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TRADER JOE'S COMPANY
7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 CHRISTINA WEBB, on behalf of
herself, all others similarly situated, and
12 the general public,

13 Plaintiff,

14 v.

15 TRADER JOE'S COMPANY,
16 Defendant.

Case No. **'19CV1587 CAB WVG**

[San Diego Superior Court Case No.
37-2019-00035568-CU-BT-CTL]

**DEFENDANT TRADER JOE'S
COMPANY'S NOTICE OF
REMOVAL OF ACTION TO
FEDERAL COURT**

CLASS ACTION

JURY TRIAL DEMANDED

Action Filed: July 10, 2019

PLEASE TAKE NOTICE that Defendant Trader Joe's Company ("Trader Joe's") hereby removes this action from the Superior Court of the State of California for the County of San Diego to the United States District Court for the Southern District of California, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, on the grounds that federal jurisdiction exists under the Class Action Fairness Act ("CAFA"). Here, the proposed plaintiff class consists of over 100 members, minimal diversity exists because Trader Joe's is a citizen of California and the putative class includes at least one citizen of another state, and the amount in controversy exceeds \$5,000,000. Additionally, this Notice of Removal is timely and fulfills all procedural requirements.

I. PROCEDURAL HISTORY

1. On July 10, 2019, Plaintiff Christina Webb ("Plaintiff"), individually and on behalf of all others similarly situated, filed this action, captioned *Christina Webb v. Trader Joe's Company*, Case Number 37-2019-00035568-CU-BT-CTL, in the Superior Court of the State of California for the County of San Diego (the "Superior Court Action")¹.

2. Pursuant to 28 U.S.C. § 1446(a), Trader Joe's has attached, as Exhibit 1, a copy of all process, pleadings, and orders served upon Trader Joe's or otherwise filed in the Superior Court Action. True and correct copies of Plaintiff's Summons and Class Action Complaint (the "Complaint") are included in Exhibit 1.

3. Plaintiff served Trader Joe's with the Summons and Complaint in the Superior Court Action on July 24, 2019. *See* Ex. 1.

4. The Complaint asserts claims against Trader Joe's relating to its marketing and sale of raw poultry products, including the Trader Joe's All Natural Boneless Chicken Breasts, Trader Joe's All Natural Chicken Thighs, and Trader

¹ Prior to filing the Superior Court Action, on June 26, 2019, Plaintiff served a CLRA demand letter on Trader Joe's ("CLRA Demand Letter"). A true and correct copy of the CLRA Demand Letter is attached as Exhibit 2.

1 Joe's All Natural Chicken Wings (hereinafter the "Products"). Compl. ¶¶ 5-6.

2 5. Plaintiff alleges that Trader Joe's misleadingly labels the Products
3 because the Products allegedly contain more retained water than disclosed on the
4 Products' label and less poultry product than stated on the net weight label. Compl.
5 ¶ 7. Based on these allegations, Plaintiff and the putative class assert claims for
6 alleged violations of (1) Consumers Legal Remedies Act; (2) California Unfair
7 Competition Law; (3) False Advertising Law; (4) Breach of Express Warranties; (5)
8 Breach of Implied Warranties; (6) Theft by False Pretenses; (7) Unjust Enrichment.
9 *Id.* ¶¶ 129-251.

10 6. Plaintiff purports to bring this action on behalf of a nationwide class of
11 "[a]ll U.S. citizens who purchased the Products in their respective state of
12 citizenship on or after January 1, 2012 and until the Class is certified, for personal
13 use and not for resale [exclusions omitted]" (the "Nationwide Class"); and a
14 subclass of "[a]ll California citizens who purchased the Product in California on or
15 after January 1, 2012 and until the Class is certified, for personal use and not for
16 resale [exclusions omitted]." (the "California Subclass"). *Id.* ¶¶ 118-119.

17 7. The Complaint seeks declaratory relief, injunctive relief, damages,
18 restitution, disgorgement, punitive damages, and recovery of costs and reasonable
19 attorneys' fees. *Id.*, at 33-34, Prayer For Relief.

20 8. On August 15, 2019, Trader Joe's filed its Answer to the Complaint in
21 the Superior Court Action. *See* Ex. 1, Trader Joe's Answer to Class Action
22 Complaint.

23 **II. GROUNDS FOR REMOVAL**

24 9. This action is removable pursuant to 28 U.S.C. § 1441(a) because this
25 is an action over which this Court has original jurisdiction.

26 10. This Court possesses original jurisdiction under the Class Action
27 Fairness Act, "CAFA," 28 U.S.C. §§ 1332(d), 1453. CAFA extends federal
28

jurisdiction over class actions where: (1) any member of the proposed class is a citizen of a state different from any defendant (*i.e.*, minimal diversity exists); (2) the putative class consists of more than 100 members; and (3) the amount in controversy is \$5 million or more, aggregating all claims and exclusive of interests and costs. *See* 28 U.S.C. §§ 1332(d)(2), 1332 (d)(5)(B). Each of these requirements is met here for the reasons stated below.

11. This Action meets the CAFA definition of a class action, which includes “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action” *See* 28 U.S.C. § 1332(d)(1)(B); Compl. ¶ 117.²

A. Minimal Diversity

12. Minimal diversity exists between Defendant and the members of the putative class under 28 U.S.C. § 1332(d)(2)(A). Under CAFA, minimal diversity is met if “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

13. Trader Joe’s is a citizen of California, because its headquarters and principal place of business is in California. Compl. ¶ 16 (alleging Defendant to be “a California corporation with its headquarters and principal place of business . . . in California”); *See* 28 U.S.C. §1332(c)(1) (deeming the citizenship of a corporation to be where “it has been incorporated and . . . where it has its principal place of business.”); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (concluding that the “principal place of business” is the “nerve center . . . where the corporation maintains its headquarters”).

14. Plaintiff brings this action on behalf of a nationwide class of “All U.S.

² Despite filing the Superior Court Action in California state court, the Plaintiff’s Complaint purports to bring the action pursuant to “Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).” Compl. ¶ 117.

1 citizens who purchased the Products in their respective state of citizenship . . .”
 2 Compl. ¶ 118. The Products are sold throughout the United States, including in
 3 states other than California. Thus, at least one member of the proposed class is
 4 from a state other than California, thereby satisfying minimal diversity for purposes
 5 of CAFA jurisdiction. *See* 28 U.S.C. § 1332(d)(2)(A).

6 **B. Number of Class Members**

7 15. Plaintiff alleges that the number of class members is “at a minimum in
 8 the tens of thousands.” *Id.* at ¶ 122. Therefore, CAFA’s requirement that the
 9 putative class consists of more than 100 members is satisfied. *See* 28 U.S.C. §
 10 1332(d)(5)(B).

11 **C. Amount in Controversy**

12 16. The amount in controversy in this action satisfies CAFA’s \$5,000,000
 13 jurisdictional threshold. Under CAFA, the claims of all class members are
 14 aggregated to determine if the amount in controversy exceeds the “sum or value of
 15 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). “The amount
 16 in controversy is simply an estimate of the total amount in dispute, not a
 17 prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*,
 18 627 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts
 19 first look to the complaint and “the sum claimed by the plaintiff controls if the
 20 claim is apparently made in good faith.” *Id.* (citation omitted). Accordingly, “in
 21 assessing the amount in controversy, a court must assume that the allegations of the
 22 complaint are true and assume that a jury will return a verdict for the plaintiff on all
 23 claims made in the complaint.” *Campbell v. Vitran Express, Inc.*, 471 F. App’x
 24 646, 648 (9th Cir. 2012) (citation omitted). Where a complaint does not specify the
 25 amount of damages sought, the removing defendant need only establish that it is
 26 more likely than not that the amount in controversy requirement has been met.
 27 *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006); *see also Dart*

Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 81 (2014) (“a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”). “The removing party’s burden is ‘not daunting,’ and defendants are not obligated to ‘research, state, and prove the plaintiff’s claims for damages.’” *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009).

17. While Trader Joe’s contends that Plaintiff’s allegations and claims are without merit, and that neither the Plaintiff nor the putative class members are entitled to any relief, the amount in controversy here exceeds the jurisdictional requirement of \$5,000,000. Here, Plaintiff seeks relief on behalf a Nationwide Class and a California Subclass who purchased the Products between January 1, 2012 and when the putative class is certified. Compl. ¶¶ 118-19. Plaintiff and the putative class seek, *inter alia*, “[a]n order requiring Defendant to pay restitution to all Class members” (Compl. ¶ 33), “[a]n order requiring Defendant to disgorge to the Class any benefits received from the Class and any unjust enrichment realized as a result of Defendant’s improper conduct” (Compl. ¶ 34), and a “refund” for “California consumers who purchased the [challenged products].” (CLRA Demand Letter at 4). Based on Trader Joe’s records, gross nationwide sales of the Products during the putative class period were in excess of \$5,000,000. In addition, Plaintiff seeks to recover her attorneys’ fees, which contribute to the alleged amount in controversy. *Id.* at 33-34 (Prayer for Relief); *Kroske v. US. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (including attorney’s fees in amount in controversy); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155– 56 (9th Cir. 1998) (including attorneys’ fees in calculating the amount in controversy requirement for traditional diversity jurisdiction).

18. Plaintiff also seeks punitive damages, which are properly included in the amount in controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.

2001) (“It is well established that punitive damages are part of the amount in controversy in a civil action.”).

19. Additionally, Plaintiff also seeks injunctive relief “enjoining Defendant’s unlawful, unfair, and unconscionable practices.” Compl. at 33. The injunctive relief that Plaintiff seeks include (1) revisions to the Product labels; (2) change in manufacturing process to “reduce the amount of retained water within the Products”; (3) a recall of all Products; and (4) corrective advertising campaign. CLRA Demand Letter, at 4. *See, e.g., Bayol v. ZipCar, Inc.*, 2015 WL 4931756, at *10 (N.D. Cal. Aug. 18, 2015) (“[A] defendant’s aggregate cost of compliance with an injunction is appropriately counted toward the amount in controversy.”).

20. Accordingly, while Trader Joe’s denies that Plaintiff and any putative class is entitled to relief, the amount in controversy is in excess of the jurisdictional requirement of \$5,000,000. *See Campbell*, 471 F. App’x at 648 (in determining the amount in controversy, “a court must assume that the allegations in the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.”)

D. No Exception to CAFA Applies

21. Although CAFA contains several exceptions, which, where applicable may prevent the Court from exercising jurisdiction under CAFA, those exceptions do not impose additional jurisdictional requirements. Instead, after an action is removed, Plaintiff bears the burden of showing that an exception to CAFA jurisdiction applies. *See, e.g., Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir. 2007) (“[T]he provisions set forth in §§ 1332(d)(3) and (4) are not part of the prima facie case for establishing minimal diversity jurisdiction under CAFA, but, instead, are exceptions to jurisdiction.”). In any event and despite Plaintiffs conclusory allegations in her complaint, no “local controversy exception” applies here because she seeks to represent a nationwide class of all “all U.S.

1 citizens who purchased the Products in their respective state . . .” Compl. ¶ 118.

2 **III. ALL OTHER STATUTORY REQUIREMENTS FOR REMOVAL**
 3 **HAVE BEEN SATISFIED**

4 22. This Notice of Removal is properly filed in the United States District
 5 Court for the Southern District of California, because the Superior Court of the
 6 State of California for the County of San Diego is located in this judicial district.
 7 *See* 28 U.S.C. § 1441(a).

8 23. This Notice of Removal is timely. Neither the Complaint nor the
 9 CLRA Demand Letter expressly allege a specific amount in controversy. In this
 10 circumstance, the thirty day removal period under § 1446(b) does not apply. *See*
 11 *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013)
 12 (holding that “§ § 1441 and 1446, read together, permit a defendant to remove
 13 outside the two thirty-day periods on the basis of its own information, provided that
 14 it has not run afoul of either of the thirty-day deadlines.”). However, based on
 15 Trader’s Joe’s records, the amount in controversy is in excess of \$5,000,000.

16 24. This Notice of Removal is signed pursuant to Rule 11 of the Federal
 17 Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

18 25. There are no other named defendants in this action other than Trader
 19 Joe’s, thus no consent to removal is necessary.

20 26. No previous application has been made for the relief requested herein.

21 27. Pursuant to 28 U.S.C. § 1446(a), a copy of processes, pleadings and
 22 orders served upon Defendant in this action, which include the Complaint and
 23 Summons, and Answer are attached. *See* Ex. 1.

