Product Name | Heavy Metals ^① Microbial Contamination ^① Appearance/ Taste | Dietary Fiber ^① Total Carbohydrates ^① Protein ^① Calories ^① | Total Fat ^① Claimed Fatty Acids ^① Suggested Storage ▶ |
|---|--|--|--|
| \$ Price Check | <i>Brown-white, coarsely ground and slightly dry and chewy meal. Slight nutty flavor.</i> | | |
| NOT APPROVED due to cadmium contamination Bob's Red Mill® Whole Ground Flaxseed Meal  Dist. by Bob's Red Mill Natural Foods, Inc. | 2 tbsp [13 g] Whole flaxseed meal Cadmium: 6.1 mcg (0.47 mcg/g) Lead: <0.13 mcg (<0.01 mcg/g) Arsenic: 0.57 mcg (0.04 mcg/g) Microbes: Pass <i>Brown-white fine to medium ground, chewy meal, slightly bitter.</i> | 2 tbsp [13 g] Fiber: 3 g ✓ (Found: 2.7 g) Total Carbs: 4 g ✓ (Found: 3.4 g) Protein: 3 g ✓ (Found: 2.8 g) 70 Cal ✓ (Found: 75.7 Cal) | 2 tbsp [13 g] Fat: 4.5 g ✓ (Found: 5.6 g) Claimed Fatty Acids: Omega-3: 2,430 mg Keeps best refrigerated or frozen after opening. |

Test Results by Product: ▼

| Approval Status ^① Product Name | Heavy Metals ^① Microbial Contamination ^① Appearance/ Taste | Dietary Fiber ^① Total Carbohydrates ^① Protein ^① Calories ^① | Total Fat ^① Claimed Fatty Acids ^① Suggested Storage ▶ |
|--|---|---|--|
| Added March 2023 ^① \$ Price Check | <i>and oily.</i> | | |
| NOT APPROVED due to cadmium contamination Bob's Red Mill® Whole Golden Flaxseed  Dist. by Bob's Red Mill Natural Foods, Inc. | 3 tbsp [31 g] Organic whole golden flaxseed Cadmium: 5.5 mcg (0.18 mcg/g) Lead: <0.31 mcg (<0.01 mcg/g) Arsenic: 0.96 mcg (0.03 mcg/g) Microbes: Pass <i>Light brown, crunchy seeds with nutty but slightly stale oil flavor.</i> | 3 tbsp [31 g] Fiber: 8 g ✓ (Found: 8.7 g ^①) Total Carbs: 10 g ✓ (Found: 7.2 g ^①) Protein: 6 g ✓ (Found: 7.1 g) 170 Cal ✓ (Found: 176.4 Cal) | 3 tbsp [31 g] Fat: 11 g ✓ (Found: 13.2 g) Claimed Fatty Acids: Omega-3: 5,790 mg Keeps best refrigerated or frozen after opening. |

1 22. In response to the ConsumerLab test results, a representative of Defendant
2 seemingly admitted that Defendant does not test the Products for carcinogens and toxic heavy
3 metals like cadmium. The representative stated: “Bob’s Red Mill Products comply with all
4 applicable laws and regulations, those laws and regulations do not require us to conduct our own
5 testing for heavy metals.” The full response is set forth below.

6 **Bob's Red Mill (1/20/23):**

7 A CL member contacted Bob's Red Mill Natural Foods on 1/17/23 asking if corrective action was being taken in
8 response to ConsumerLab's findings of relatively high levels of cadmium in servings of both of its products
9 tested in this Review. A Senior Company Representative responded the next day, noting the following – which
10 suggests that **Bob's Red Mill may not be checking its flaxseed for heavy metals such as cadmium:**

11 "Flaxseeds may absorb cadmium from the soil or growing environment, but that does not mean
12 consuming Flaxseeds and/or Flaxseed Meal is unsafe."

13 "The Food and Drug Administration, the U.S. agency with responsibility for food safety, has studied
14 cadmium for many years and has set limits on how much lead/cadmium/mercury/arsenic can be
15 present in food. Our products comply with FDA guidelines."

16 "Regarding possible exposure to heavy metals, it is up to you to decide whether you feel a product is
17 safe to consume and you may choose to discuss further with a health care professional. **Bob's Red Mill
18 products comply with all applicable laws and regulations, those laws and regulations do not require us
19 to conduct our own testing for heavy metals.**"

20 "We stand behind our products with a 100% customer satisfaction guarantee, so I would be happy to
21 send you free product vouchers and coupons, Amazon gift card for the purchase price of the product or
22 a check refund for the purchase price, whichever you prefer."

23 "We are currently evaluating the findings of this report and have engaged with our raw material suppliers
24 to address the issues raised in the report."

