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11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **SOUTHERN DISTRICT OF CALIFORNIA**

14  
 15  
 16 CRYSTAL RODRIGUEZ, on behalf of  
 17 herself, all others similarly situated, and the  
 18 general public,  
 19  
 20 Plaintiff,  
 21  
 22 v.  
 23 LINDT & SPRÜNGLI (NORTH AMERICA)  
 24 INC.,  
 25  
 26 Defendant.

Case No: '23CV0056 L AHG

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF:**  
**CAL. BUS. & PROF. CODE §§17200 *et seq.*;**  
**CAL. BUS. & PROF. CODE §§17500 *et seq.*;**  
**CAL. CIV. CODE §§ 1750 *et seq.*;**  
**BREACH OF IMPLIED WARRANTIES ; and**  
**UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Crystal Rodriguez, on behalf of herself, all others similarly situated, and the  
2 general public, by and through her undersigned counsel, hereby sues Lindt & Sprüngli (North  
3 America) Inc. (“Lindt”), and alleges the following upon her own knowledge, or where she  
4 lacks personal knowledge, upon information and belief, including the investigation of her  
5 counsel.

6 **INTRODUCTION**

7 1. Lindt is the North American subsidiary of Lindt & Sprungli AG, a globally  
8 ubiquitous confectionary company based in Switzerland, with revenues of nearly \$5 billion  
9 in 2021. Lindt markets and sells a variety of confectionaries, including dark chocolate  
10 products, and specifically including Lindt Excellence Dark Chocolate 70% Cocoa and Lindt  
11 Excellence Dark Chocolate 85% Cocoa [hereafter the “Products”]. Lindt sells the Products  
12 throughout the United States, including in California.

13 2. A December 2022 report by Consumer Reports states that “[r]esearch has found  
14 that some dark chocolate bars contain cadmium and lead—two heavy metals linked to a host  
15 of health problems in children and adults,” in amounts such that “eating just an ounce a day  
16 would put an adult over a level that public health authorities and [Consumer Report’s]  
17 experts say may be harmful for at least one of those heavy metals.” Among those containing  
18 substantial levels of lead and cadmium are the Products, as pictured below.



1 3. As shown above, the 85% Cocoa bar tested at 166% of “California’s maximum  
2 allowable dose level (MADL) for lead” and the 70% Cocoa bar tested at 116% of  
3 California’s maximum allowable dose level for cadmium.

4 4. Lead and cadmium are heavy metals and their presence in food, alone or  
5 combined, poses a serious safety risk to consumers because they can cause cancer and serious  
6 and often irreversible damage to brain development, liver, kidneys, bones, and other serious  
7 health problems. As Consumer Reports noted, “both cadmium and lead pose serious health  
8 risks” and, with respect to lead specifically, “no amount of it is considered safe.”

9 5. As described more fully below, consumers who purchased the Products were  
10 injured by Lindt’s acts and omissions concerning the presence of lead and cadmium. No  
11 reasonable consumer would know, or have reason to know, that the Products contained heavy  
12 metals, including lead and cadmium. Worse, as companies across the industry have adopted  
13 methods to limit heavy metals in their dark chocolate products, Lindt has stood idly by with  
14 a reckless disregard for its consumers’ health and well-being.

15 6. Plaintiff brings this action against Lindt on behalf of herself, similarly-situated  
16 Class Members, and the general public to enjoin Lindt from deceptively marketing the  
17 Products, and to recover compensation for injured Class Members.

18 **JURISDICTION & VENUE**

19 7. This Court has original jurisdiction over this action under 28 U.S.C. §  
20 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the  
21 sum or value of \$5,000,000, exclusive of interest and costs, and at least one member of the  
22 class of plaintiffs is a citizen of a State different from Lindt. In addition, more than two-  
23 thirds of the members of the class reside in states other than the state in which Lindt is a  
24 citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28  
25 U.S.C. § 1332(d) do not apply.

26 8. The Court has personal jurisdiction over Lindt as a result of Lindt’s substantial,  
27 continuous and systematic contacts with the State, and because Lindt has purposely availed  
28

1 itself of the benefits and privileges of conducting business activities within the State,  
2 including by marketing, distributing, and selling the Products in California.

3 9. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §  
4 1391(b) and (c), because Lindt resides (*i.e.*, is subject to personal jurisdiction) in this district,  
5 and because a substantial part of the events or omissions giving rise to the claims occurred  
6 in this district.