24 28. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will
 25 be promptly served on the Plaintiff and promptly filed with the clerk of the Superior
 26 Court of the State of California for the County of San Diego.

27 29. No admission of fact, law, or liability is intended by this Notice of
 28

1 Removal, and Defendant expressly reserves all defenses, counterclaims, and
2 motions otherwise available to it.

3 **IV. CONCLUSION**

4 For the foregoing reasons, this action is within this Court's original
5 jurisdiction and meets all requirements for removal, such that removal is proper
6 under 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly, Trader Joe's
7 respectfully removes this action from the Superior Court for the State of California,
8 County of San Diego, to this Court.

9
10 Dated: August_23, 2019

VENABLE LLP

11
12 By: /s/ Angel A. Garganta

13 Angel A. Garganta
14 Amit Rana
15 101 California Street, Suite 3800
16 San Francisco, CA 94111
17 Telephone: 415.653.3750
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19 Attorneys for Defendant
20 TRADER JOE'S COMPANY
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Christina Webb

DEFENDANTS

Trader Joe's Company

(b) County of Residence of First Listed Plaintiff San Diego County, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ronald A. Marron, Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103, (619) 696-9006

Attorneys (If Known)

Angel A. Garganta, Amit Rana
101 California Street, Suite 3800
San Francisco, CA 94111 (415) 653-3750

'19CV1587 CAB WVG**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Overpayment of Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § § 1332(d), 1441(a), 1446

Brief description of cause:

Class action asserting claims under California Business & Professions Code and Civil Code

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/23/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Angel A. Garganta

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

EXHIBIT 1

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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

07/10/2019 at 03:29:28 PM

Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CHRISTINA WEBB, on behalf of herself,
all others similarly situated, and the
general public,

Plaintiff,

v.

TRADER JOE'S COMPANY,

Defendant.

Case No: 37-2019-00035568-CU-BT-CTL

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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Christina Webb (“Plaintiff”), on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby brings this action against Trader Joe’s Company (“Defendant” or “Trader Joe’s”), and upon information and belief and investigation of counsel alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(4)(A), the local controversy exception to federal jurisdiction under the Class Action Fairness Act of 2005 (CAFA) because greater than two-thirds of all members in the proposed Class are citizens of California; the Defendant is a citizen of California and Defendant’s conduct forms a significant basis for the claims asserted by the Class; the principal injuries resulting from Defendant’s conduct were incurred in California; and during the three-year period preceding the filing of this action, no other class action has been filed asserting the same or similar factual allegations against the Defendant on behalf of the same person. Additionally, the number of members of the proposed Class in the aggregate is more than 100 and the Defendant is not a State, State official, or other governmental entity against whom the Court may be foreclosed from ordering relief.

2. This Court has both general and specific personal jurisdiction over the Defendant.

3. The Court has personal jurisdiction over Defendant because Defendant is headquartered and has its principal place of business in California; Defendant’s Products are advertised, marketed, distributed and sold throughout the State of California; Defendant engaged in the wrongdoing alleged in this Complaint in the State of California; Defendant is authorized to do business in the State of California and engages in substantial activity within the State of California; Defendant has numerous stores throughout the State of California; and Defendant has sufficient minimum contacts with the State of California, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice.

4. Venue is proper in this Court pursuant to California Code of Civil Procedure sections 395 and 395.5 because Plaintiff purchased the Product within this judicial district

1 and suffered injuries due to Defendant's conduct within this judicial district. Defendant's
 2 business practices and wrongful acts have occurred and continue to occur in this county,
 3 and the adverse effects of Defendant's alleged wrongful conduct have harmed and will
 4 continue to harm the residents of this county and the rest of the state.

5 **II. NATURE OF THE ACTION**

6 5. This is a consumer class action for violations of express and implied
 7 warranties, negligent and intentional misrepresentations, fraudulent omissions, and
 8 consumer protection laws, with a California class for violations of California consumer
 9 protection laws.

10 6. Defendant manufactures, packages, distributes, advertises, markets, and sells
 11 a variety of Trader Joe's branded raw poultry products, including, without limitation, the
 12 Trader Joe's All Natural Boneless Chicken Breasts, Trader Joe's All Natural Chicken
 13 Thighs, and Trader Joe's All Natural Chicken Wings (collectively, the "Products" or
 14 "Chicken Products").

15 7. The labeling of the Products is false and misleading and the Products are thus
 16 misbranded under consumer protection laws. Specifically, the Products claim to contain
 17 only 5% retained water, when they actually contain unlawful amounts of excess Retained
 18 Water,¹ far greater than that disclosed on the product labels. Some of the products were
 19 found to contain as much as 16% excess Retained Water, for which California consumers
 20 are unlawfully charged the per-pound price of poultry.

21 8. Defendant's conduct violates several California consumer protection laws
 22 including the Consumers Legal Remedies Act ("CLRA"), Unfair Competition Law
 23 ("UCL"), False Advertising Law ("FAL"), and Song-Beverly Act. Each of these state laws
 24 either incorporate the requirements of the Federal Poultry Products Inspection Act
 25 ("PPIA") by reference or impose by statute requirements identical to those of the PPIA.

26 9. The Products as labeled and sold are also in breach of express and implied

27 ¹ The term "Retained Water" as used herein refers to water picked up by the chicken during
 28 poultry processing that remains with the product at the time of packaging. *See*, 66 FR
 1749; 9 CFR 381, 9 CFR 441. Retained Water may remain on or in the chicken or may
 migrate into the product's packaging during post-packaging transport and storage.

1 warranties and constitute theft by false pretenses under California law.

2 10. Defendant packages, transports, distributes, and sells the Products packaged
3 with excess Retained Water, and offers those products in commerce in California.
4 Defendant mislabeled these Products because they contained more Retained Water at the
5 time they were packaged at the processing facility than is disclosed on the labels. These
6 products are economically adulterated and misbranded and are therefore illegal to sell.

7 11. Defendant receives and sells the adulterated and misbranded Products in the
8 United States and California, violating federal and California laws, including the Song-
9 Beverly Act and California's Unfair Competition Law, and breach implied warranties
10 applicable to retail sellers of goods under California law.

11 12. Plaintiff purchased Trader Joe's chicken products from several Trader Joe's
12 store locations in San Diego County, California. Those products contained excess
13 Retained Water that was unlawfully included in the products' labeled net weight. Because
14 Plaintiff paid the marked, per-pound price for excess Retained Water above that declared
15 on the product labels, Plaintiff paid more for the products than the products were worth
16 and was injured economically.

17 13. After sampling and analyzing Trader Joe's Chicken Products offered for sale
18 at supermarkets in Northern California, it was found that Trader Joe's Chicken Products
19 were routinely and consistently misbranded and economically adulterated with excess
20 Retained Water far greater than that declared on the labels.

21 14. Plaintiff therefore brings this action on her own behalf and on behalf of all
22 consumers who purchased such products during the Class Period.

23 15. Plaintiff, on her own behalf and on behalf of the Class defined herein, seeks
24 an order compelling Defendant to, *inter alia*: (1) cease packaging, distributing, advertising
25 and selling the Products in violation of U.S. FDA regulations, California consumer
26 protection laws, and state common laws; (2) re-label or recall all existing deceptively
27 packaged Products; (3) conduct a corrective advertising campaign to inform consumers
28 about the deceptive practices; (4) award Plaintiff and other Class Members an appropriate
measure of restitution, actual damages, statutory damages, and punitive damages; and (5)

1 pay all costs of suit including expenses, pre- and post-judgment interest, and reasonable
2 attorney fees for this action.

3 **III. PARTIES**

4 16. Defendant Trader Joe's Company packages, labels, advertises, markets,
5 distributes, and sells Trader Joe's branded uncooked retail poultry products in California
6 and throughout the United States. Trader Joe's is a California corporation with its
7 headquarters and principal place of business at 800 S. Shamrock Avenue in Monrovia,
8 California. Trader Joe's is registered with the California Secretary of State under entity
9 number C0353027.

10 17. Plaintiff Christina Webb ("Plaintiff") is a resident and citizen of San Diego
11 County, California, who purchased the Product multiple times during the Class Period in
12 San Diego County, California for personal and household consumption.

13 18. Plaintiff suffered economic injury as a result of Defendant's violations of
14 California law. Plaintiff would like to continue to purchase the Products, intends to do so,
15 and will do so when she can do so with the assurance that Defendant will package, label,
16 and offer the Products for sale truthfully and in compliance with federal and California
17 law.

18 **IV. FACTUAL ALLEGATIONS**

19 **A. Defendant packages, labels, transports, receives, and sells poultry products** 20 **adulterated with excess Retained Water.**

21 19. California law requires Defendant to produce, package, label, transport, and
22 offer in commerce poultry products that truthfully and accurately represent on the labels
23 the amount of Retained Water in the products.

24 20. California law similarly requires Defendant to receive in commerce and sell
25 only poultry products that are lawfully labeled, are not misbranded or economically
26 adulterated, and that truthfully represent on the product labels the amount of Retained
27 Water in the products.

28 21. Defendant, however, packages, labels, advertises, transports, and sells
products with significant excess Retained Water, in packages that falsely advertise the

1 maximum amount of Retained Water in those products.

2 22. Poultry products are sold by weight. Excess Retained Water in the product
3 unlawfully increases the price the consumer pays and decreases the value of the product,
4 cheating the consumer.

5 23. The excess Retained Water concealed in the Products means that the
6 consumer is unknowingly paying the per-pound price advertised for the poultry for
7 significant quantities of Retained Water in excess of the labeled maximum.

8 24. Because of Defendant's deceptive and unlawful practices, consumers are
9 cheated into paying more than they should for the Trader Joe's Chicken Products.

10 **B. Defendant packages the Products with unlawful excess Retained Water.**

11 25. Defendant packages the Products with unlawful excess Retained Water, and
12 fails to truthfully disclose the amount of Retained Water in the Products at that time on
13 the Product labels.

14 26. Poultry processors use a water-immersion process to chill chicken carcasses
15 during processing. In this process, the poultry carcasses are immersed into a chilled water
16 bath or "immersion chiller" until cooled to the proper temperature.

17 27. The poultry is then removed from the chiller and processing water that the
18 product picks up in the chiller begins to drain off.

19 28. The processing of poultry in water-immersion chillers always results in some
20 "carry-over" or retention of processing water when the product is removed from the
21 chiller.

22 29. The product begins to give up the water picked up in the immersion process
23 as soon as it is removed from the chiller. Any processing water picked up during
24 immersion that remains with the product when it is packaged is Retained Water.

25 30. If allowed to drain and dry properly before packaging, the chicken will give
26 up much of the water that was picked up in the chilling process and rapidly return to near
27 (within 4% of) its pre-immersion net weight before being packaged.

28 31. During transportation and storage after packaging and prior to sale, some of
the Retained Water in immersion-chilled products stays on or in the chicken while some

1 drains out of the chicken and into the Product packaging.

2 32. Poultry processors that use a water-immersion process can control the
3 chilling, handling, and packaging process so as to minimize the amount of Retained Water
4 in the product. Processors can control the amount of water that their products retain by
5 adjusting process control variables such as drip time and drying time and methods before
6 the products are packaged.

7 33. Retained Water is defined in Federal regulations and under California law as
8 any processing water that remains with the product at the time of packaging.

9 34. If poultry processing results in any Retained Water in the products, the
10 processor is required by identical California and Federal law requirements to label the
11 products with the maximum percentage of Retained Water at the time of packaging.

12 35. Under the Federal PPIA regulations and parallel California law, it is unlawful
13 to package, transport, receive, sell, or offer for sale or transport, any raw poultry products
14 that retain water and do not accurately declare on the package the maximum percentage
15 of Retained Water in the product.²

16 36. Defendant declares a maximum of 5% Retained Water in its Trader Joe's
17 Chicken Products.

18 37. The Trader Joe's Chicken Products, however, include significantly more than
19 the maximum percentage of Retained Water declared on the product labels, rendering all
20 of those Products misbranded and economically adulterated and unlawful to sell, offer for
21 sale, transport, or receive in commerce.

22 38. Defendant receives in commerce and sells the economically-adulterated
23 products, violating federal and California law and profiting thereby at the expense of
24 consumers.