25 Regarding the statement made by the representative that "Bob's Red Mill products comply with all applicable
26 laws and regulations..." it should be noted that ConsumerLab recently learned that a Notice of Violation was
27 filed in California in April 2022 against Bob's Red Mill Natural Foods alleging that its *Whole Golden Flaxseed*
28 contained an amount of cadmium that exceeded the California Proposition 65 level of 4.1 mcg of cadmium per
daily serving while the product, when sold into California, did not include the required warning label. The amount
found is not disclosed in the public posting of the case, but, in this Review, ConsumerLab.com found 5.5 mcg in
the listed 3 tablespoon serving.

Regarding the statement that the FDA has "set limits" on how much cadmium can be present in food and that
Bob's Red Mill products comply with FDA guidelines, ConsumerLab is not aware of any such federal limit for
cadmium in flaxseed.

ConsumerLab has not been contacted by Bob's Red Mill Natural Foods, but, per our policy, we would furnish the
company with our findings, at no cost, if requested.

EXPOSURE TO HIGH LEVELS OF CADMIUM IS HARMFUL TO HUMAN HEALTH

23. According to the Centers for Disease Control and Prevention (“CDC”), consuming “large amounts of cadmium can severely irritate the stomach and cause vomiting and diarrhea.”⁸ Cadmium is also considered a cancer-causing agent.⁹ Indeed, the Environmental Protection Agency (“EPA”) classifies cadmium as a “probable human carcinogen.”¹⁰

24. Because cadmium is a cancer-causing agent, California has placed cadmium on the Proposition 65 list. According to the Proposition 65 website, “[e]xposure to cadmium and cadmium compounds can cause cancer of the lung and may cause cancer of the prostate and kidney.”¹¹ “Cadmium is also on the Proposition 65 list because it can cause birth defects or other reproductive harm. Exposure to cadmium may harm a man’s reproductive system. Exposure during pregnancy may affect a child’s development.”¹²

25. The California Office of Environmental Health Hazard Assessment (“OEHHA”) has released a comprehensive technical support document on cadmium titled *Public Health Goal for Cadmium in Drinking Water*.¹³ This technical document cites to several animal and human studies finding the consumption of cadmium leads to developmental and reproductive toxicity.

26. The OEHHA technical document on cadmium also cites to several published scientific studies showing that consumption of cadmium may cause immunotoxicity,

⁸ *Cadmium Factsheet*, CENTERS FOR DISEASE CONTROL AND PREVENTION, available at https://www.cdc.gov/biomonitoring/Cadmium_FactSheet.html#:~:text=Breathing%20high%20levels%20of%20cadmium,considered%20a%20cancer%2Dcausing%20agent. (last visited July 31, 2023).

⁹ *Id.*

¹⁰ *Cadmium Compounds (A) Hazard Summary*, ENVIRONMENTAL PROTECTION AGENCY, available at <https://www.epa.gov/sites/default/files/2016-09/documents/cadmium-compounds.pdf> (last visited July 31, 2023).

¹¹ *Cadmium and Cadmium Compounds*, PROPOSITION 65- YOUR RIGHT TO KNOW!, available at <https://www.p65warnings.ca.gov/fact-sheets/cadmium-and-cadmium-compounds> (last visited July 31, 2023).

¹² *Id.*

¹³ *Public Health Goal for CADMIUM in Drinking Water*, OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, available at <https://oehha.ca.gov/media/downloads/water/chemicals/122206cadmiumphg.pdf> (last visited July 31, 2023).

1 neurotoxicity, renal toxicity, and carcinogenicity.¹⁴ The technical document goes on to say that
 2 “[a]dverse effects associated with human exposures to cadmium are well known and have been
 3 characterized in both occupational and residential settings.”¹⁵

4 27. Research has also linked cadmium exposure with kidney dysfunction and
 5 decreases in bone mineral density.¹⁶ Indeed, cadmium “is a toxic heavy metal” that is a “severe
 6 health threat” to humans.¹⁷ Cadmium “largely accumulates in kidneys, liver, bone and other
 7 organs and causes irreversible damage to the target organs.”¹⁸

8 PLAINTIFF’S EXPERIENCE

9 28. Plaintiff Mark Hayden purchased 32-ounce bags of the Bob’s Red Mill Organic
 10 Whole Ground Flaxseed Meal product on approximately two occasions beginning on or around
 11 January of 2023. Plaintiff purchased the Product from the Berkeley Bowl store located at 2020
 12 Oregon Street, Berkeley, California 94703 and paid approximately \$10 for each of his purchases.
 13 Plaintiff Hayden was not aware of the high levels of cadmium in the Product. After reading the
 14 label, Plaintiff Hayden purchased the Product on the assumption that the labeling was accurate,
 15 and that the Product did not contain harmful substances like cadmium. Plaintiff saw and relied
 16 on the following front-labeling statements “To Your Good Health,” “You Can See Our Quality,”
 17 “Non-GMO,” “Organic,” and “Gluten Free.” Plaintiff also saw and relied on the rear-labeling
 18 statements, including the statements that the Products “contain a wealth of nutrients,” that the
 19 Products “gives your body access to the amazing nourishment,” that there “is a general
 20 agreement among experts of all sorts that folks should consume more omega-3 fatty acids to
 21

22 ¹⁴ *Id.*

23 ¹⁵ *Id.*

24 ¹⁶ Soisungwan Satarug, et al., *Adverse Health Effects of Chronic Exposure to Low-Level*
 25 *Cadmium in Foodstuffs and Cigarette Smoke*, ENVIRONMENTAL MEDICINE VOL. 112, NO. 10,
 available at <https://ehp.niehs.nih.gov/doi/full/10.1289/ehp.6751> (last visited July 31, 2023).