7 **PARTIES**

8 10. Plaintiff Crystal Rodriguez is a resident of San Diego County, California.

9 11. Defendant Lindt & Sprüngli (North America) Inc. is a Delaware corporation  
10 with its principal place of business in Kansas City, Missouri.

11 **FACTS**

12 **I. Lead and Cadmium are Toxic and are Present in the Lindt Products at Unsafe**  
13 **Levels**

14 12. California recognizes that certain chemicals and elements are “known to the  
15 state to cause cancer or reproductive toxicity . . . if in the opinion of the state's qualified  
16 experts it has been clearly shown through scientifically valid testing according to generally  
17 accepted principles to cause cancer or reproductive toxicity.” *See* Cal. Health & Safety Code  
18 § 25249.8(b). Lead and cadmium, in the amounts found in the Products, are on the list of  
19 chemicals known to cause cancer and/or reproductive harm.

20 13. The harmful effects of lead are well-documented, particularly on children.  
21 Exposure puts children at risk for lowered IQ, behavioral problems (such as attention deficit  
22 hyperactivity disorder (ADHD)), type 2 diabetes, and cancer, among other health issues.  
23 Heavy metals also pose risks to adults. Even modest amounts of heavy metals can increase  
24 the risk of cancer, cognitive and reproductive problems, and other adverse conditions. As  
25 such, it is important to limit exposure.

1 14. “No amount of lead is known to be safe.”<sup>1</sup> Exposure to lead may cause anemia,  
2 weakness, and kidney and brain damage.<sup>2</sup> Lead affects almost every organ and system in the  
3 body and accumulates over time, leading to severe health risks and toxicity, including  
4 inhibiting neurological function, anemia, kidney damage, seizures, and in extreme cases,  
5 coma and death.<sup>3</sup> Lead can also cross the fetal barrier during pregnancy, exposing the mother  
6 and developing fetus to serious risks, including reduced growth and premature birth.<sup>4</sup> Lead  
7 exposure is also harmful to adults as more than 90 percent of the total body burden of lead  
8 is accumulated in the bones, where it is stored.<sup>5</sup> Lead in bones may be released into the  
9 blood, re-exposing organ systems long after the original exposure.<sup>6</sup>

10 15. Cadmium, also a heavy metal, likewise poses a serious safety risk to consumers  
11 because it can cause cancer and is a known teratogen, an agent which causes malformation  
12 of an embryo. Exposure to cadmium can affect the kidneys, lungs and bones.<sup>7</sup> There may be  
13 no safe level of exposure to a carcinogen, so all contact should be reduced to the lowest  
14 possible level.<sup>8</sup> It is considered a class 1 carcinogen by the World Health Organization.<sup>9</sup>  
15 Even at low exposure, cadmium can cause nausea, vomiting, diarrhea and abdominal pain.  
16

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17 <sup>1</sup> See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epalimits-can-still-impact-your-health>

18 <sup>2</sup> <https://www.cdc.gov/niosh/topics/lead/health.html>

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

20 <sup>4</sup> See <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm>

21 <sup>5</sup> See State of New York Department of Health, “Lead Exposure in Adults: A Guide for  
22 Health Care Providers,” available online at  
23 <https://www.health.ny.gov/publications/2584.pdf>.

24 <sup>6</sup> *Id.*

25 <sup>7</sup> <https://www.betterhealth.vic.gov.au/health/healthyliving/cadmium>

26 <sup>8</sup> New Jersey Department of Health Fact Sheet (available online at  
<https://www.nj.gov/health/eoh/rtkweb/documents/fs/0305.pdf>)

27 <sup>9</sup> [https://www.unep.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/lead-  
28 and-cadmium](https://www.unep.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/lead-and-cadmium)

1 And, because cadmium builds up in the body, even at low dosage, repeated exposure can  
2 cause liver and kidney damage, anemia and loss of smell. According to the Centers for  
3 Disease Control, “exposure to low levels of cadmium in . . . food . . . over time may build up  
4 cadmium in the kidneys and cause kidney disease and fragile bones” and is indisputably  
5 “considered a cancer-causing agent.”<sup>10</sup>

6 16. It is undisputed that the Products contain lead and cadmium, and that Lindt has  
7 known as much for at least the last five years. In 2017, Lindt (and several other manufacturers  
8 and distributors of dark chocolate products) received notice that at least some of its dark  
9 chocolate products, including specifically the Lindt bars that are the subject of this lawsuit,  
10 contained excessive cadmium and/or lead, or both, including by being provided with  
11 certificates of merit that independent experts confirmed the presence of heavy metals in the  
12 Lindt Products. However, Lindt failed to warn consumers that consuming the Products  
13 exposes consumers to those chemicals.