25 39. Trader Joe's retail poultry packages currently sold in California were found
26 to contain on average nearly 9% Retained Water, most of which is hidden from the

27 ² See, 7 CFR 2.18, 2.53. Sec. 441.10 Retained Water; 21 U.S.C. 451-470, 601-695; 7 U.S.C.
28 450, 1901-1906. Poultry processors must also eliminate any Retained Water that is not an
inevitable consequence of the process used to meet food safety requirements. *Id.*

1 consumer in superabsorbent pads underneath the product.

2 40. Some randomly sampled Trader Joe's Chicken Products contained as much
3 as 16% Retained Water in the packages, and some varieties of the Products contained
4 more than 9% Retained Water on average.

5 41. California currently uses the "dry tare" method of weighing poultry products.
6 Under the "dry tare" procedure, the product net weight shown on the package includes
7 fluids contained within the package.

8 42. In 2008, California switched from a "wet tare" method to the dry tare method
9 for weighing poultry packages.

10 43. Prior to that time, published scientific and government reports found that the
11 average pre-packaged poultry product contained less than 4% Retained Water.

12 44. Taking advantage of the dry-tare weighing method in California, however,
13 Trader Joe's now includes in its Products on average not 5% Retained Water as claimed
14 on the labels but nearly 9% of the product's marked weight in Retained Water – and some
15 sampled Trader Joe's products contained as much as 16% Retained Water.

16 45. Testing was performed on several varieties of the Products. The marked net
17 weight of the Products was routinely greater than the actual weight of the poultry in the
18 package, and a large quantity of water was held in the package in an absorbent pad
underneath the product.

19 46. For nearly every Trader Joe's Product package tested, Defendant's "Up to
20 5% Retained Water" statement was false.

21 47. The water in these packages consisted almost entirely of Retained Water, as
22 any purged naturally-occurring moisture from the chicken constituted only a negligible
23 amount of the liquid in the packages.

24 48. Most of this water is concealed in a superabsorbent pad Trader Joe's inserts
25 into its Product packages. Trader Joe's uses a special absorbent pad that allows Defendant
26 to include large amounts of Retained Water in the Products in excess of the amount
27 declared on the label and yet have that Retained Water remain undetectable by the
28 consumer at the point of purchase.

1 49. Defendant uses these pads to conceal from the consumer how much excess
2 Retained Water the packages contain.

3 50. In the absence of the superabsorbent pads that Defendant includes in the
4 packages – or if the Products were accurately labeled – consumers could know the amount
5 of Retained Water in the package and either accept or refuse to buy the product. But with
6 the excess Retained Water concealed in an absorbent pad underneath the Products, and
7 the Products falsely labeled, consumers have no way of knowing how much of their
8 purchase is Retained Water.

9 51. The difference between the marked net weight and the actual lawful net
10 weight of this poultry product was not a reasonable variation from the stated weight.

11 52. The products were mislabeled and adulterated with excessive Retained Water
12 when packaged, and the use of superabsorbent pads hidden in the packages to conceal the
13 excessive Retained Water was an additional deceptive trade practice.

14 53. Under the Federal PPIA and California law imposing identical requirements,
15 poultry product sellers must disclose on the product label the maximum percentage of
16 Retained Water in the product. This disclosure enables the consumer to compare products
17 and make informed purchasing decisions.

18 54. Under both the PPIA and California law, a processor's failure to minimize
19 the amount of Retained Water carried over from the chilling process or failure to
20 accurately label the amount of Retained Water in the product results in the product
21 becoming economically adulterated.

22 55. It is illegal to package, possess, transport, offer in commerce, or sell an
23 economically adulterated product in California.

24 56. A product is misbranded if its labeling is false or misleading in any particular.

25 57. A product is also misbranded if its container is filled so as to be misleading.

26 58. A product is also misbranded if the product label does not accurately reflect
27 the package contents in net weight.

28 59. These California laws impose identical packaging and labeling requirements
to the applicable federal regulations under the PPIA.

60. The Trader Joe's Products described herein violate both the federal and California laws and are economically adulterated and misbranded.

61. Trader Joe's is liable as a seller of the adulterated Products for receiving and offering misbranded products in commerce, and is also liable for express and implied warranties applicable to product sellers for its role as a retailer of the Products.

C. Trader Joe's products tested had unlawful excess Retained Water.

62. A San Francisco food testing laboratory tested several Trader Joe's chicken products, including chicken wings, chicken breasts, and chicken thighs.

63. The samples were collected using a standardized sampling protocol to eliminate any potential sampler bias in selecting packages for analysis, and analyzed for Retained Water consistent with applicable Federal and state regulations, guidelines, and procedures including the PPIA and associated regulations and guidelines.

64. The marked net weight of the Products was routinely greater than the actual weight of the poultry in the package, and a large quantity of water was held in the package in an absorbent pad underneath the product.

65. The chart below shows the results of the testing performed on the Products.

Sample ID	% Moisture	Stated Net Weight Lbs	Net weight Found Lbs	Retained Water Stated	Actual Retained Water Found
Natural Boneless Skinless Chicken Thighs	72.63	1.31	1.19	5%	9.16%
Natural Boneless Skinless Chicken Thighs	72.99	1.37	1.26	5%	8.0%
Natural Boneless Skinless Chicken Thighs	71.19	1.63	1.45	5%	11.04%
Natural Boneless Skinless Chicken Thighs	71.92	1.92	1.74	5%	9.38%
Natural Boneless Skinless Chicken Thighs	70.83	1.89	1.70	5%	10.05%
Natural Chicken Wings	71.80	1.54	1.41	5%	8.44%

Natural Chicken Wings	75.63	1.69	1.41	5%	16.57%
Natural Chicken Wings	67.31	1.61	1.53	5%	4.9%
Natural Chicken Wings	70.69	1.66	1.55	5%	6.6%
Natural Chicken Wings	69.30	1.68	1.58	5%	5.9%
Natural Boneless Chicken Breast	75.15	1.73	1.60	5%	7.51%
Natural Boneless Chicken Breast	74.39	1.75	1.63	5%	6.85%
Natural Boneless Chicken Breast	72.65	1.59	1.43	5%	10.06%
Natural Boneless Chicken Breast	72.86	1.74	1.54	5%	11.49%

66. The results of the testing, conducted during June 2019, revealed that sampled Trader Joe's Products in San Francisco contained, on average, 9% Retained Water.

67. This result met all statistical tests for significance.

68. In this sampling round, fourteen (14) individual samples of Trader Joe's Products were purchased from various Trader Joe's stores in the San Francisco area.

69. The product samples were all observed to include cut-up poultry, packaging materials including a plastic foam tray and flexible plastic film over-wrap, a large absorbent pad in the plastic tray underneath the poultry, and Retained Water.

70. Each Product sample was transported to the analytical food laboratory and weighed as purchased on a calibrated, legal-for-trade scale in accordance with applicable Federal and state regulations, guidelines, and procedures. The product was then unwrapped and the contents and packaging weighed separately and the actual weight of poultry, packaging, and Retained Water was derived and recorded.

71. Retained Water comprised nearly 9% or more of the Products' weight on average at the time the Products were packaged and labeled at the processing facility.

72. This was almost twice the "maximum of 5% retained water" declared on the package labels.

73. This analysis demonstrated conclusively that the Products routinely

1 contained unlawful excess Retained Water at the time the Products were packaged and
2 that Defendant systematically and unlawfully misrepresents the percentage of Retained
3 Water in the Trader Joe's Chicken Products.

4 74. The poultry meat in these samples was found to range from 75.63% moisture
5 down to 67.31% moisture; the average among these Products was 72.09% moisture.

6 75. Poultry products contain naturally-occurring moisture, and packaged raw
7 chicken may also release a small amount of the chicken's naturally-occurring moisture
8 during transportation and storage.

9 76. This release of naturally-occurring moisture is referred to as "purge."

10 77. Uncooked chickens, like the Products at issue here, contain on average 66%
11 naturally-occurring moisture.³ This naturally-occurring moisture is principally bound to
12 muscle tissue and does not readily purge from uncooked chicken.

13 78. The sampled Products contained on average not 66% moisture but instead
14 over 72% moisture, indicating that the Products had lost no net naturally-occurring
15 moisture to purge and in fact had absorbed Retained Water into the Product tissue.

16 79. The Products were also analyzed for absorbed moisture, as a second method
17 to check on the Retained Water calculation. Representative samples of the chicken were
18 weighed, oven dried, and weighed again.

19 80. The average moisture in these samples significantly exceeded the average
20 naturally-occurring moisture in un-immersed chicken. This indicated that the Products, at
21 the time of purchase and analysis, still contained absorbed Retained Water as well as the
22 Retained Water that migrated into the Product packaging.

23 81. Based on the analytical results, during the packaging, storage, and
24 transportation of the Products much but not all of the Retained Water migrated into the
25 Products' packaging. At the time of purchase, the majority of the Retained Water in the
26 Products was located in the absorbent pad in the package.

27 ³ United States Department of Agriculture, *Water in Meat and Poultry*;
28 https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/water-in-meat-and-poultry/ct_index;
last visited May 4, 2018.

1 82. The moisture analysis conducted as a check on sampled Trader Joe's
2 products showed that the Products contained Retained Water still absorbed in the chicken
3 tissue at the time of purchase in addition to the Retained Water observed in the packages.
4 Water loss from the Products into the packaging was almost exclusively Retained Water.
5 The net amount of purged naturally-occurring moisture from the Products was *de minimis*
6 and did not affect either the calculation of Retained Water or the conclusion that the
7 Products contained unlawful amounts of excess Retained Water.

8 83. The Trader Joe's Products' average of 9% or more Retained Water uniformly
9 exceeded the labeled maximum of 5% Retained Water declared on the product labels,
10 across multiple sampling rounds, diverse products, and different store locations, with
11 individual Product packages containing as much as 16% Retained Water.

12 84. Trader Joe's Chicken Products systematically contain excess Retained Water
13 when packaged and labeled at the processing facility, far in excess of the labeled
14 maximum percentages, rendering those products misbranded, economically adulterated,
15 and illegal to sell in California and the United States.

16 85. Defendant declares 5% as the maximum Retained Water in its raw chicken
17 Products. This amount therefore may be presumed to represent the maximum amount of
18 Retained Water that is an unavoidable result of Defendant's processing.⁴ The far greater
19 percentages of Retained Water found in those Products exceed the maximum amount of
20 Retained Water that is an unavoidable result of processing.

21 86. Defendant is capable of producing safe raw poultry products with a
22 maximum of 5% Retained Water as declared on the Product labels. Defendant has
23 produced such chicken products with less than 5% Retained Water. Trader Joe's'
24 competitors currently produce similar poultry products with less than 5% Retained Water.
25 And Trader Joe's currently produces some raw chicken products with less than 5%
26 Retained Water.

27 ⁴ Although rare, some Trader Joe's product samples did show Retained Water within the
28 declared, lawful range.

1 87. There is no lawful justification for Defendant's practice of misrepresenting
2 the amount of Retained Water in the Products.

3 88. Defendant's practice of misrepresenting the amount of Retained Water in the
4 Trader Joe's Chicken Products and including unlawfully large amounts of Retained Water
5 in those products causes consumers to pay more for economically adulterated and
6 misbranded products.

7 89. Plaintiff and the Class members who purchased the Products during the Class
8 period paid the advertised per-pound price for Products with Retained Water far in excess
9 of the maximum percentage declared on the Product labels.

10 90. Plaintiff and the Class Members were injured economically as a direct and
11 proximate result of Defendant's actions.

12 91. Every Class Member is therefore entitled to damages as compensation and in
13 restitution for having paid the per-pound product price for retained water far in excess of
14 the maximum percentage declared and warranted on the product labels.

15 **D. Defendant's Retained Water labeling did not comply with the federal PPIA at**
16 **the time the Products were packaged in Defendant's facilities.**

17 92. Trader Joe's Chicken Products' Retained Water statements are false.

18 93. Laboratory testing and statistical analysis showed Defendant's labeling of
19 maximum Retained Water percentages in its Products ignores significant quantities of
20 processing water retained in the Products from processing.

21 94. The Product labels are therefore false and in violation of the federal PPIA as
22 well as California law.

23 95. The Products are falsely labeled at the time the Products are packaged in
24 Defendant's facility because they do not accurately disclose the amount of water included
25 in the Products as Retained Water from processing.

26 **E. Plaintiff's purchases contained unlawful excess Retained Water.**

27 96. Plaintiff purchased the Products on a monthly basis from Trader Joe's
28 locations in San Diego County, California during the Class Period defined herein.