26 ¹⁷ Mei Wang, et al., *A review on Cadmium Exposure in the Population and Intervention*
 27 *Strategies Against Cadmium Toxicity*, BULLETIN OF ENVIRONMENTAL CONTAMINATION AND
 TOXICOLOGY (Jan. 23, 2021), available at <https://link.springer.com/article/10.1007/s00128-020-03088-1> (last visited July 31, 2023).

28 ¹⁸ *Id.*

1 promote good health,” and the statement “To Your Good Health.” The front and rear label
2 statements created the net impression that the Products are healthy and do not contain potentially
3 harmful ingredients like high levels of cadmium. Plaintiff would not have purchased the Product
4 had he known the Product contains high levels of cadmium, a substance which is known to be
5 hazardous to human health. As a result, Plaintiff suffered in fact when he spent money to
6 purchase the Product he would not have purchased absent Defendant’s misconduct. Plaintiff is
7 not bringing a personal injury claim.

8 29. Plaintiff has not purchased the Products after learning that they contain high
9 levels of cadmium. Plaintiff continues to see the Products for sale at retail stores in California
10 and desires to purchase the Products again if the Products did not contain high levels of
11 cadmium. However, as a result of Defendant’s ongoing misrepresentations and material
12 omissions, Plaintiff is unable to rely on the Products’ labeling when deciding in the future
13 whether to purchase the Products.

14 30. Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement
15 or information on the Products’ labeling or packaging that disclosed that the Products contained
16 high levels of cadmium. At the time of Plaintiff’s purchases, he did not know the Products
17 contained high levels of cadmium.

18 **REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT’S MISREPRESENTATIONS AND**
19 **OMISSIONS**

20 31. Consumers, like Plaintiff, relied on Defendant’s labeling statements set forth
21 above, including the statements: “To Your Good Health,” “You Can See Our Quality,” “Non-
22 GMO,” “Organic,” “Gluten Free,” “contain a wealth of nutrients,” that the Products “gives your
23 body access to the amazing nourishment,” and that there “is a general agreement among experts
24 of all sorts that folks should consume more omega-3 fatty acids to promote good health.” The
25 net-effect or net-impression of the Products’ labeling on consumers is that the Products do not
26 contain harmful ingredients like high levels of cadmium and certainly do not contain unlawful
27 levels of harmful ingredients.
28

1 32. Consumers, like Plaintiff, want to know if a product they eat contains substances
2 which are hazardous to their health. Consumers, like Plaintiff, want to know if a product they
3 eat contains high levels of substances which are declared to be unlawful carcinogens by the State
4 of California. Defendant's nondisclosure of the high levels of cadmium in the Products is
5 material because reasonable consumers would deem the presence of cadmium in the Products to
6 be important in determining whether to purchase the Products. Defendant has exclusive
7 knowledge that the Products contain high levels of cadmium. The fact that Defendant's Products
8 contain cadmium is not reasonably accessible to Plaintiff and consumers. Consumers, like
9 Plaintiff, trust that the food products they purchase do not contain toxic heavy metals like
10 cadmium which have been intentionally or negligently added to the products. Consumers, like
11 Plaintiff, trust that the food products they purchase do not contain toxic heavy metals at unlawful
12 levels. Defendant has a duty to disclose the presence of cadmium in the Products because the
13 fact is known to Defendant (that the Products contain cadmium), and the failure to disclose the
14 cadmium in the Products is misleading. The high levels of dangerous substances such as
15 cadmium in the Products implicates a health concern that is important to reasonable consumers
16 when deciding to purchase Defendant's Products. Defendant has actively concealed the high
17 levels of cadmium in the Products from Plaintiff and putative class members. For example, in
18 the letter to Consumer Labs, Defendant stated the product was legal to sell. However, it is not
19 legally sold in California without the required Proposition 65 warning.

20 33. A failure to disclose a fact constitutes actionable conduct if the omission goes to
21 the central function of the product. Here, the Products' central function is for people to safely
22 consume the Products. Flaxseed that contains harmful cadmium in extremely high levels does
23 not serve its central function. Reasonable consumers, like Plaintiff, would deem it important in
24 determining whether to purchase the Products because Plaintiff would not have purchased the
25 Products had he known that harmful chemicals like cadmium were in the Products. That is, the
26 omission of the cadmium content of the Products was material because a reasonable consumer
27 would deem it important in determining how to act in the transaction at issue.

