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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANKUSH PURI, on behalf of themselves and all
others similarly situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

Case No.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1
2 Plaintiff, by attorneys, alleges upon information and belief, except for allegations
3 pertaining to plaintiff, which are based on personal knowledge:
4

5 1. Costco Wholesale Corporation (“defendant”) manufactures, distributes, markets,
6 labels and sells ice cream bars purported to be dipped in chocolate and almonds, under the
7 Kirkland Signature brand (“Product”).
8

9 2. The Product is available to consumers from defendant's retail stores and is sold in
10 boxes of 18 bars (55.8 OZ).

11 3. The relevant representations include “Kirkland Signature,” “Ice Cream Bars,”
12 “Chocolate Almond Dipped Vanilla,” a picture of the product and pieces of chocolate, vanilla
13 beans, a vanilla flower and whole almonds:
14



28 4. The unqualified, prominent and conspicuous front label representations of the
chunks of chocolate, the chocolate almond coating of the Product and the statement “Chocolate
CLASS ACTION COMPLAINT

1
2 Almond Dipped” are false, deceptive and misleading because the “chocolate” consists mainly of
3 ingredients consumers do not expect in chocolate – vegetable oils.

4 5. Chocolate is made from cacao beans, which are not consumed by themselves – they
5 are subject to fermentation, drying and roasting, which produces cacao nibs.

6 6. The nibs are then ground to produce cocoa mass or chocolate liquor, which is
7 separated into components of cocoa solids and cocoa butter.

8 7. Consumers want chocolate in chocolate products to come from a real source, i.e.,
9 from cacao beans.

10 8. Chocolate provides greater satiety and a creamy and smooth mouthfeel compared
11 to other ingredients which substitute for chocolate, like vegetable oils.

12 9. Vegetable oils provide less satiety than chocolate, a waxy and oily mouthfeel and
13 leave an aftertaste.

14 10. Cocoa butter makes up about one-fourth of chocolate but costs more than three
15 times as much as vegetable oil.

16 11. However, the taste is not the same since even a small amount of vegetable oil
17 changes the mouthfeel from creamy and smooth to waxy and oily.

18 12. These sensations are the opposite of what consumers associate chocolate’s taste
19 with.

20 13. Numerous studies have indicated that chocolate may be beneficial to the heart and
21 arteries because of flavonoids, plant compounds from the cacao bean that contain antioxidants.

22 14. These flavonoids are activated when the cacao bean is transformed into cocoa
23 butter.

24 15. Additionally, cocoa butter does not raise cholesterol or have any artery-clogging
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1
2 trans-fats which are present in vegetable oils

3 16. Though cocoa butter and vegetable oils both contain fat, the fat in cocoa butter is
4 unsaturated and relatively healthy for the heart, in contrast to saturated fats in vegetable oils.

5 17. Consumption of vegetable oil is known to result in numerous health problems, like
6 increased chances of heart disease.

7 18. Cocoa butter contains antioxidant and its consumption in chocolate does not raise
8 the levels of cholesterol the way vegetable oils do.

9 19. In a chocolate compound, chocolate liquor is replaced with cocoa powder, and
10 cocoa butter with vegetable oil.

11 20. From the time chocolate was first made, companies have adulterated chocolate
12 products with synthetics and substitutes such as cheaper, lower quality vegetable oils.

13 21. According to “Adulteration – The Dark World of ‘Dirty’ Chocolate,” “mixing
14 unnatural ingredients with chocolate – with the intent of extending the quantity of raw product
15 and defrauding customers – has a long history.”¹

16 22. As a valuable food, chocolate has always been vulnerable to being “extended” with
17 lower quality components.

18 23. Since consumers were constantly being misled by chocolate products that contained
19 little actual chocolate, Congress directed the Food and Drug Administration (“FDA”) to establish
20 standards and rules to combat the marketing of foods from which traditional constituents are
21 removed or new or different (often cheaper and artificial) ingredients are substituted.
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28 ¹ Chapter 47 in *Chocolate – History, Culture, Heritage*.

1
2 24. Chocolate was one of these foods, and the standards effectively stopped companies
3 from substituting lower quality, cheaper ingredients like vegetable oils for chocolate ingredients.
4 *See* 21 C.F.R. § 163.123 (Sweet chocolate.), 21 C.F.R. § 163.124 (White chocolate), 21 C.F.R.
5 § 163.130 (“milk chocolate”); 21 C.F.R. § 163.135 (Buttermilk chocolate.)

6 25. For example, the optional ingredients in milk chocolate include cacao fat, nutritive
7 carbohydrate sweeteners, spices, natural and artificial flavorings, dairy ingredients and
8 emulsifying agents but not vegetable oils. 21 C.F.R. § 163.124(b).

9
10 26. These requirements prevented foods from being labeled with the unqualified
11 designation of “chocolate” if their main ingredients were anything other than chocolate liquor
12 and cocoa butter.

13 27. The chocolate standards have been in place for over fifty (50) years, and
14 companies’ adherence to these regulations have benefitted consumers who otherwise would not
15 be able to rely on a product’s representations.

16 28. These regulations effectively established custom and practice so that consumers’
17 experience with that custom and practice primes them to infer from a product’s labeling whether
18 a product contains chocolate or is a chocolate mixture (compound) which contains vegetable
19 oils.
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21 29. Over ten years ago in response to a proposal to modify the chocolate standards to
22 allow vegetable oils, industry leader Mars Wrigley was adamant in its opposition, because it
23 recognized what consumers wanted:
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