14 17. Moreover, in December 2022, Consumer Reports [“CR”], a consumer  
15 protection and advocacy organization dedicated to independent product testing, consumer-  
16 oriented research, and investigative journalism, tested 28 different dark chocolate bars for  
17 lead and cadmium. The results showed that the Lindt 70% Cocoa dark chocolate bar  
18 contained 4.76mcg of cadmium, more than the Maximum Allowable Dose Level [“MADL”]  
19 for cadmium, and the Lindt 85% Cocoa dark chocolate bar contained 0.58mcg of lead, about  
20 1.7 times the MADL for lead. These MADL standards are set by the California Office of  
21 Environmental Health Hazard Assessment [“OEHHA”].

22 18. Notably, the lead is getting into the Lindt Products *after* harvesting. As  
23 Consumer Reports notes, “lead seems to get into cacao after beans are harvested. The  
24 researchers found that the metal was typically on the outer shell of the cocoa bean, not in the  
25 bean itself. Moreover, lead levels were low soon after beans were picked and removed from  
26 pods but increased as beans dried in the sun for days. During that time, lead-filled dust and  
27

28 <sup>10</sup> <https://tinyurl.com/y4f2kku7>

1 dirt accumulated on the beans.” Thus, on information and belief, Lindt itself is responsible  
2 for lead being present in the Products, at least in the levels at which they are found in the  
3 Products.

4 **II. Reasonable Consumers Do Not Expect Heavy Metals in the Lindt Products;**  
5 **Lindt Nevertheless Failed to Disclose the Presence of Lead or Cadmium in the**  
6 **Products**

7 19. The global dark chocolate market has witnessed significant growth in recent  
8 years and is expected to continue growing into 2023.<sup>11</sup>

9 20. The growth of dark chocolate sales is premised, in part, on reasonable  
10 consumers’ belief that dark chocolate is actually *healthier* than other food choices, and  
11 especially healthier than other confectionaries, specifically milk chocolates. “The pervasive  
12 health and wellness trend continues to influence dark chocolate market, with manufacturers  
13 incorporating organic ingredients and natural sweeteners. The preference for dark chocolate  
14 over milk chocolates on accounts its health benefits continues to remain intact,” especially  
15 as demand for healthy products, generally, increases.<sup>12</sup> Thus, the safety and health effects of  
16 the Products are material facts to reasonable consumers.

17 21. Given the negative effects of toxic lead and cadmium on human development,  
18 especially in embryos and children, and on adult health, the presence of toxic heavy metals  
19 in the Products is a material fact to reasonable consumers, including Plaintiff and members  
20 of the Class.

21 22. A global company as ubiquitous as Lindt has earned significant public trust that  
22 its foods are safe and fit for regular consumption. Reasonable consumers believe that Lindt  
23 would not sell products that are unsafe.

24  
25  
26  
27 <sup>11</sup> <https://www.persistencemarketresearch.com/market-research/dark-chocolate-market.asp>

28 <sup>12</sup> *Id.*



1           23. Lindt knew that if the presence of toxic heavy metals in its Products were  
2 disclosed to Plaintiff and the Class members, they would be unwilling to purchase the  
3 Products or would pay less for them.

4           24. In light of Lindt's knowledge that Plaintiff and the Class members would be  
5 unwilling to purchase the Products or would pay less for the Products if they knew that the  
6 Products contained toxic heavy metals, Lindt intentionally and knowingly concealed this fact  
7 from Plaintiff and the Class Members and did not disclose the presence of lead or cadmium  
8 on the label of the Products.

9           25. Lindt knew or should have known that Plaintiff and the Class members would  
10 rely upon the packaging of the Products and intended for them to do so but failed to disclose  
11 the presence of lead or cadmium.