28

1 34. A failure to disclose a fact constitutes actionable conduct if the omission causes
2 an unreasonable safety hazard. Here, it is not reasonable to sell a product that consumers eat
3 with illegally high levels of cadmium. As explained above, cadmium is a safety hazard because
4 it causes several negative health effects in humans including developmental and reproductive
5 problems and an increased risk of certain cancers.

6 35. Defendant also made partial representations that the Products are safe and
7 healthy, including “To Your Good Health,” “You Can See Our Quality,” “Non-GMO,”
8 “Organic,” “Gluten Free,” which create the net-impression that the Products did not contain
9 potentially harmful ingredients like cadmium. These partial disclosures are misleading because
10 the cadmium content of the Products was not disclosed.

11 **PLAINTIFF AND THE PUTATIVE CLASS MEMBERS SUFFERED ECONOMIC INJURY**

12 36. Plaintiff and putative class members suffered economic injury as a result of
13 Defendant’s actions. Plaintiff and putative class members spent money that, absent Defendant’s
14 actions, they would not have spent. With all the other flaxseed products on the market without
15 high levels of cadmium, a reasonable consumer would choose to purchase a product without
16 high levels of cadmium and not Defendant’s Products. Plaintiff and putative class members are
17 entitled to damages and restitution for the purchase price of the Products that were defective,
18 not merchantable, and not fit for their represented purpose. Consumers, including Plaintiff,
19 would not have purchased Defendant’s Products if they had known the Products contain high
20 levels of cadmium, a substance which has known adverse health effects on humans. Defendant
21 did not disclose that the Products contain high levels of cadmium although it was required to do
22 so in accordance with California’s Proposition 65.

23 37. Making matters worse, flaxseed products made by Defendant’s competitors, such
24 as Barlea’s, Terrasoul Superfoods, Arrowhead Mills, and many other popular brands, do not
25 contain high levels of cadmium. Thus, there are safer alternatives that Plaintiff and class
26 members would have purchased but were denied the benefit-of-the bargain as a result of
27 Defendant’s concealment of the high levels of cadmium in the Products. Because high levels of
28 cadmium is a hazard to human health, Defendant has a continuing duty to disclose the presence

1 of high levels of cadmium in the Products to consumers. Defendant has failed to adequately
2 disclose that the Products contain high levels of cadmium. Defendant's Products contain a
3 hidden defect and Plaintiff and putative class members suffered economic injury. Had Plaintiff
4 and putative class members known about the high levels of cadmium, they would not have
5 purchased the Products or would have paid less for the Products.

6 38. Accordingly, Plaintiff brings this action individually and on behalf of other
7 similarly situated consumers to halt the dissemination of Defendant's deceptive advertising
8 message, correct the deceptive perception it has created in the minds of consumers, and obtain
9 redress for those who have purchased the Products. As a consequence of Defendant's deceptive
10 labeling and material omissions, Plaintiff alleges Defendant has violated and is violating
11 California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq. (the "CLRA"),
12 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (the "UCL") and
13 constitutes a breach of implied warranties.

14 NO ADEQUATE REMEDY AT LAW

15 39. Plaintiff and members of the class are entitled to equitable relief as no adequate
16 remedy at law exists. The statutes of limitations for the causes of action pled herein vary. Class
17 members who purchased the Products more than three years prior to the filing of the complaint
18 will be barred from recovery if equitable relief were not permitted under the UCL.

19 40. The scope of actionable misconduct under the unfair prong of the UCL is broader
20 than the other causes of action asserted herein. It includes Defendant's overall unfair marketing
21 scheme to promote and brand the Products, across a multitude of media platforms, including the
22 Product labels and packaging, over a long period of time, in order to gain an unfair advantage
23 over competitor products. The UCL also creates a cause of action for violations of law (such as
24 statutory or regulatory requirements and court orders related to similar representations and
25 omissions made on the type of products at issue). This is especially important here because
26 Plaintiff alleges Defendant has committed "unlawful" acts and brings a claim for violation of
27 the UCL's "unlawful prong." Specifically, Defendant has violated California's Safe Drinking
28 Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code § 25249.5, *et seq.* No

1 other causes of actions allow this claim to proceed, and thus, there is no adequate remedy at law
2 for this specific violation of the UCL's unlawful prong. Plaintiff's UCL unlawful prong claim
3 does not rest on the same conduct as his other causes of action, and there is no adequate remedy
4 at law for this specific unlawful claim. Plaintiff and class members may also be entitled to
5 restitution under the UCL, while not entitled to damages under other causes of action asserted
6 herein (e.g., the CLRA is limited to certain types of plaintiffs (an individual who seeks or
7 acquires, by purchase or lease, any goods or services for personal, family, or household
8 purposes) and other statutorily enumerated conduct).