 97. These products contained Retained Water far in excess of the maximum

1 percentages stated on the labels.

2 98. Plaintiff first discovered Defendant's unlawful acts described herein in June
3 2019, when she learned that the Products contain more retained water than that disclosed
4 on the Product labels.

5 99. Plaintiff was deceived by and relied upon the Product's deceptive labeling,
6 and specifically the representation that the Products contained a maximum of 5% Retained
7 Water. Plaintiff purchased the Products believing they only contained a maximum of 5%
8 Retained Water, based on the Products' deceptive labeling.

9 100. Defendant, but not Plaintiff or the Class, knew that this labeling was in
10 violation of state and federal law.

11 101. Because Plaintiff reasonably assumed the Products to contain a maximum of
12 5% Retained Water, based on the Product label's representation of that fact, when it
13 actually contained significantly more Retained Water, she did not receive the benefit of her
14 purchases.

15 102. Because the Retained Water was hidden in superabsorbent pads underneath
16 the poultry, Plaintiff, like the rest of the Class Members, had no way of knowing that these
17 packages contained excess Retained Water until after they had purchased them.

18 103. The Product was worth less than what Plaintiff paid for it and Class members
19 would not have paid as much as they have for the Products absent Defendant's
20 misrepresentations.

21 V. CLASS MEMBERS' INJURIES

22 104. As a result of Defendant's actions, the Class and its members sustained
23 economic injuries.

24 105. Because Class members intended to purchase poultry products that complied
25 with Federal and California law and that did not include Retained Water in excess of the
26 labeled maximum percentage, each was injured in the amount of the difference in value
27 between the product as labeled and the product as delivered.

28 106. This amount is to be proven at trial via collected data, expert testimony,
and/or other admissible evidence.

VI. RELIANCE AND INJURY

107. When selecting poultry products for purchase, Plaintiff and the Class were seeking properly packaged and labeled food products that complied with applicable Federal and state laws and regulations and did not misrepresent the amount of Retained Water.

108. Defendant offered the Trader Joe's Products as lawful products that did not misrepresent the amount of Retained Water in the Products or contain unlawful excess Retained Water.

109. The Products were unsatisfactory to Plaintiff and to the Class members for the reasons described herein, because they included excess Retained Water, had false and misleading labels that misrepresented the maximum amount of Retained Water, did not conform to the representations of fact on the labels, and violated Federal regulations and identical California law.

110. Plaintiff and the Class lost money as a result of Defendant's conduct because they purchased products that contained Retained Water in excess of the declared maximum Retained Water and were falsely labeled. Had Defendant not violated the law, Plaintiff and the Class would not have been injured.

111. The products that Plaintiff and the Class bought were worth less than the labeled prices that Class Members paid for those products.

112. Plaintiff and the Class members lost money as a result of Defendant's unlawful behavior. Each altered his or her position to their detriment and suffered loss in an amount equal to the difference in value between a lawful, accurately-labeled product and an inaccurately-labeled product that included Retained Water in excess of the labeled maximum percentage.

VII. DELAYED DISCOVERY

113. Class members are all consumers who exercised reasonable diligence in their selection of poultry products.

114. Nevertheless, they would not have been able to discover Defendant's deceptive practices, if at all, until long after the date they first purchased the products because Defendant deliberately used superabsorbent pads hidden underneath the poultry to

1 conceal the excess Retained Water.

2 115. This practice was known to Defendant but was not known to the Class.

3 116. Class members are therefore entitled to the doctrines of delayed discovery and
4 tolling of the statute of limitations.

5 **VIII. CLASS ACTION ALLEGATIONS**

6 117. Plaintiff brings this action on behalf of herself and all others similarly situated
7 (the "Class") pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

8 118. The nationwide Class is defined as follows:

9 All U.S. citizens who purchased the Product in their respective state of
10 citizenship on or after January 1, 2012 and until the Class is certified, for
11 personal use and not for resale, excluding Defendant and Defendant's officers,
12 directors, employees, agents and affiliates, and the Court and its staff.

13 119. The California sub-Class is defined as follows:

14 All California citizens who purchased the Product in California on or after
15 January 1, 2012 and until the Class is certified, for personal use and not for
16 resale, excluding Defendant and Defendant's officers, directors, employees,
17 agents and affiliates, and the Court and its staff.

18 120. The proposed Class meets all criteria for a class action, including numerosity,
19 typicality, superiority, and adequacy of representation.

20 121. The proposed Class representative satisfies adequacy of representation.
21 Plaintiff will fairly and adequately protect the interests of the Class, has no interests that
22 are incompatible with the interests of the Class, and has retained counsel competent and
23 experienced in class litigation.

24 122. The Product is offered for sale at over 100 Trader Joe's locations in the
25 United States; the Class numbers at a minimum in the tens of thousands. This action has
26 been brought and may properly be maintained as a class action against Defendant. While
27 the exact number and identities of other Class Members are unknown to Plaintiff at this
28 time, Plaintiff is informed and believes that there are hundreds of thousands of Members
in the Class. The Members of the Class are so numerous that joinder of all Members is

1 impracticable and the disposition of their claims in a class action rather than in individual
2 actions will benefit Class members, the parties, and the courts.

3 123. The proposed Class satisfies typicality. Plaintiff's claims are typical of and
4 are not antagonistic to the claims of other Class members. Plaintiff and the Class members
5 all purchased the Product, were deceived by the unlawful labeling, and lost money as a
6 result, purchasing a Product that was illegal to sell in California and the United States.

7 124. Class adjudication is superior to other options for the resolution of the
8 controversy. The relief sought for each Class member is small. Class action litigation is
9 the only feasible way for Class members to seek relief for Defendant's unlawful acts.

10 125. Defendant has acted on grounds applicable to the Class, thereby making final
11 injunctive relief or declaratory relief appropriate concerning the Class as a whole.

12 126. There is a well-defined community of interest in questions of law and fact
13 common to the Class, and these predominate over any individual questions affecting
14 individual Class members in this action.

15 127. Questions of law and fact common to Plaintiff and the Class include:

- 16 a. Whether the Products contained unlawful amounts of Retained
17 Water in excess of the maximum percentage of Retained Water
18 declared on the labels;
- 19 b. Whether the Products were legal to sell as packaged and labeled;
- 20 c. Whether Defendant's conduct constitutes a violation of the
21 Consumers Legal Remedies Act;
- 22 d. Whether Defendant's conduct constitutes a violation of the False
23 Advertising Law;
- 24 e. Whether Defendant's conduct constitutes a violation of the
25 unlawful prong of California's Unfair Competition Law;
- 26 f. Whether Defendant's conduct constitutes a violation of the unfair
27 prong of California's Unfair Competition Law;
- 28 g. Whether Defendant's conduct was immoral, unethical,
unscrupulous, or substantially injurious to consumers;

- h. Whether the slight utility Defendant realized as a result of its conduct outweighs the gravity of the harm the conduct causes to consumers;
 - i. Whether Defendant's conduct violates public policy as declared by specific constitutional, statutory, or regulatory provisions;
 - j. Whether the Products failed to conform to representations of fact on the Product labels;
 - k. Whether the Products breached express warranties or implied warranties or both;
 - l. Whether the injury to the consumers and to competition from Defendant's practices is substantial;
 - m. Whether the injury to the consumers and to competition from Defendant's practices is one the consumers themselves could reasonably have avoided;
 - n. Whether the Class is entitled to actual damages, restitution, punitive damages, attorney fees and costs, and an injunction;
 - o. Whether the statute of limitations should be tolled on behalf of the Class;
 - p. Whether members of the Class are entitled to restitution and, if so, the correct measure of restitution;
 - q. Whether members of the Class are entitled to an injunction and, if so, its terms;
 - r. Whether members of the Class are entitled to statutory damages or punitive damages; and
 - s. Whether members of the Class are entitled to any further relief.
128. Class treatment is therefore appropriate under Federal Rule of Civil Procedure

23.

1 **IX. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

4 **CAL. CIV. CODE §§ 1750, *et seq.***

5 129. Plaintiff alleges and incorporates here by reference every allegation of fact
6 described in this Complaint as if fully set forth herein.

7 130. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*
8 (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and unconscionable
9 commercial practices in connection with the sale of any goods or services to consumers.

10 131. Plaintiff and the Class are “consumers” as defined by Cal. Civ. Code §
11 1761(d). The Products are a “good” as defined by Cal. Civ. Code § 1761.

12 132. Defendant’s failure to label the Product in compliance with federal and state
13 labeling regulations, was an unfair, deceptive, unlawful, and unconscionable commercial
14 practice.

15 133. Defendant’s conduct violates the CLRA, including but not limited to, the
16 following provisions:

17 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which
18 they do not have.

19 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade
20 if they are of another.

21 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

22 § 1770(a)(16): representing the subject of a transaction has been supplied in
23 accordance with a previous representation when it has not.

24 134. Defendant advertised and represented the Products as containing less
25 Retained Water than the Products actually did.

26 135. The CLRA imposes the same requirement here as the PPIA, which requires
27 poultry products that include Retained Water to display a truthful statement of the
28 maximum percentage of Retained Water on the front label.

136. Defendant placed the false and misleading declarations of Retained Water on

1 the Product packages, which all Class members were exposed to at the point of purchase.

2 137. Plaintiff and the Class suffered injury in fact and lost money or property as a
3 result of Defendant's unlawful acts, and will continue to do so in the future.

4 138. Had Plaintiff and the Class been aware of Defendant's unlawful
5 representations, they would not have purchased the misbranded Products or would only
6 have been willing to pay less for those Products than they did.

7 139. Defendant's unlawful acts allowed Defendant to sell the Products for a higher
8 price and at a higher profit margin than it otherwise would have.

9 140. As a result of Defendant's conduct, Plaintiff and the Class sustained the
10 injuries, losses, and damages more fully described above.

11 141. Plaintiff therefore seeks an order enjoining Defendant from continuing to
12 falsely advertise, market, offer for sale, and sell the Products as labeled.

13 142. Plaintiff will also seek by amendment of this Complaint an order for the
14 disgorgement and restitution as provided in the CLRA of all excess revenue received by
15 Defendant from the sale of misbranded and economically adulterated Products described
16 herein, as well as any other damages allowable by law under the CLRA, no less than thirty
17 days after Plaintiff has provided Defendant the required CLRA notice.

18 **SECOND CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

20 **(UNLAWFUL PRONG)**

21 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

22 143. Plaintiff re-alleges and incorporates by reference here each and every
23 allegation of fact contained elsewhere in the Complaint as if fully set forth herein.

24 144. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair or fraudulent
25 business act or practice."

26 145. Defendant's practices as described herein were at all times during the Class
27 Period and continue to be in violation of California's Unfair Competition Law.

28 146. The UCL unlawful prong borrows violations of other laws and statutes and
designates those violations also to constitute violations of California law.

1 147. Under California Health and Safety Code § 110390 *et seq.*, it is unlawful for
2 any person to disseminate any false advertisement of any food, drug, device, or cosmetic.
3 An advertisement is false if it is false or misleading in any particular.

4 148. It is also unlawful for any person to manufacture, sell, deliver, hold, or offer
5 for sale any food . . . that is falsely advertised, Cal. Health and Saf. Code § 110390, and
6 to advertise for sale any food . . . that is adulterated or misbranded, Cal. Health and Saf.
7 Code § 10398.

8 149. It is also unlawful for any person to receive in commerce any food . . . that
9 is falsely advertised or to deliver or proffer for delivery any such food Cal. Health
10 and Saf. Code §110400.

11 150. These requirements are not different from or in addition to those of the
12 Federal PPIA, which requires poultry products that include Retained Water to display a
13 truthful statement of the maximum percentage of Retained Water on the front label.

14 151. Defendant violated one or more of these provisions of California and Federal
15 law and therefore also violated California's UCL.

16 152. Defendant placed the false and misleading declarations of Retained Water on
17 the Product packages, which all Class members were exposed to at the point of purchase.

18 153. Defendant received in commerce and offered for sale Products that had false
19 and misleading declarations of maximum Retained Water on the Product packages. Those
20 Products were therefore misbranded and violated California's Health and Safety Code,
supra, as well as the Federal PPIA regulations.

21 154. Defendant also received in commerce, sold, delivered, held, and offered for
22 sale foods that were that were adulterated or misbranded in violation of California's Song-
23 Beverly Act, violating California law which identically mirrors requirements of the
24 Federal PPIA.