12           26. Lindt knew or should have known that it owed consumers a duty of care to  
13 adequately test for lead, cadmium, and other heavy metals, particularly considering that it  
14 was provided notice of independent expert testing of the Products. Had Lindt done so, it  
15 would have known that its Products contained significant levels of lead or cadmium.  
16 Alternatively, Lindt *did* know that its Products contained significant levels of heavy metals  
17 and purposely hid that fact from consumers.

18           27. Additionally, Lindt knew or should have been aware that a reasonable consumer  
19 would consume the Products regularly, and possibly multiple Products daily, leading to  
20 repeated exposure to both lead and cadmium, which each independently accumulate in the  
21 body and its systems over time.

22           28. Lindt knew or should have known it could control the levels of lead and  
23 cadmium in the Products by properly monitoring for heavy metal presence, sourcing  
24 ingredients with less heavy metals, or none at all, adjusting its formulation to reduce or  
25 eliminate heavy metals, or improve its manufacturing process to eliminate introduction of  
26 lead caused by Lindt itself.



1 29. Prior to purchasing the Products, Plaintiff and the Class members were exposed  
2 to, saw, read, and understood the labels of the Products, and relied upon the same in  
3 purchasing the Products, but Lindt failed to disclose the presence of heavy metals.

4 30. As a result of Lindt’s concealment of the fact that the Products contained toxic  
5 heavy metals, including lead and cadmium, Plaintiff and the Class members reasonably  
6 believed the Products were free from substances that would negatively affect children’s  
7 development as well as their own health.

8 31. Plaintiff and the Class members purchased the Lindt Products in reliance upon  
9 Lindt labels that contained omissions.

10 32. Had Plaintiff and the Class members known that the Products contained toxic  
11 heavy metals, rendering them unsafe for consumption, they would not have been willing to  
12 purchase the Products or would have paid less for them.

13 33. Therefore, as a direct and proximate result of Lindt’s omissions concerning the  
14 Products, Plaintiff and the Class Members purchased the Products and paid more than they  
15 were worth.

16 34. Plaintiff and the Class members were harmed in the form of the monies they  
17 paid for the Products which they would not otherwise have paid had they known the truth  
18 about the Products. Since the presence of toxic heavy metals, including lead and cadmium,  
19 in the Products renders them unsafe for human consumption, the Products that Plaintiff and  
20 the Class members purchased are worthless, or at a minimum are worth less than Plaintiff  
21 and the Class paid for them.

### 22 **III. The Products’ Labeling Violates California and Federal Food Labeling Law**

23 35. The Products’ labeling violates California Health and Safety Code §§ 109875,  
24 *et. seq.* (the “Sherman Law”), which has expressly adopted the federal food labeling  
25 requirements as its own. *See, e.g., id.* § 110100; *id.* § 110670 (“Any food is misbranded if  
26 its labeling does not conform with the requirements for nutrition labeling as set forth in  
27 Section 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the regulation adopted pursuant  
28

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

#### 9 **IV. Plaintiff’s Purchase, Reliance, And Injury**

10 36. Ms. Rodriguez regularly purchased the Lindt Excellence Dark Chocolate 85%  
11 Cocoa Product during the Class Period, often making her purchases from Whole Foods and  
12 Sprouts in San Diego, including at least the Whole Foods at 8825 Villa La Jolla San Diego,  
13 California and Sprouts locations at 3015 Clairemont Dr. and 3358 Governor Dr., in San  
14 Diego, California.

15 37. When purchasing the Products, Plaintiff was seeking chocolate bars she  
16 believed to be healthier than other confectionaries, by virtue of their higher cocoa (and thus  
17 lesser sugar) content. Moreover, Plaintiff would have avoided any food she knew contained  
18 toxic ingredients, especially heavy metals like lead and cadmium. She would also have  
19 avoided purchasing any food she knew could increase her risk of inhibited neurological  
20 function, anemia, kidney damage, seizures, coma, or death.

21 38. Plaintiff acted reasonably in purchasing the Products, whose labels did not  
22 disclose the presence of lead or cadmium, or the attendant health risks in consuming the  
23 Products.

24 39. By omitting that its Products contains lead or cadmium, Lindt was able to gain  
25 a greater share of the snack market, specifically the confectionary and dark chocolate market,  
26 than it would have otherwise and to increase the size of the market.

1 40. Plaintiff paid more for the Products, and would only have been willing to pay  
2 less, or unwilling to purchase them at all, absent Lindt omissions regarding the lead and  
3 cadmium content described herein.