9 41. Injunctive relief is appropriate on behalf of Plaintiff and members of the class
10 because Defendant continues to omit material facts about the Products. Injunctive relief is
11 necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or
12 unlawful conduct described herein and to prevent future harm—none of which can be achieved
13 through available legal remedies (such as monetary damages to compensate past harm).
14 Injunctive relief, in the form of affirmative disclosures or halting the sale of unlawful sold
15 products is necessary to dispel the public misperception about the Products that has resulted
16 from years of Defendant's unfair, fraudulent, and unlawful marketing efforts. Such disclosures
17 would include, but are not limited to, publicly disseminated statements that the Products contain
18 high levels of cadmium; and/or requiring prominent qualifications and/or disclaimers on the
19 Products' front label concerning the Products' true nature. An injunction requiring affirmative
20 disclosures to dispel the public's misperception, and prevent the ongoing deception and repeat
21 purchases, is also not available through a legal remedy (such as monetary damages). In addition,
22 Plaintiff is currently unable to accurately quantify the damages caused by Defendant's future
23 harm, because discovery and Plaintiff's investigation have not yet completed, rendering
24 injunctive relief necessary. Further, because a public injunction is available under the UCL, and
25 damages will not adequately benefit the general public in a manner equivalent to an injunction.

26 42. It is premature to determine whether an adequate remedy at law exists. This is an
27 initial pleading and discovery has not yet commenced and/or is at its initial stages. No class has
28 been certified yet. No expert discovery has commenced and/or completed. The completion of

1 fact/non-expert and expert discovery, as well as the certification of this case as a class action,
 2 are necessary to finalize and determine the adequacy and availability of all remedies, including
 3 legal and equitable, for Plaintiff's individual claims and any certified class or subclass. Plaintiff
 4 therefore reserves his right to amend this complaint and/or assert additional facts that
 5 demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal
 6 remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to
 7 the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or
 8 the entry of an order granting equitable relief.

9 CLASS ACTION ALLEGATIONS

10 43. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
 11 Procedure 23(b)(2) and 23(b)(3) on behalf of the following Class:

12 All persons who purchased the Products for personal use in California within the
 13 applicable statute of limitations until the date class notice is disseminated.

14 44. Excluded from the class are: (i) Defendant and its officers, directors, and
 15 employees; (ii) any person who files a valid and timely request for exclusion; and (iii) judicial
 16 officers and their immediate family members and associated court staff assigned to the case.

17 45. Plaintiff reserves the right to amend or otherwise alter the class definition
 18 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response
 19 to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

20 46. The Class is appropriate for certification because Plaintiff can prove the elements
 21 of the claims on a classwide basis using the same evidence as would be used to prove those
 22 elements in individual actions alleging the same claims.

23 47. Numerosity: Class Members are so numerous that joinder of all members is
 24 impracticable. Plaintiff believes that there are thousands of consumers who are Class Members
 25 described above who have been damaged by Defendant's deceptive and misleading practices.

26 48. Commonality: There is a well-defined community of interest in the common
 27 questions of law and fact affecting all Class Members. The questions of law and fact common
 28

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1 to the Class Members which predominate over any questions which may affect individual Class
2 Members include, but are not limited to:

3 a. Whether Defendant is responsible for the conduct alleged herein which was
4 uniformly directed at all consumers who purchased the Products;

5 b. Whether Defendant's misconduct set forth in this Complaint demonstrates that
6 Defendant engaged in unfair, fraudulent, or unlawful business practices with respect to the
7 advertising, marketing, and sale of the Products;

8 c. Whether Defendant made material omissions concerning the Products that were
9 likely to deceive the public;

10 d. Whether Plaintiff and the Class are entitled to injunctive relief;

11 e. Whether Plaintiff and the Class are entitled to money damages and/or restitution
12 under the same causes of action as the other Class Members.

13 49. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to represent.
14 Plaintiff's claims are typical of the claims of each Class Member in that every member of the
15 Class was susceptible to the same deceptive, misleading conduct and purchased the Products.
16 Plaintiff is entitled to relief under the same causes of action as the other Class Members.

17 50. Adequacy: Plaintiff is an adequate Class representative because Plaintiff's
18 interests do not conflict with the interests of the Class Members Plaintiff seeks to represent; the
19 consumer fraud claims are common to all other members of the Class, and Plaintiff has a strong
20 interest in vindicating the rights of the class; Plaintiff has retained counsel competent and
21 experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this
22 action. Plaintiff has no interests which conflict with those of the Class. The Class Members'
23 interests will be fairly and adequately protected by Plaintiff and proposed Class Counsel.
24 Defendant has acted in a manner generally applicable to the Class, making relief appropriate
25 with respect to Plaintiff and the Class Members. The prosecution of separate actions by
26 individual Class Members would create a risk of inconsistent and varying adjudications.