25 155. Defendant also therefore violated California's Unfair Competition Act as
26 well, because the Products it sold violated the Song-Beverly Act.

27 156. Defendant's practices are therefore unlawful as defined in Section 17200.

28 157. Defendant's conduct is further unlawful because it violates California's

1 Sherman Law, Cal. Health & Safety Code § 109875 *et seq.*, and in particular, § 110585 *et*
2 *seq.*, which govern food adulteration.

3 158. Under Section 110585(d), a food is adulterated if any substance has been
4 added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce
5 its quality or strength or make it appear better or of greater value than it is.

6 159. This requirement of California's Sherman law is identical to the requirements
7 of the Federal PPIA.

8 160. It is unlawful for any person to manufacture, sell, deliver, hold, or offer for
9 sale any food that is adulterated. Cal. Health & Safety Code § 110620.

10 161. It is unlawful for any person to adulterate any food. Cal. Health & Safety
11 Code §110625.

12 162. It is unlawful for any person to receive in commerce any food product that is
13 adulterated or to deliver or proffer for delivery any such food. Cal. Health & Safety Code
14 §110630.

15 163. Defendant violated one or more of these provisions of California law, among
16 others.

17 164. Further, California's Business & Professions Code § 12606, states,

18 (a) No container wherein commodities are packed shall . . . be otherwise so
19 constructed or filled, wholly or partially, as to facilitate the perpetration of
20 deception or fraud.

21 (b) No container shall be made, formed, or filled as to be misleading.

22 165. This California state-law requirement is identical to that of the PPIA, which
23 prohibits the use of any container for a poultry product that is "made, formed, or filled as
24 to be misleading[.]"

25 166. Defendant offers for sale in commerce in California and the United States
26 Products in packages filled and labeled so as to be misleading.

27 167. Further, under Federal regulations, borrowed and incorporated into the UCL,
28 poultry washing, chilling, and draining practices and procedures must be such as will

1 minimize water absorption and retention at time of packaging,⁵ and a processor's failure
2 to minimize the amount of water carried over from the chilling process results in the
3 product becoming adulterated.⁶ As both these regulations are borrowed and incorporated
4 by reference into the UCL, Defendant Trader Joe's has violated the UCL accordingly.

5 168. Further, California's Penal Code § 532 makes it a crime in California to
6 acquire money or property through false pretenses.

7 169. Defendant's misrepresentation of the percentage of Retained Water in the
8 Products, which induced Plaintiff and the Class Members to purchase those Products and
9 pay the marked price per pound for excess Retained Water, also constituted theft by false
10 pretenses.

11 170. Defendant's conduct also therefore is unlawful under the UCL as that
12 conduct violated California's Penal Code § 532.

13 171. All of these California laws constituting predicate violations under the UCL
14 impose requirements identical to those of the Federal PPIA.

15 172. Plaintiff and the Class suffered injury in fact and lost money or property as a
16 result of Defendant's unlawful acts.

17 173. Had Plaintiff and the Class been aware of Defendant's unlawful practices,
18 they would not have purchased the improperly packaged, misbranded and economically
19 adulterated Products or would only have been willing to pay less for those Products than
20 they did.

21 174. Defendant's unlawful acts allowed Defendant to sell the Products for a higher
22 price and at a higher profit margin than it would have otherwise.

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

26 176. Plaintiff also seeks an order for the disgorgement and restitution of all excess
27 revenue received by Defendant from the sale of unlawful adulterated and misbranded

28 ⁵ California Unfair Competition Law, incorporating as predicate 9 CFR 381.66 (d)(1).

⁶ California Unfair Competition Law, incorporating as predicate 66 Fed. Reg. 6 at 1751.

1 Products as described herein.

2 **THIRD CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
4 **(UNFAIR PRONG)**

5 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

6 177. Plaintiff re-alleges and incorporates by reference each and every allegation
7 of fact contained elsewhere in the Complaint as if fully set forth herein.

8 178. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent
9 business act or practice.

10 179. Defendant’s practices as described herein are “unfair” within the meaning of
11 the California Unfair Competition Law because that conduct is unethical as well as
12 unlawful, and substantially injurious to consumers, and the utility of the conduct to
13 Defendant does not outweigh the gravity of the economic harm and potential harm.

14 180. While Defendant’s decision to package and to sell poultry products with
15 Retained Water in excess of that declared on the labels may have some utility to Defendant
16 in that it allows Defendant to realize higher profit margins than if it sold lawful products
17 accurately labeled, this utility is small and far outweighed by the gravity of the serious
18 risk of harm Defendant inflicts on consumers and the market by the practice.

19 181. Defendant’s conduct also injures competing manufacturers and sellers that
20 do not engage in the same unlawful, unfair, and unethical behavior.

21 182. Defendant realizes greater profits and competes unfairly in the marketplace
22 thereby.

23 183. Moreover, Defendant’s practices violate public policy expressed by specific
24 regulatory provisions, including Federal PPIA labeling regulations.

25 184. The policy of the State of California with respect to false advertising of foods
26 is expressed in California Health and Safety Code § 12601. That provision states, “This
27 chapter is designed to protect purchasers of any commodity within its provisions against
28 deception or misrepresentation. Packages and their labels should enable consumers to
obtain accurate information as to the quantity of the contents and should facilitate value

1 comparisons.”

2 185. Defendant’s practices as alleged herein not only violate the PPIA and specific
3 analogous California laws with identical requirements, they also prevent consumers from
4 obtaining accurate information as to the contents of the Products and do not facilitate value
5 comparisons.

6 186. Further, Defendant’s practices are unfair because they violate public policy
7 as declared by specific constitutional, statutory, or regulatory provisions, including those
8 embodied in the California Health & Safety Code and identical regulations under the
9 Federal PPIA.

10 187. Further, Defendant’s practices are unfair because the injury to consumers
11 from its practices is substantial, not outweighed by benefits to consumers or competition,
12 and not one that consumers themselves could reasonably have avoided or should be
13 obligated to avoid.

14 188. Plaintiff therefore seeks an order for the disgorgement and restitution of all
15 excess revenue received by Defendant from the unlawful sale of poultry products as
16 described herein.

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF THE FALSE ADVERTISING LAW**

19 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

20 189. Plaintiff re-alleges and incorporates by reference each and every allegation
21 of fact contained elsewhere in the Complaint as if fully set forth herein.

22 190. Cal. Bus. & Prof. Code § 17500 states that it shall be a violation “to make or
23 disseminate or cause to be made or disseminated before the public in this state” any
24 statement concerning real or personal property . . . “or concerning any circumstance or
25 matter of fact” connected with the disposition thereof “which is untrue or misleading, and
26 which is known, or which by the exercise of reasonable care should be known, to be untrue
or misleading”

27 191. Defendant’s statements regarding the percentage of Retained Water in the
28 Products were both untrue and misleading and by the exercise of reasonable care should

1 have been known to be so.

2 192. This requirement under California law is identical to that imposed by the
3 Federal PPIA.

4 193. Defendant violated Cal. Bus. & Prof. Code § 17500, California's False
5 Advertising Law, by advertising and selling the Products with untrue statements.

6 194. Defendant violated California law by placing false statements on the Product
7 labels.

8 195. Plaintiff and the Class suffered injury in fact and lost money or property as a
9 result of Defendant's unlawful acts.

10 196. Had Plaintiff been aware of Defendant's unlawful tactics, she would not have
11 purchased the improperly packaged and misbranded Products or would only have been
12 willing to pay less for those Products than she did.

13 197. Defendant's unlawful acts allowed Defendant to sell the Products for a higher
14 price and at a higher profit margin than it otherwise would have.

15 198. Plaintiff therefore seeks an order enjoining Defendant from continuing this
16 unlawful conduct, and an order for the disgorgement and restitution of all excess revenue
17 received by Defendant from the unlawful sale of the Products in California as described
18 herein.

19 **FIFTH CAUSE OF ACTION**

20 **BREACH OF EXPRESS WARRANTIES**

21 **CAL. COMM. CODE § 2313**

22 199. Plaintiff re-alleges and incorporates by reference each and every allegation
23 of fact contained elsewhere in the Complaint as if fully set forth herein.

24 200. Defendant expressly warranted that each Product included Retained Water
25 less than or equal to the maximum percentage of Retained Water declared on the label.

26 201. This California requirement is identical to that of the PPIA, which imposes a
27 duty to accurately declare on Product labels the maximum percentage of Retained Water.

28 202. The Products distributed in commerce by Defendant and sold to Class
members violated this express warranty. The Products contained far more Retained Water

1 than Defendant warranted.

2 203. Defendant is therefore liable to the Class members in an amount equal to the
3 difference in value between the product as it was represented – free of Retained Water in
4 excess of the declared percentage – and the product as it was provided, packaged with
5 excess Retained Water constituting unlawful economic adulteration.

6 204. Plaintiff therefore seeks on behalf of the Class an order that the Products
7 breached express warranties and an order for the disgorgement and restitution of all excess
8 revenue received by Defendant from Class members during the Class Period.

9 **SIXTH CAUSE OF ACTION**

10 **BREACH OF IMPLIED WARRANTIES**

11 **CAL. COMM. CODE § 2314**

12 205. Plaintiff re-alleges and incorporates by reference each and every allegation
13 of fact contained elsewhere in the Complaint as if fully set forth herein.

14 206. The sale of the Products and representations of fact on the Product labels
15 created implied warranties under California law that the Products were suitable for a
16 particular purpose, specifically that they could lawfully be sold and pass without objection
17 in the trade.

18 207. The distribution in commerce and sale of the Products in California creates
19 an implied warranty under California law that the Products are accurately labeled and legal
20 to sell in California. Cal. Comm. Code § 2314.

21 208. Defendant breached this implied warranty under California law.

22 209. Defendant is a merchant with respect to the Products and goods of that kind.

23 210. Defendant is a “seller” of the Products under California law.

24 211. California law imposes requirements on these sellers of poultry products
25 identical to the requirements of the PPIA, which imposes a duty to accurately declare on
26 poultry product labels the maximum percentage of Retained Water and only to distribute
27 and offer in commerce poultry products that conform to the label.

28 212. Defendant violated its obligations to Plaintiff under California’s Song-
Beverly Act and Cal. Comm. Code § 2314 because Defendant breached the Products’

1 implied warranties of merchantability that arose by operation of California law.

2 213. Each Product's front label misleadingly claims a lower maximum retained-
3 water percentage than the Products actually include.

4 214. As alleged above, at the time of purchase, Defendant had reason to know by
5 virtue of its experience and expertise in the trade that Plaintiff, as well as members of the
6 Class, intended to purchase lawful poultry products that were accurately labeled.

7 215. This became part of the basis of the bargain between the parties.

8 216. Defendant's actions had an influence thereby on consumers' decisions in
9 purchasing the Products. Plaintiff and Class Members justifiably relied on Defendant's
10 representations when purchasing the Products.

11 217. Defendant offered the Products in commerce in California and the United
12 States, and then sold the goods to Plaintiff and other Class Members in California and the
13 United States based on the implied warranties.

14 218. At the time of purchase, Defendant knew or had reason to know that Plaintiff
15 and Class members were relying on Defendant's skill and judgment to furnish a Product
16 that was lawful for sale and was suitable for this particular purpose, and justifiably relied
17 on Defendant's skill and judgment.

18 219. The Products were not lawful products to sell or offer for sale.

19 220. Plaintiff purchased the Products believing they had the qualities Plaintiff
20 sought, based on the Defendant's representations, but the Products were actually
21 unsatisfactory to Plaintiff for the reasons described herein.

22 221. The Products were not merchantable in California, as they were not of the
23 same quality as other products in the category generally acceptable in the trade as each
24 contained unlawful excess Retained Water. *See* Cal. Comm. Code § 2314(1).

25 222. The Products would not pass without objection in the trade when packaged
26 with the existing labels, because the Products were misbranded and illegal to sell in
27 California. Cal. Comm. Code § 2314(2)(a).

28 223. The Products also were not acceptable commercially and breached their
implied warranties because they were not adequately packaged and labeled as required

1 under California law. Cal. Comm. Code § 2314(2)(e).

2 224. The Products also were not acceptable commercially and breached their
3 implied warranties because they did not conform to the promises or affirmations of fact
4 made on the container or label, Cal. Comm. Code § 2314(2)(f), and other grounds as set
5 forth in the Commercial Code, section 2314(2).