4 41. Plaintiff would not have purchased the Products if she had known that they were  
5 misbranded pursuant to California and FDA regulations, or that they contained toxic lead or  
6 cadmium in the amounts found in the Products.

7 42. For these reasons, the Products were worth less than what Plaintiff and the Class  
8 Members paid for them.

9 43. Plaintiff and the Class lost money as a result of Lindt's omissions and unfair  
10 practices in that they did not receive what they paid for when purchasing the Products.

11 44. Plaintiff still wishes to purchase snack foods, including dark chocolate, and  
12 continues to see Lindt dark chocolate products at the stores she regularly shops. She would  
13 purchase the Lindt Products in the future if, because of an injunction requiring Lindt to  
14 disclose lead or cadmium when present, she could be assured by the absence of a disclosure  
15 that the Products no longer contained lead or cadmium. But unless Lindt is enjoined in the  
16 manner Plaintiff requests, she may not be able to reasonably determine whether the lead or  
17 cadmium in the Products has been addressed, or whether Lindt is continuing to omit their  
18 presence.

19 45. Plaintiff's substantive right to a marketplace free of fraud, where she is entitled  
20 to rely with confidence on representations such as those made by Lindt, continues to be  
21 violated every time Plaintiff is exposed to the Products' labels.

22 46. Plaintiff's legal remedies are inadequate to prevent these future injuries.

23 **CLASS ACTION ALLEGATIONS**

24 47. While reserving the right to redefine or amend the class definition prior to or as  
25 part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23,  
26 Plaintiff seeks to represent a class of all persons in the United States, or alternatively in  
27 California, who, at any time from four years preceding the date of the filing of this Complaint  
28

1 to the time a class is notified (the “Class Period”), purchased, for personal or household use,  
2 and not for resale or distribution, the Lindt Products (the “Class”).

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

6 49. Questions of law and fact common to Plaintiff and the Class include:

- 7 a. whether the omissions on the Products’ labels with respect to lead content  
8 is material, or likely to be material, to a reasonable consumer;
- 9 b. whether the omissions on the Products’ labels with respect to cadmium  
10 content is material, or likely to be material, to a reasonable consumer;
- 11 c. whether the omissions regarding lead content was reasonably likely to  
12 deceive a reasonable consumer;
- 13 d. whether the omissions regarding cadmium content was reasonably likely  
14 to deceive a reasonable consumer;
- 15 e. whether Lindt conduct violates public policy;
- 16 f. whether Lindt conduct violates state or federal food statutes or  
17 regulations;
- 18 g. whether Lindt made and breached warranties;
- 19 h. the proper amount of damages, including punitive damages;
- 20 i. the proper amount of restitution;
- 21 j. the proper scope of injunctive relief; and
- 22 k. the proper amount of attorneys’ fees.

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

25 51. Plaintiff’s claims are typical of Class Members’ claims because they are based  
26 on the same underlying facts, events, and circumstances relating to Lindt’s conduct.  
27 Specifically, all Class Members, including Plaintiff, were subjected to the same misleading  
28

1 and deceptive conduct when they purchased the Products and suffered economic injury  
2 because the Products are misrepresented. Absent Lindt’s business practice of deceptively  
3 and unlawfully labeling the Products by omitting material information regarding their toxic  
4 lead and cadmium content, Plaintiff and Class Members would not have purchased the  
5 Products or would have paid less for them.

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

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

13 54. Lindt has acted on grounds applicable to the Class, thereby making appropriate  
14 final injunctive and declaratory relief concerning the Class as a whole.

15 55. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.  
16 23(a), 23(b)(2), and 23(b)(3).

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Violations of the Unfair Competition Law**

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

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

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

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

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

3 **Fraudulent**

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

6 61. As set forth herein, Lindt's omissions regarding the toxic lead and cadmium  
7 content of the Products is likely to deceive reasonable consumers and the public.

8 **Unlawful**

9 62. As set forth herein, Lindt omissions are "unlawful" under the UCL in that they  
10 violate at least the following laws:

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

17 63. By violating these laws, Defendant has engaged in unlawful business acts and  
18 practices, which constitute unfair competition within the meaning of Business & Professions  
19 Code § 17200.

20 **Unfair**

21 64. Lindt's conduct with respect to the labeling, advertising, and sale of the  
22 Products was unfair because Lindt's conduct was immoral, unethical, unscrupulous, or  
23 substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh  
24 the gravity of the harm to its victims.