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1 51. The Class is properly brought and should be maintained as a class action because
2 a class action is superior to traditional litigation of this controversy. A class action is superior to
3 the other available methods for the fair and efficient adjudication of this controversy because:

4 a. The joinder of hundreds of individual Class Members is impracticable,
5 cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

6 b. The individual claims of the Class Members may be relatively modest compared
7 with the expense of litigating the claim, thereby making it impracticable, unduly burdensome,
8 and expensive to justify individual actions;

9 c. When Defendant’s liability has been adjudicated, all Class Members’ claims can
10 be determined by the Court and administered efficiently in a manner far less burdensome and
11 expensive than if it were attempted through filing, discovery, and trial of all individual cases;

12 d. This class action will promote orderly, efficient, expeditious, and appropriate
13 adjudication and administration of Class claims;

14 e. Plaintiff knows of no difficulty to be encountered in the management of this
15 action that would preclude its maintenance as a class action;

16 f. This class action will assure uniformity of decisions among Class Members;

17 g. The Class is readily definable and prosecution of this action as a class action will
18 eliminate the possibility of repetitious litigation; and

19 h. Class Members’ interests in individually controlling the prosecution of separate
20 actions is outweighed by their interest in efficient resolution by single class action;

21 52. Additionally or in the alternative, the Class also may be certified because
22 Defendant has acted or refused to act on grounds generally applicable to the Class thereby
23 making final declaratory and/or injunctive relief with respect to the members of the Class as a
24 whole, appropriate.

25 53. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
26 behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent
27 Defendant from engaging in the acts described, and to require Defendant to provide full
28 restitution to Plaintiff and Class members.

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1 54. Unless the Class is certified, Defendant will retain monies that were taken from
2 Plaintiff and Class members as a result of Defendant’s wrongful conduct. Unless a classwide
3 injunction is issued, Defendant will continue to commit the violations alleged and the members
4 of the Class and the general public will continue to be misled.

5 **FIRST CLAIM FOR RELIEF**

6 **Violation of California’s Consumers Legal Remedies Act**

7 **Cal. Civ. Code § 1750 et seq.**

8 55. Plaintiff realleges and incorporates by reference all allegations contained in this
9 complaint, as though fully set forth herein.

10 56. Plaintiff brings this claim under the CLRA individually and on behalf of the Class
11 against Defendant.

12 57. At all times relevant hereto, Plaintiff and the members of the Class were
13 “consumer[s],” as defined in California Civil Code section 1761(d).

14 58. At all relevant times, Defendant constituted a “person,” as defined in California
15 Civil Code section 1761(c).

16 59. At all relevant times, the Products manufactured, marketed, advertised, and sold
17 by Defendant constituted “goods,” as defined in California Civil Code section 1761(a).

18 60. The purchases of the Products by Plaintiff and the members of the Class were
19 and are “transactions” within the meaning of California Civil Code section 1761(e).

20 61. Defendant disseminated, or caused to be disseminated, through their advertising,
21 false and misleading representations, including the Products’ labeling that they do not contain
22 hazardous substances such as high levels of cadmium. Defendant fails to disclose that the
23 Products contain high levels of cadmium. This is a material omission as reasonable consumer
24 would find the fact that the Products contain high levels of cadmium to be important to their
25 decision in purchasing the Products. Defendant’s representations violate the CLRA in the
26 following ways:

27 a) Defendant represented that the Product have characteristics, ingredients, uses,
28 and benefits which they do not have (Cal. Civ. Code § 1770(a)(5));

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1 b) Defendant represented that the Product are of a particular standard, quality, or
2 grade, which they are not (Cal. Civ. Code § 1770(a)(7));

3 c) Defendant advertised the Products with an intent not to sell the Products as
4 advertised (Cal. Civ. Code § 1770(a)(9)); and

5 d) Defendant represented that the subject of a transaction has been supplied in
6 accordance with a previous representation when it has not (Cal. Civ. Code § 1770(a)(16)).

7 62. Defendant violated the CLRA because the Products contain high levels of
8 cadmium. Defendant knew or should have known that consumers would want to know that the
9 Products contain high levels of cadmium. Defendant had a duty to disclose that the Products
10 contain high levels of cadmium. Based on the statutory text, legislative history (which includes
11 the National Consumer Act), the judicial decisions and statutes that existed when the CLRA was
12 enacted, the subsequent case law, and the many amendments to the CLRA from 1975 through
13 2016, failures to disclose material facts are actionable under the CLRA. In particular,
14 subdivision (a)(5), (7), and (9) of Civil Code section 1770 proscribe material omissions.
15 Defendant’s labeling of the Products also created the net-impression that the Products do not
16 contain hazardous substances such as cadmium. Defendant had exclusive knowledge of the
17 material fact that the Products contain high levels of cadmium, and Defendant failed to disclose
18 this fact. Defendant actively concealed this material fact. The fact that the Products contain high
19 levels of cadmium is material to consumers because reasonable consumers would deem the
20 existence of cadmium in a product they eat important in determining whether to buy the
21 Products.