6 225. These California requirements are the same as those imposed by the PPIA.

7 226. Under the Song-Beverly Act as codified in the California Commercial Code,
8 the implied warranty of fitness for a particular purpose arises from the sale of goods by a
9 “seller.” *See* Cal. Com. Code § 2315.

10 227. A “seller” is “a person who sells or contracts to sell goods.” *Id.* § 2103. The
11 Song-Beverly Act makes the implied warranty of fitness applicable to retailers and
12 distributors as well as to manufacturers. Cal. Civ. Code §§ 1791.1.

13 228. The Song-Beverly Act defines a “retailer” as one who “engages in the
14 business of selling or leasing consumer goods to retail buyers.” *Id.* § 1791(1).

15 229. California’s Song-Beverly Act imposes requirements on sellers of the
16 Products equivalent to those imposed by the PPIA in this regard.

17 230. Under the Song-Beverly Act as well, the implied warranty of merchantability
18 requires that consumer goods such as the Products conform to the promises or affirmations
19 of fact made on the container or label, are adequately contained, packaged, and labeled,
20 and will pass without objection in the trade under the contract description. Cal. Civ. Code
§ 1791.1

21 231. By offering the Products for sale and distributing the Products in California,
22 Defendant warranted that the Products were not misbranded and were legal to sell in
23 California. Because the Products were misbranded in several regards and were therefore
24 illegal to sell or offer for sale in California, Defendant breached this warranty as well.

25 232. As a result of this breach, Plaintiff and other Class Members did not receive
26 goods as impliedly warranted by Defendant. As an actual and proximate result of this
27 breach of warranty, Plaintiff and other Class Members have been damaged in amounts to
28 be determined at trial.

1 233. As a result, Plaintiff, the Class, and the general public are entitled to
2 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds
3 by which Defendant was unjustly enriched.

4 **SEVENTH CAUSE OF ACTION**

5 **THEFT BY FALSE PRETENSES**

6 **CAL. CIV. CODE §496(a)**

7 234. Plaintiff re-alleges and incorporates by reference each and every allegation
8 of fact contained elsewhere in the Complaint as if fully set forth herein.

9 235. Defendant induced Plaintiff and the Class members to part with money in
10 exchange for the Products that was in excess of the actual value of those Products.

11 236. Defendant did so, in part, by adulterating the Products and by falsely
12 advertising the Products as described herein.

13 237. California's Penal Code § 532 makes it a crime in California to acquire
14 money or property through false pretenses.

15 238. Defendant's label declaration and advertising of the maximum percentage of
16 Retained Water in the Products, which induced Plaintiff and the Class Members to
17 purchase those Products and pay the marked price per pound for excess included Retained
18 Water, also constituted theft by false pretenses.

19 239. California Civil Code §496(c) enables a California plaintiff to bring a civil
20 action to recover actual and statutory damages for alleged violations of Penal Code § 532.

21 240. Defendant induced Plaintiff and the Class to part with money through the
22 false pretense of labeling, advertising, offering and selling the Products as if they
23 contained less Retained Water than those Products actually did.

24 241. Defendant is therefore liable to Plaintiff and to the Class for the actual
25 damages as determined at trial and statutory damages under §496.

26 **EIGHTH CAUSE OF ACTION**

27 **UNJUST ENRICHMENT/MONEY HAD AND RECEIVED**

28 242. Plaintiff re-alleges and incorporates by reference each and every allegation
of fact contained elsewhere in the Complaint as if fully set forth herein.

1 243. Plaintiff and the Class allege that Defendant owes them money for the
2 unlawful or deceptive conduct described herein.

3 244. Defendant, by packaging, labeling, and selling the Products with Retained
4 Water in excess of the labeled maximum percentage Retained Water, received additional
5 money from Plaintiff and the Class that was intended to be used for the benefit of Plaintiff
6 and the Class – specifically, that money was intended to be used to purchase the quantity
7 of Product, which was sold by weight, as was represented on the Product package labels
8 without unlawful excess Retained Water included in the Products at the time of packaging.

9 245. That money was not used for the benefit of Plaintiff and the Class, and
10 Defendant has not given the money back, either to the Plaintiff or to the other Class
11 members.

12 246. The additional money was paid by mistake, where an undue advantage was
13 taken of the Plaintiff's lack of knowledge of the deception, whereby money was exacted
14 to which the Defendant had no legal right.

15 247. Defendant is therefore indebted to Plaintiff and the Class in a sum certain,
16 specifically the difference between the amount that Plaintiff and the Class paid for the
17 Products purchased during the Class period and the Products' actual value had the
18 Products conformed to their label declarations of Retained Water.

19 248. The retail price actually paid for all the Products during the Class period is
20 consideration for which Defendant failed to tender the full amount of lawful Product.

21 249. The Defendant is therefore indebted to the Plaintiff and the Class in a sum
22 certain for the additional money had and received by the Defendant for the use of the
23 Plaintiff and the Class, which the Defendant in equity and good conscience should not
24 retain.

25 250. Defendant actually received this money as described herein. Defendant
26 acquired additional and excess profits from the sale of the Products to Plaintiff and the
27 Class in commerce in California.

28 251. Defendant is therefore liable to Plaintiff and the Class in the amount of unjust
enrichment or money had and received to be determined at trial.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and on behalf of all others similarly situated and the general public, prays for judgment against Defendant as follows:

- A. An order declaring that conduct complained of herein violates the Consumers Legal Remedies Act;
- B. An order declaring that conduct complained of herein violates the Unfair Competition Law;
- C. An order declaring that conduct complained of herein violates the False Advertising Law;
- D. An order declaring that conduct complained of herein breached Defendant's express warranties to California consumers;
- E. An order declaring that conduct complained of herein breached Defendant's implied warranties to California consumers;
- F. An order declaring that the conduct complained of herein is compensable under California Penal Code Section 496;
- G. An order declaring that the conduct complained of herein caused Defendant to be unjustly enriched and that Defendant improperly had and received monies in excess of the lawful labeled prices of the Products;
- H. An order enjoining Defendant's unlawful, unfair, and unconscionable practices;
- I. An order confirming that the class action described herein is properly maintainable as defined above, appointing Plaintiff and her undersigned counsel to represent the Class and Subclass, and requiring Defendant to bear the cost of class notice;
- J. An order declaring that the conduct complained of herein violated California law during the effective Class Period, including delayed discovery and tolling as appropriate;
- K. An order requiring Defendant to pay restitution to all Class members so that they may be restored the money which Defendant acquired by means of any

unlawful, unfair, deceptive, unconscionable, or negligent acts;

L. An order requiring Defendant to disgorge to the Class any benefits received from the Class and any unjust enrichment realized as a result of Defendant's improper conduct;

M. An order awarding to the Class any and all direct and consequential actual damages, punitive damages, statutory damages, and costs and reasonable attorneys' fees, including pre-judgment and post-judgment interest, arising from all injuries described herein compensable by such damages; and

N. Such other and further relief as this Court may deem just, equitable, or proper.

XI. JURY DEMAND

Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek a jury trial for claims sounding in equity.

DATED: July 10, 2019

Respectfully Submitted,



Ronald A. Marron

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*Attorneys for Plaintiff and the Proposed
Class*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7064	
PLAINTIFF(S) / PETITIONER(S): Christina Webb	
DEFENDANT(S) / RESPONDENT(S): Trader Joe's Company	
WEBB VS TRADER JOES COMPANY [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00035568-CU-BT-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: John S. Meyer

Department: C-64

COMPLAINT/PETITION FILED: 07/10/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	12/20/2019	10:00 am	C-64	John S. Meyer

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

***ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ronald A. Marron [SBN 175650] Law Offices of Ronald A. Marron 651 Arroyo Drive San Diego, California 92103 TELEPHONE NO.: 619-696-9006 FAX NO.: 619-564-6665 ATTORNEY FOR (Name): Christina Webb		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/10/2019 at 03:28:28 PM Clerk of the Superior Court By Taylor Crandall, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central Division			
CASE NAME: Webb v. Trader Joe's Company			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2019-00035568-CU-BT-CTL JUDGE: Judge John S. Meyer DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Eight
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 10, 2019
 Ronald A. Marron

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central		<i>FOR COURT USE ONLY</i>
Short Title: WEBB VS TRADER JOES COMPANY [E-FILE]		
NOTICE OF CONFIRMATION OF ELECTRONIC FILING		CASE NUMBER: 37-2019-00035568-CU-BT-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

Electronic Filing Summary Data

Electronically Submitted By:	Michael Houchin
On Behalf of:	Christina Webb
Transaction Number:	2669323
Court Received Date:	07/10/2019
Filed Date:	07/10/2019
Filed Time:	03:29 PM
Fee Amount Assessed:	\$1,435.00
Case Number:	37-2019-00035568-CU-BT-CTL
Case Title:	WEBB VS TRADER JOES COMPANY [E-FILE]
Location:	Central
Case Type:	Business Tort
Case Category:	Civil - Unlimited
Jurisdictional Amount:	> 25000

Status

Documents Electronically Filed/Received

Accepted	Complaint
Accepted	Civil Case Cover Sheet
Rejected	Original Summons

RejectReason 1: Other

Comments to submitter 1: THE SUMMONS MUST MATCH THE COMPLAINT EXACTLY WHEN NAMING PLAINTIFFS OR DEFENDANTS.

Comments

Clerk's Comments:
Events Scheduled

Hearing(s)		Date	Time	Location	Department
Civil Case Management Conference		12/20/2019	10:00 AM	Central	C-64

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: (800) 938-8815

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Trader Joe's Company

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Christina Webb, on behalf of herself, all others similarly situated,
and the general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

07/17/2019 at 09:10:00 AM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of San Diego

CASE NUMBER:
(Número del Caso):

37-2019-00035568-CU-BT-CTL

330 West Broadway
San Diego, California 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Offices of Ronald A. Marron, 651 Arroyo Drive, San Diego, California 92103, 619-696-9006

DATE: 07/18/2019
(Fecha)

Clerk, by
(Secretario)

L. Sheffa
L. Sheffa

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7068	<i>FOR COURT USE ONLY</i>
PLAINTIFF: Christina Webb	
DEFENDANT: Trader Joe's Company	
Short Title: WEBB VS TRADER JOES COMPANY [E-FILE]	
NOTICE OF CASE REASSIGNMENT	CASE NUMBER: 37-2019-00035568-CU-BT-CTL

Filed : 07/10/2019

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED FOR ALL PURPOSES:

to Judge Richard S. Whitney, in Department C-68

due to the following reason: 170.6

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

ANY NEW HEARINGS ON THIS CASE WILL BE SCHEDULED BEFORE THE NEW JUDICIAL OFFICER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

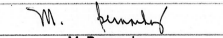
SHORT TITLE: WEBB VS TRADER JOES COMPANY [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2019-00035568-CU-BT-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF CASE REASSIGNMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 07/22/2019. The mailing occurred at Gardena, California on 07/23/2019.

Clerk of the Court, by:


M. Bernardez

, Deputy

MICHAEL T HOUCHIN
651 ARROYO DRIVE
SAN DIEGO, CA 92103

LILACH HALPERIN
651 ARROYO DRIVE
SAN DIEGO, CA 92103

CLERK'S CERTIFICATE OF SERVICE BY MAIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 450-7068

PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): Christina Webb

DEFENDANT(S)/RESPONDENT(S): Trader Joe's Company

Short Title: WEBB VS TRADER JOES COMPANY [E-FILE]

NOTICE OF HEARING

CASE NUMBER:

37-2019-00035568-CU-BT-CTL

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>DEPT</u>	<u>JUDGE</u>
Civil Case Management Conference	03/20/2020	10:00 am	C-68	Richard S. Whitney

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101


SHORT TITLE: WEBB VS TRADER JOES COMPANY [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2019-00035568-CU-BT-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 07/22/2019. The mailing occurred at Gardena, California on 07/23/2019.