25 65. Lindt's conduct with respect to the labeling, advertising, and sale of the  
26 Products was also unfair because it violates public policy as declared by specific  
27 constitutional, statutory or regulatory provisions, including but not necessarily limited to the  
28

1 False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, the Song  
2 Beverly Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

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

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

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

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

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



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

3 72. Because Plaintiff's claims under the "unfair" prong of the UCL sweep more  
4 broadly than their claims under the FAL, CLRA, or UCL's "fraudulent" prong, Plaintiff's  
5 legal remedies are inadequate to fully compensate Plaintiff for all of Lindt's challenged  
6 behavior.

7 **SECOND CAUSE OF ACTION**

8 **Violations of the False Advertising Law**

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

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

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

14 75. As set forth herein, the Plaintiff purchased Products based on the labels, which  
15 constituted advertising and which omitted the presence of toxic lead and cadmium in the  
16 Products.

17 76. Plaintiff and the Class Members paid money for the Lindt Products. However,  
18 they did not obtain the full value or any value of the Products due to Lindt's omissions  
19 regarding the nature of the Products. Accordingly, Plaintiff and the Class Members suffered  
20 an injury in fact and lost money or property as a direct result of Lindt's omissions.

21 77. Lindt's conduct is ongoing and continuing, such that prospective injunctive  
22 relief is necessary, especially given Plaintiff's desire to purchase the Products in the future  
23 and hopes to rely in the future on Lindt's marketing and packaging.

24 78. Plaintiff and members of the Class are entitled to injunctive and equitable relief,  
25 and restitution in the amount they spent on the Products.

26 79. Here, equitable relief is appropriate because Plaintiff may lack an adequate  
27 remedy at law if, for instance, damages resulting from her purchase of the Products is  
28

1 determined to be an amount less than the premium price of the Products. Without  
2 compensation for the full premium price of the Products, Plaintiff would be left without the  
3 parity in purchasing power to which they are entitled.

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

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

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

1 **THIRD CAUSE OF ACTION**

2 **Violations of the Consumers Legal Remedies Act**

3 **Cal. Civ. Code §§ 1750 *et seq.***

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

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

9 85. Lindt's false and misleading labeling and other policies, acts, and practices were  
10 designed to, and did, induce the purchase and use of the Lindt Products for personal, family,  
11 or household purposes by Plaintiff and Class Members, and violated and continue to violate  
12 the following sections of the CLRA:

- 13 a. § 1770(a)(5): representing that goods have characteristics, uses, or  
14 benefits which they do not have;
- 15 b. § 1770(a)(7): representing that goods are of a particular standard, quality,  
16 or grade if they are of another;
- 17 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised;  
18 and

19 86. Lindt profited from the sale of the falsely, deceptively, and unlawfully  
20 advertised Products to unwary consumers.

21 87. Lindt's wrongful business practices constituted, and constitute, a continuing  
22 course of conduct in violation of the CLRA.

23 88. Plaintiff and the Class have suffered harm and seek only injunctive relief and  
24 restitution, at this time.

25 89. In compliance with Cal. Civ. Code § 1780(d), an affidavit of venue is filed  
26 concurrently herewith.

1 **FOURTH CAUSE OF ACTION**

2 **Breach of Implied Warranty Under the Song-Beverly Act**

3 **Cal. Civ. Code §§ 1790 *et seq.***

4 90. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
5 as if set forth in full herein.

6 91. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790, *et*  
7 *seq.*, every sale of consumer goods in this State is accompanied by both a manufacturer’s  
8 and retail seller’s implied warranty that the goods are merchantable, as defined in that Act.  
9 In addition, every sale of consumer goods in this State is accompanied by both a  
10 manufacturer’s and retail seller’s implied warranty of fitness when the manufacturer or  
11 retailer has reason to know that the goods as represented have a particular purpose and that  
12 the buyer is relying on the manufacturer’s or retailer’s skill or judgment to furnish suitable  
13 goods consistent with that represented purpose.

14 92. The Products are a “consumer good” within the meaning of Cal. Civ. Code §  
15 1791(a).

16 93. Plaintiff and the Class Members who purchased one or more of the Lindt  
17 Products are “retail buyers” within the meaning of Cal. Civ. Code § 1791.