22 63. Defendant’s actions as described herein were done with conscious disregard of
23 Plaintiff and the Class members’ rights and were wanton and malicious.

24 64. Defendant’s wrongful business practices constituted, and constitute, a continuing
25 course of conduct in violation of the CLRA, since Defendant is still representing that the
26 Products have characteristics which they do not have.

27
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1 65. Pursuant to California Civil Code section 1782(d), Plaintiff and the members of
2 the Class seek an order enjoining Defendant from engaging in the methods, acts, and practices
3 alleged herein.

4 66. Pursuant to California Civil Code section 1782, Plaintiff notified Defendant in
5 writing by certified mail of the alleged violations of the CLRA and demanded that Defendant
6 rectify the problems associated with the actions detailed above and give notice to all affected
7 consumers of their intent to so act. If Defendant fails to rectify or agree to rectify the problems
8 associated with the actions detailed herein and give notice to all affected consumers within 30
9 days of the date of written notice pursuant to section 1782 of the CLRA, Plaintiff will amend
10 this complaint to seek actual, punitive, and statutory damages, as appropriate.

11 67. Pursuant to section 1780(d) of the CLRA, attached as **Exhibit 1** is an affidavit
12 showing that this action was commenced in a proper forum.

SECOND CLAIM FOR RELIEF

Violation of California's Unfair Competition Law

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

16 68. Plaintiff realleges and incorporates by reference all allegations contained in this
17 complaint, as though fully set forth herein.

18 69. Plaintiff brings this claim under the UCL individually and on behalf of the Class
19 against Defendant.

20 70. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
21 practice and any false or misleading advertising.

22 71. Defendant committed unlawful business acts or practices by making the
23 representations and omitted material facts (which constitutes advertising within the meaning of
24 California Business & Professions Code section 17200), as set forth more fully herein, and
25 violating California Civil Code sections 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16),
26 California Business & Professions Code section 17500 *et seq.*, California common law breach
27 of implied warranties, and California's Safe Drinking Water and Toxic Enforcement Act of 1986
28 (“Proposition 65”), Cal. Health & Safety Code § 25249.5, *et seq.* Plaintiff, individually and on

1 behalf of the other Class members, reserves the right to allege other violations of law, which
2 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
3 this date.

4 72. Defendant committed “unfair” business acts or practices by: (1) engaging in
5 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
6 of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
7 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct
8 that undermines or violates the intent of the consumer protection laws alleged herein. There is
9 no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a
10 Product that is not as advertised by Defendant. Further, Defendant failed to disclose a material
11 fact (that the Products contain high levels of cadmium) of which it had exclusive knowledge.
12 While Plaintiff and the other Class members were harmed, Defendant was unjustly enriched by
13 its false misrepresentations and material omissions. As a result, Defendant’s conduct is “unfair,”
14 as it offended an established public policy. There were reasonably available alternatives to
15 further Defendant’s legitimate business interests, other than the conduct described herein. For
16 example, several of Defendant’s competitors sell flaxseed products that do not contain high
17 levels of cadmium.

18 73. Defendant committed “fraudulent” business acts or practices by making the
19 representations of material fact regarding the Products set forth herein. Defendant’s business
20 practices as alleged are “fraudulent” under the UCL because they are likely to deceive customers
21 into believing the Products do not contain high levels of cadmium.

22 74. Plaintiff and the other members of the Class have in fact been deceived as a result
23 of their reliance on Defendant’s material representations and omissions. This reliance has caused
24 harm to Plaintiff and the other members of the Class, each of whom purchased Defendant’s
25 Products. Plaintiff and the other Class members have suffered injury in fact and lost money as a
26 result of purchasing the Product and Defendant’s unlawful, unfair, and fraudulent practices.

27 75. Defendant’s wrongful business practices and violations of the UCL are ongoing.
28

1 76. Plaintiff and the Class seek pre-judgment interest as a direct and proximate result
2 of Defendant's unfair and fraudulent business conduct. The amount on which interest is to be
3 calculated is a sum certain and capable of calculation, and Plaintiff and the Class seek interest
4 in an amount according to proof.

5 77. Unless restrained and enjoined, Defendant will continue to engage in the above-
6 described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business
7 & Professions Code section 17203, Plaintiff, individually and on behalf of the Class, seek (1)
8 restitution from Defendant of all money obtained from Plaintiff and the other Class members as
9 a result of unfair competition; (2) an injunction prohibiting Defendant from continuing such
10 practices in the State of California that do not comply with California law; and (3) all other relief
11 this Court deems appropriate, consistent with California Business & Professions Code section
12 17203.