Clerk of the Court, by:


C. Boyle

, Deputy

RONALD A MARRON
651 ARROYO DRIVE
SAN DIEGO, CA 92103

CLERK'S CERTIFICATE OF SERVICE BY MAIL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ronald A. Marron [SBN 175650] Law Offices of Ronald A. Marron 651 Arroyo Drive San Diego, CA 92103 TELEPHONE NO.: 619-696-9006 FAX NO.(Optional): 619-564-6665 EMAIL ADDRESS (Optional): ron@consumersadvocates.com ATTORNEY FOR (Name): Christina Webb	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/12/2019 at 02:22:00 PM Clerk of the Superior Court By Jessica Pascual, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	JUDGE Hon. John S. Meyer DEPT C-64
PLAINTIFF(S)/PETITIONER(S) Christina Webb	CASE NUMBER 37-2019-00035568-CU-BT-CTL
DEFENDANT(S)/RESPONDENT(S) Trader Joe's Company	
IN THE MATTER OF Webb v. Trader Joe's Company	
PEREMPTORY CHALLENGE	

Ronald A. Marron _____, is ☐ a party ☒ an attorney for a party in the above-entitled case and declares that Judge John S. Meyer, the judicial officer to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judicial officer.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judicial officer for further proceedings.

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

Date: July 12, 2019

Signature

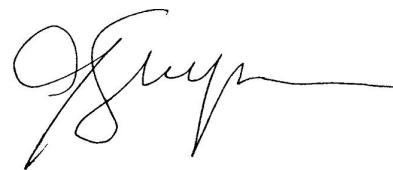
ORDER

☒ GRANTED – The court finds the challenge is timely filed and the party's/attorney's above statement meets the requirements of Code of Civ. Proc. §170.6 (a)(4). The case will be reassigned and a notice will be mailed to the parties and/or counsel.

☐ DENIED

IT IS SO ORDERED.

Date: 7-15-19



Judge/~~Commissioner~~ of the Superior Court

John S. Meyer

Date: 7-22-19

Case is reassigned to Judge/~~Commissioner~~ Richard S. Whitney

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>) Law Offices of Ronald A. Marron Ronald A. Marron (SBN 175650) 651 Arroyo Drive San Diego, CA 92103 TELEPHONE NO: 619-696-9006 FAX NO (<i>Optional</i>): E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/25/2019 at 12:55:00 PM Clerk of the Superior Court By E- Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Hall of Justice	
PLAINTIFF / PETITIONER: Christina Webb; et al. DEFENDANT / RESPONDENT: Trader Joe's Company	CASE NUMBER: 37-2019-00035568-CU-BT-CTL
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: 3594244

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (*served in complex cases only*)
 - e. ☐ cross-complaint
 - f. ☒ other (*specify documents*): Notice of Case Assignment; Peremptory Challenge
3. a. Party served (*specify name of party as shown on documents served*):
Trader Joe's Company
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (*specify name and relationship to the party named in item 3a*):
Ernesto Cruz / Authorized to Accept Service
4. Address where the party was served:
Paracorp Incorporated 2804 Gateway Oaks Drive Suite 100, Sacramento, California 95833
5. I served the party (*check proper box*)
 - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (*date*): Wed, Jul 24 2019 (2) at (*time*): 04:06 PM
 - b. ☐ **by substituted service.** On (*date*): at (*time*): I left the documents listed in item 2 with or in the presence of (*name and title or relationship to person indicated in item 3*):
 - (1) ☐ (**business**) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (**home**) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (**physical address unknown**) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (*date*): from (*city*): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PLAINTIFF / PETITIONER: Christina Webb; et al.
 DEFENDANT / RESPONDENT: Trader Joe's Company

CASE NUMBER:
 37-2019-00035568-CU-BT-CTL

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):
- ☐ Additional page describing service is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): Trader Joe's Company
 under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| <input type="checkbox"/> other: | |
7. **Person who served papers**
- a. Name: Demian Ross
- b. Address: 5435 Palm Avenue, Sacramento, CA 95841
- c. Telephone number: 916-373-9065
- d. **The fee** for service was: \$39.80
- e. I am:
- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☒ owner ☐ employee ☐ independent contractor
- (ii) Registration No: Sacramento County #2011-66
- (iii) County:
8. ☒ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
9. ☐ **I am a California sheriff or marshal and** I certify that the foregoing is true and correct.

Date: 07/25/2019

Demian Ross

(NAME OF PERSON WHO SERVED PAPERS / SHERIFF OR MARSHAL)



(SIGNATURE)

1 VENABLE LLP
Angel A. Garganta (163957)
2 agarganta@venable.com
Amit Rana (291912)
3 arana@venable.com
101 California Street, Suite 3800
4 San Francisco, CA 94111
Telephone: 415.653.3750
5 Facsimile: 415.653.3755

6 Attorneys for Defendant
7 TRADER JOE'S COMPANY

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/15/2019 at 03:43:00 PM
Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 CHRISTINA WEBB, on behalf of herself, all
11 others similarly situated, and the general public,

12 Plaintiff,

13 v.

14 TRADER JOE'S COMPANY,

15 Defendant.

Case No. 37-2019-00035568-CU-BT-CTL

**ANSWER TO CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Action Filed: July 10, 2019

1 Defendant Trader Joe's Company ("Defendant") hereby answers Plaintiff Christina
2 Webb's ("Plaintiff's") Class Action Complaint as follows:

3 **GENERAL DENIAL**

4 Pursuant to California Code of Civil Procedure § 431.30(d), Defendant generally denies
5 each and every allegation of Plaintiff's Complaint, and further denies that Plaintiff is entitled to
6 any remedy or relief as a result of any alleged act or omission by Defendant.

7 **AFFIRMATIVE DEFENSES**

8 Defendant sets forth below its defenses and affirmative defense. Each defense and
9 affirmative defense is asserted as to all causes of action against it. By setting forth these defenses
10 and affirmative defenses, Defendant does not assume the burden of proving any fact, issue, or
11 element of a claim where such burden properly belongs to Plaintiff. Defendant also reserves the
12 right to allege additional defenses and affirmative defenses as they become known or as they
13 evolve during litigation.

14 **First Affirmative Defense**

15 **(Failure to State a Claim)**

16 Plaintiff has failed to state facts sufficient to constitute a claim upon which relief can be
17 granted.

18 **Second Affirmative Defense**

19 **(Lack of Causation)**

20 To the extent Plaintiff suffered any of the injuries, losses or damages described in the
21 Complaint, which Defendant denies, such injuries, losses, or damages were not proximately or in-
22 fact caused by Defendant's conduct.

23 **Third Affirmative Defense**

24 **(Absence of Fraud)**

25 Plaintiff's claims fail because Defendant did not engage in acts, practices, or courses of
26 business which were fraudulent, deceptive, unlawful, unfair, or manipulative with respect to any
27 involved parties
28

Fourth Affirmative Defense

(No Standing)

Plaintiff is not entitled to relief under the statutes and legal theories invoked in her Complaint because Plaintiff lacks standing.

Fifth Affirmative Defense

(Good Faith)

Plaintiff's claims fail because Defendant acted with good faith in connection with all facts alleged in the Complaint.

Sixth Affirmative Defense

(Waiver)

Plaintiff, by reason of her knowledge, statements, and conduct, has waived any rights she may have for any acts or omissions of Defendant and any further obligations or liabilities they may have owed to Plaintiff, thereby barring each of her claims for relief.

Seventh Affirmative Defense

(Accord and Satisfaction)

One or more of Plaintiff's claims and/or the relief she seeks are barred by the doctrine of accord and satisfaction.

Eighth Affirmative Defense

(Equitable Estoppel and Equitable Indemnity)

One or more of Plaintiff's claims and/or the relief she seeks are barred by the doctrines of equitable estoppel and equitable indemnity.

Ninth Affirmative Defense

(Unclean Hands)

One or more of Plaintiff's claims and/or the relief she seeks are barred by the doctrine of unclean hands.

Tenth Affirmative Defense

(Laches)

One or more of Plaintiff's claims and/or the relief she seeks are barred by the doctrine of

1 laches.

2 **Eleventh Affirmative Defense**

3 **(Lack of Justifiable Reliance)**

4 Plaintiff's claims are barred, in whole or in part, because Plaintiff knew, at all times, the
 5 characteristics, ingredients, uses, benefits, quantities, standard, quality, and grade of Defendant's
 6 products and therefore could not have justifiably relied on the alleged misrepresentation or
 7 omission asserted in her Complaint.

8 **Twelfth Affirmative Defense**

9 **(Substantial Compliance)**

10 Defendant has substantially complied with the requirements of the law as they pertain to
 11 this lawsuit and such substantial compliance bars Plaintiff's claims.

12 **Thirteenth Affirmative Defense**

13 **(Preemption)**

14 All or some of the alleged causes of action are preempted by federal law.

15 **Fourteenth Affirmative Defense**

16 **(Safe Harbor)**

17 Plaintiff's allegations do not state a claim, because Defendant's conduct was, and is,
 18 authorized by federal and state law.

19 **Sixteenth Affirmative Defense**

20 **(Actions Pursuant to Local, State or Federal Authority)**

21 Defendant is not liable for any acts or omissions undertaken by or at the direction of local,
 22 state, or federal authority, including, without limitation, acts, or omissions made in accordance
 23 with regulations, ordinances, statutes, and laws applicable at the time of the acts or omissions at
 24 issue.

25 **Seventeenth Affirmative Defense**

26 **(Failure to Mitigate)**

27 If Plaintiff has suffered any damages or injury in fact, which Defendant expressly denies,
 28 Defendant alleges that Plaintiff's recovery is barred by her failure to mitigate, reduce, or

otherwise avoid damages or injuries.

Eighteenth Affirmative Defense

(Aggravation of Harm)

To the extent any harm exists, Defendant alleges, on information and belief, that Plaintiff's actions have aggravated such harm, and thus, any recovery from Plaintiff's Complaint for such harm should be barred or reduced accordingly.

Nineteenth Affirmative Defense

(Statute of Limitation)

Plaintiff's claims and damages are barred, reduced, and/or limited by the applicable statutes of limitations.

Twentieth Affirmative Defense

(Mootness)

One or more of Plaintiff's claims and/or relief she seeks are moot.

Dated: August 15, 2019

VENABLE LLP
ANGEL A. GARGANTA
AMIT RANA

By: /s/ Angel A. Garganta
Angel A. Garganta

101 California Street, Suite 3800
San Francisco, CA 94111
Telephone: 415.653.3750
Facsimile: 415.653.3755

Attorneys for Defendant
TRADER JOE'S COMPANY

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415-653-3750

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 101 California Street, Suite 3800, San Francisco, California.

On August 15, 2019, I served a copy ☒ / original ☐ of the foregoing document(s) described as **ANSWER TO COMPLAINT** on the interested parties in this action addressed as follows:

LAW OFFICES OF RONALD A. MARRON

Attorneys for Plaintiff and the Proposed Class

Ronald A. Marron
Michael T. Houchin
Lilach Halperin
651 Arroyo Drive
San Diego, CA 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
ron@consumeradvocates.com
mike@consumeradvocates.com
lilach@consumeradvocates.com

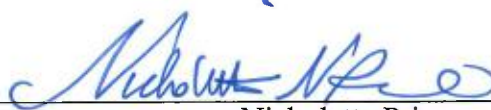
☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 101 California Street, Suite 3800, San Francisco, California, in the ordinary course of business.

☒ **BY ELECTRONIC SERVICE:** I caused the above-entitled document(s) to be served through OneLegal addressed to all parties appearing on the OneLegal electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the OneLegal Receipt/Confirmation Page will be maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 15, 2019, at San Francisco, California.



Nicholette Prince

PROOF OF SERVICE

1 VENABLE LLP
Angel A. Garganta (163957)
2 agarganta@venable.com
101 California Street, Suite 3800
3 San Francisco, CA 94111
Telephone: 415.653.3750
4 Facsimile: 415.653.3755

5 Attorneys for Defendant
6 TRADER JOE'S COMPANY
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/15/2019 at 03:43:00 PM

Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 CHRISTINA WEBB, on behalf of herself, all
11 others similarly situated, and the general public,

12 Plaintiff,

13 v.

14 TRADER JOE'S COMPANY,

15 Defendant.
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Case No. 37-2019-00035568-CU-BT-CTL

**NOTICE OF APPEARANCE –
ANGEL A. GARGANTA**

CLASS ACTION

Action Filed: July 10, 2019

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that I, Angel A. Garganta of Venable LLP, will be appearing as counsel for Defendant TRADER JOE'S COMPANY in this matter. My contact information is as follows:

VENABLE LLP

Angel A. Garganta
101 California Street, Suite 3800
San Francisco, CA 94111
Email: agarganta@venable.com
Telephone: (415) 653-3750
Facsimile: (415) 653-3755

Please serve said counsel with all pleadings and notices in this action.