18 94. Lindt is in the business of manufacturing, assembling, producing and/or selling  
19 the Products to retail buyers, and therefore is a “manufacturer” and “seller” within the  
20 meaning of Cal. Civ. Code § 1791.

21 95. Lindt impliedly warranted to retail buyers that the Products were merchantable  
22 in that they (a) would pass without objection in the trade or industry under the contract  
23 description, and (b) were fit for the ordinary purposes for which the Products is used. For a  
24 consumer good to be “merchantable” under the Act, it must satisfy both of these elements.  
25 Lindt breached these implied warranties because the Products were unsafe in that they  
26 contained toxic lead and cadmium. Therefore, the Products would not pass without objection  
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1 in the trade or industry and were not fit for the ordinary purpose for which they are used,  
2 which is consumption by consumers, including children.

3 96. Plaintiff and the Class purchased the Products in reliance upon Lindt's skill and  
4 judgment in properly packaging and labeling the Products.

5 97. The Products were not altered by Plaintiff or other Class Members.

6 98. Lindt knew that the Products would be purchased and used without additional  
7 testing by Plaintiff and the Class.

8 99. As a direct and proximate cause of Lindt's breach of the implied warranty,  
9 Plaintiff and the Class have been injured and harmed because they would not have purchased  
10 the Products or would have paid less for the Products if they knew the truth about the  
11 Products, namely, that they contained toxic lead and cadmium.

## 12 **FIFTH CAUSE OF ACTION**

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

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

16 101. As set forth herein, Lindt manufactured and sold the Products, and prior to the  
17 time the Products were purchased by Plaintiff and other Class Members, impliedly warranted  
18 that the Products were of merchantable quality and fit for their ordinary use, consumption  
19 by consumers, including children.

20 102. Lindt is a merchant with respect to the goods of this kind which were sold to  
21 Plaintiff and the Class, and there were, in the sale to Plaintiff and the Class, implied  
22 warranties that those goods were merchantable.

23 103. Lindt impliedly warranted to retail buyers that the Products were merchantable  
24 in that they (a) would pass without objection in the trade or industry under the contract  
25 description, and (b) were fit for the ordinary purposes for which the Products are used.  
26 Defendant breached this implied warranty because the Products were unsafe in that it  
27 contained toxic lead and cadmium. Therefore, the Products would not pass without objection  
28

1 in the trade or industry and were not fit for the ordinary purpose for which they are used,  
2 which is consumption by consumers, including children.

3 104. Lindt was on notice of this breach as it was aware of the lead and cadmium in  
4 the Products, including based on receiving notice in at least 2017.

5 105. As a direct and proximate cause of Defendant's breach of the implied warranty,  
6 Plaintiff and the Class members have been injured and harmed because they would not have  
7 purchased the Products or would have paid less for it if they knew the truth about the  
8 Products, namely, that they contained lead and cadmium.

9 106. As a result, Plaintiff seeks actual damages, including, without limitation,  
10 expectation damages.

## 11 **SIXTH CAUSE OF ACTION**

### 12 **Unjust Enrichment**

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

15 108. Lindt financial benefits resulting from its unlawful and inequitable conduct are  
16 economically traceable to Plaintiff's and Class Members' purchases of the Products, and the  
17 economic benefits conferred on Lindt are a direct and proximate result of its unlawful and  
18 inequitable conduct.

19 109. It would be inequitable, unconscionable, and unjust for Lindt to be permitted to  
20 retain these economic benefits because the benefits were procured as a direct and proximate  
21 result of its wrongful conduct.

22 110. As a result, Plaintiff and Class Members are entitled to equitable relief including  
23 restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits  
24 which may have been obtained by Lindt as a result of such business practices.

**PRAYER FOR RELIEF**

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

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

b. An Order requiring Lindt to bear the cost of Class Notice;

c. An Order compelling Lindt to destroy all misleading and deceptive advertising materials and product labels, and to recall all offending Products;

d. An Order requiring Lindt to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

e. An Order requiring Lindt to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;

f. An Order requiring Lindt to pay compensatory damages and punitive damages as permitted by law;

g. An award of attorneys’ fees and costs; and

h. Any other and further relief that Court deems necessary, just, or proper.

**JURY DEMAND**

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

Dated: January 11, 2023

/s/ Trevor Flynn

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***Counsel for Plaintiff***

# ClassAction.org

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