THIRD CLAIM FOR RELIEF

Breach of Implied Warranties

13 78. Plaintiff realleges and incorporates by reference all allegations contained in this
14 complaint, as though fully set forth herein.

15 79. Plaintiff brings this claim individually and on behalf of the Class against
16 Defendant.

17 80. Defendant was at all relevant times the manufacturer, distributor, and/or
18 warrantor of the Products. Defendant knew or had reason to know of the specific use for which
19 its Products were purchased.

20 81. Defendant, through the acts and omissions set forth herein, in the sale, marketing,
21 and promotion of the Products made implied representations to Plaintiff and the Class that the
22 Products were fit for the particular purpose of consumption. However, the Products are
23 hazardous to consume. Further, Defendant cannot legally sell the product in California without
24 a Proposition 65 disclosure on the labels, and thus, by definition they are not fit for the particular
25 purpose of consumption. At the time the Products were sold, Defendant knew or should have
26 known that Plaintiff and members of the Class would rely on Defendant's skill and judgment
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1 regarding the safety and composition of the Products. Because the Products contain high levels
2 of cadmium, they are not of the same quality as those generally accepted in the trade and were
3 not fit for the ordinary purposes for which the Products are used (i.e., consumption).

4 82. By advertising and selling the Products at issue, Defendant, a merchant of goods,
5 made promises and affirmations of fact that the Products are merchantable and conform to the
6 promises or affirmations of fact made on the Product's packaging and labeling, and through its
7 marketing and advertising, as described herein. This labeling and advertising, combined with
8 the implied warranty of merchantability, constitute warranties that became part of the basis of
9 the bargain between Plaintiff and members of the Class and Defendant. Defendant's labeling
10 and advertising, combined with the implied warranty of merchantability, constitute a warranty
11 that the Products do not contain hazardous substances such as high levels of cadmium.

12 83. In reliance on Defendant's skill and judgment and the implied warranties of
13 fitness for this purpose and merchantability, Plaintiff and members of the Class purchased the
14 Product for use to consume. Defendant knew that the Products would be purchased and used
15 without further testing by Plaintiff and Class members.

16 84. Consumers are the intended beneficiaries of the implied warranty as they are the
17 ones Defendant made the Products for and specifically marketed the Products to consumers.
18 Defendant breached the implied warranty of merchantability. Because the Product contain high
19 levels of cadmium, they are not fit for ordinary use (i.e., consumption).

20 85. As a direct and proximate result of Defendant's breach of warranty, Plaintiff and
21 members of the Class were harmed in the amount of the purchase price they paid for the
22 Products. Further, Plaintiff and members of the Class have suffered and continue to suffer
23 economic losses and other damages including, but not limited to, the amounts paid for the
24 Product, and any interest that would have accrued on those monies, in an amount to be proven
25 at trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of
26 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
27 Class for the loss of that money, as well as injunctive relief to enjoin Defendant's misconduct
28 to prevent ongoing and future harm that will result.

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1 86. Plaintiff seeks punitive damages pursuant to this cause of action for breach of
2 warranty on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and unlawful
3 conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct
4 warranting an award of punitive damages as permitted by law. Defendant's misconduct is
5 malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products
6 that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights
7 of Plaintiff and consumers as Defendant was aware of the probable dangerous consequences of
8 its conduct and deliberately failed to avoid misleading consumers, including Plaintiff.
9 Defendant's misconduct is oppressive. Reasonable consumers would look down upon it and/or
10 otherwise would despise such misconduct. This misconduct subjected Plaintiff and consumers
11 to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is
12 fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed
13 material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct
14 constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved,
15 and/or ratified by officers, directors, and/or managing agents of Defendant.

16 **REQUEST FOR RELIEF**

17 Plaintiff, individually, and on behalf of all others similarly situated, requests for relief
18 pursuant to each claim set forth in this complaint, as follows:

19 a. Declaring that this action is a proper class action, certifying the Class as requested
20 herein, designating Plaintiff as the Class Representative and appointing the undersigned counsel
21 as Class Counsel;

22 b. Ordering restitution and disgorgement of all profits and unjust enrichment that
23 Defendant obtained from Plaintiff and the Class members as a result of Defendant's unlawful,
24 unfair, and fraudulent business practices;

25 c. Ordering injunctive relief as permitted by law or equity, including enjoining
26 Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to
27 engage in a corrective advertising campaign;

28 d. Ordering damages for Plaintiff and the Class;

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1 e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff and the
2 other members of the Class;

3 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
4 awarded; and

5 g. Ordering such other and further relief as may be just and proper.

6 **JURY DEMAND**

7 Plaintiff hereby demands a trial by jury of all claims in this Complaint so triable.
8
9

10 Dated: August 1, 2023

CROSNER LEGAL, P.C.

11 By: /s/ Michael T. Houchin

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Certain Bob's Red Mill Flaxseed Products Contain Toxic Heavy Metal Cadmium, Class Action Says](#)