Dated: August 15, 2019

VENABLE LLP

By: /s/ Angel A. Garganta
Angel A. Garganta

Attorneys for Defendant
TRADER JOE'S COMPANY

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415-653-3750

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415-653-3750

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 101 California Street, Suite 3800, San Francisco, California.

On August 15, 2019, I served a copy ☒ / original ☐ of the foregoing document(s) described as **NOTICE OF APPEARANCE- ANGEL A. GARGANTA** on the interested parties in this action addressed as follows:

LAW OFFICES OF RONALD A. MARRON

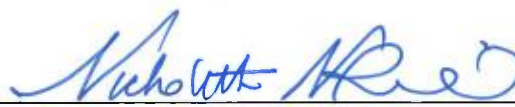
Attorneys for Plaintiff and the Proposed Class

Ronald A. Marron
Michael T. Houchin
Lilach Halperin
651 Arroyo Drive
San Diego, CA 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
ron@consumeradvocates.com
mike@consumeradvocates.com
lilach@consumeradvocates.com

- ☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.
- ☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 101 California Street, Suite 3800, San Francisco, California, in the ordinary course of business.
- ☒ **BY ELECTRONIC SERVICE:** I caused the above-entitled document(s) to be served through OneLegal addressed to all parties appearing on the OneLegal electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the OneLegal Receipt/Confirmation Page will be maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 15, 2019, at San Francisco, California.



Nicholette Prince

1 VENABLE LLP
Angel A. Garganta (163957)
2 agarganta@venable.com
Amit Rana (291912)
3 arana@venable.com
101 California Street, Suite 3800
4 San Francisco, CA 94111
Telephone: 415.653.3750
5 Facsimile: 415.653.3755

6 Attorneys for Defendant
7 TRADER JOE'S COMPANY

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 CHRISTINA WEBB, on behalf of herself, all
11 others similarly situated, and the general public,

12 Plaintiff,

13 v.

14 TRADER JOE'S COMPANY,

15 Defendant.

Case No. 37-2019-00035568-CU-BT-CTL

**NOTICE OF APPEARANCE –
AMIT RANA**

CLASS ACTION

Action Filed: July 10, 2019

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that I, Amit Rana of Venable LLP, will be appearing as counsel for Defendant TRADER JOE'S COMPANY in this matter. My contact information is as follows:

VENABLE LLP

Amit Rana
101 California Street, Suite 3800
San Francisco, CA 94111
Email: arana@venable.com
Telephone: (415) 653-3750
Facsimile: (415) 653-3755

Please serve said counsel with all pleadings and notices in this action.

Dated: August 15, 2019

VENABLE LLP

By: /s/ Amit Rana
Amit Rana

Attorneys for Defendant
TRADER JOE'S COMPANY

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415-653-3750

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**)
 3 **COUNTY OF SAN FRANCISCO**) **ss.**

4 I am employed in the County of San Francisco, State of California. I am over the age of 18 and
 5 not a party to the within action; my business address is Venable LLP, 101 California Street, Suite
 3800, San Francisco, California.

6 On August 15, 2019, I served a copy ☒ / original ☐ of the foregoing document(s) described as
 7 **NOTICE OF APPEARANCE- AMIT RANA** on the interested parties in this action addressed
 as follows:

8 **LAW OFFICES OF RONALD A.**
 9 **MARRON**

Attorneys for Plaintiff and the Proposed Class

10 Ronald A. Marron
 11 Michael T. Houchin
 Lilach Halperin
 651 Arroyo Drive
 San Diego, CA 92103
 Telephone: (619) 696-9006
 Facsimile: (619) 564-6665
 13 ron@consumeradvocates.com
 mike@consumeradvocates.com
 14 lilach@consumeradvocates.com

- 15 ☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.
- 16 ☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and
 17 processing correspondence for mailing with the U.S. Postal Service. Under that
 practice such envelope(s) is deposited with the U.S. postal service on the same day
 18 this declaration was executed, with postage thereon fully prepaid at 101 California
 Street, Suite 3800, San Francisco, California, in the ordinary course of business.
- 19 ☒ **BY ELECTRONIC SERVICE:** I caused the above-entitled document(s) to be
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 electronic service list for the above-entitled case. The service transmission was
 21 reported as complete and a copy of the OneLegal Receipt/Confirmation Page will
 be maintained with the original document(s) in this office.

22 I declare under penalty of perjury under the laws of the State of California that the above is true
 23 and correct.

24 Executed on August 15, 2019, at San Francisco, California.

25 

26 Nicholette Prince

EXHIBIT 2

LAW OFFICES OF
RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

June 26, 2019

Via: Certified Mail, receipt acknowledgment with signature requested

Trader Joe's Company
ATTN: Legal Department
800 S. Shamrock Ave.
Monrovia, CA 91016

Re: *NOTICE: Violations of the Consumers Legal Remedies Act ("CLRA"), Breach of Warranties, and Duty to Preserve Evidence*

Dear Sir or Madam:

PLEASE TAKE NOTICE that this letter constitutes the 30-day notice required before claims for damages may be filed under the California Consumer Legal Remedies Act, Civ. Code § 1750 *et seq.* ("CLRA"). This Notice pertains to all retail packages of fresh, uncooked Trader Joe's branded chicken products distributed and sold in California and the United States. Our client Christina Webb ("Client") purchased from California grocery stores for personal and household use several varieties of Trader Joe's branded chicken products (the "Products"). These Products, our Client alleges, were found to contain added water in excess of the labeled disclaimers and also in excess of good manufacturing practices under California law. Foster Farms' advertising, labeling, and marketing of the Products fails to disclose that those Products contain excess added water. This renders the Products misbranded and economically adulterated; such Products are unlawful to distribute and sell in California and the United States.

For clarity, the Products include, without limitation:

- Trader Joe's Natural Boneless Skinless Chicken Thighs;
- Trader Joe's Natural Chicken Wings; and
- Trader Joe's Natural Boneless Chicken Breasts.

This product list is not exhaustive nor exclusive and should be assumed to include any similar products produced, distributed, marketed, or sold by Trader Joe's within the Class period.

An example of one of the Products' front packaging label is shown below.

Product Front Label:



The Products' front-package labels include disclaimers stating the packages contain "Up to 5% Retained Water."¹ These label claims are false and misleading. The Products were found to contain, on average, almost twice as much retained water as was disclosed on the label, rendering the Products' labels misleading under California's CLRA, Unfair Competition Law, and False Advertising Law. The chart below shows that the retained water in the Products were significantly higher than 5%.

Sample ID	% Moisture	Stated Net Weight Lbs	Net weight Found Lbs	Retained Water Stated	Actual Retained Water Found
Natural Boneless Skinless Chicken Thighs	72.63	1.31	1.19	5%	9.16%
Natural Boneless Skinless Chicken Thighs	72.99	1.37	1.26	5%	8.0%
Natural Chicken Wings	71.80	1.54	1.41	5%	8.44%
Natural Chicken Wings	75.63	1.69	1.41	5%	16.57%
Natural Boneless Chicken Breast	75.15	1.73	1.60	5%	7.51%
Natural Boneless Chicken Breast	74.39	1.75	1.63	5%	6.85%

Trader Joe's misrepresentations regarding the retained water in its Products violates Federal regulations and California law.² The Products are misbranded and falsely advertised under federal and California law, violate the CLRA as well as other California laws and regulations, and are illegal to sell with the current labeling.

Class members in the proposed class of purchasers that Ms. Webb will represent in a putative class action purchased at least one of the Products. Because the Products' labels misrepresented the amount of retained water in the Products, Ms. Webb was not aware that the Products contained such a high level of retained water when she purchased them. Had the label properly disclosed this, as required by California and federal law, Ms. Webb and the class of California and U.S. consumers she proposes to represent would not have purchased the Products or would not have paid the advertised price for them.

On behalf of herself, all others similarly situated, and the general public, our client, hereby demands you remedy the above-described violations within 30 days of your receipt of this letter. This letter demands that you take prompt and specific corrective action, to include:

¹ Some varieties of the Products may have labels disclosing other percentages of retained water, but all such labels are alleged to be similarly false and misleading.

² This misrepresentation likely violates other states' consumer protection statutes as well.

1. Revising the Products' labeling so that all labels properly disclose an accurate estimate of the retained water in the Products; or
2. reduce the amount of retained water within the Products;
3. recall, or in the alternative, issue mandatory corrected labels and instructions for re-labeling all currently unsold improperly-labeled stock;
4. conduct a corrective advertising campaign to inform consumers regarding the former improper Products labeling; and,
5. initiate a refund process for California consumers who purchased the Products from January 1, 2012, to the present, where such Products were not labeled with accurate estimates of retained water.

Breach of Warranties and Violations of the Consumers Legal Remedies Act

This letter serves to notify you that the Products' packaging claims created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* and state law. Those warranties formed part of the benefit of the bargain, and when the Products were not as warranted by YOU, our client suffered economic loss.

Please also be advised that the alleged unfair methods of competition and unfair or deceptive acts or practices are in violation of the Consumers Legal Remedies Act ("CLRA") and include, but are not necessarily limited to:

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

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

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

§ 1770(a)(10): Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity; and

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

If you do not promptly initiate these corrective actions, our client, on behalf of herself, all others similarly situated, and the general public, will bring legal claims for injunctive relief and actual and punitive damages under the CLRA and any other applicable consumer laws and regulations, to compel these steps, as well as seeking any other legally-appropriate restitution and/or damages, attorneys' fees, costs, incentive awards, and the costs of class notice and

administration. If you do timely initiate these corrective actions, our client may choose not to seek injunctive relief but reserves the right to proceed with legal action on the basis of all past violations.

I would also like to remind you of your legal duty to preserve all records relevant to such potential litigation. *See, e.g., Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D. 162, 175 (S.D.N.Y. 2004); *National Ass'n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556-57 (N.D. Cal. 2006). We anticipate that at a minimum all e-mails, letters, reports, notes, minutes of meetings, voice mails, internal corporate instant messages, and laboratory and other records that relate to the processing, water content, labeling, and marketing of the Products will be sought in the forthcoming discovery process. You must inform any employees, contractors, and third-party agents such as product consultants, process consultants, consulting engineers and scientists, and advertising agencies handling accounts for the Products to preserve all such relevant information.

Very truly yours,

/s/ Ronald A. Marron
Ronald A. Marron

1 VENABLE LLP
Angel A. Garganta (163957)
2 agarganta@venable.com
Amit Rana (291912)
3 arana@venable.com
101 California Street, Suite 3800
4 San Francisco, CA 94111
Telephone: 415.653.3750
5 Facsimile: 415.653.3755

6 Attorneys for Defendant
TRADER JOE'S COMPANY
7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 CHRISTINA WEBB, on behalf of
herself, all others similarly situated, and
12 the general public,

13 Plaintiff,

14 v.

15 TRADER JOE'S COMPANY,
16 Defendant.

Case No. **'19CV1587 CAB WVG**

[San Diego Superior Court Case No.
37-2019-00035568-CU-BT-CTL]

**PROOF OF SERVICE RE
DEFENDANT TRADER JOE'S
COMPANY'S NOTICE TO
STATE COURT AND ADVERSE
PARTIES OF REMOVAL OF
ACTION TO FEDERAL COURT**

CLASS ACTION

JURY TRIAL DEMANDED

Action Filed: July 10, 2019

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415-653-3750

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss.

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 101 California Street, Suite 3800, San Francisco, California.

On August 23, 2019, I served a copy ☒ / Original ☐ of the foregoing document(s) described as:

1. Defendant Trader Joe's Company's Notice Of Removal Of Action To Federal Court

2. Civil Case Cover Sheet

3. Ex. 1 To Notice Of Removal

4. Ex. 2 To Notice Of Removal

on the interested parties in this action addressed as follows:

LAW OFFICES OF RONALD A. MARRON

Attorneys for Plaintiff and the Proposed Class

Ronald A. Marron
 Michael T. Houchin
 Lilach Halperin
 651 Arroyo Drive
 San Diego, CA 92103
 Telephone: (619) 696-9006
 Facsimile: (619) 564-6665
 ron@consumeradvocates.com
 mike@consumeradvocates.com
 lilach@consumeradvocates.com

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 23, 2019, at San Francisco, California.


Nicholette Prince

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415-653-3750

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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: [Class Action Claims Consumers Overpaid for Trader Joe's Raw Chicken Packaged with Excess Retained Water](#)
