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8 *Attorneys for Plaintiffs*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 NICOLAS R. MARKS, and LORRI A.
12 BOWLING, as individuals and on
13 behalf of all participants in the Trader
14 Joe’s Company Retirement Plan,

15 Plaintiffs,

16 v.

17 TRADER JOE’S COMPANY,

18 Defendant.
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CASE NO.:

CLASS ACTION COMPLAINT

1. ERISA Breach of Fiduciary Duty of Prudence
2. ERISA Failure to Monitor Fiduciaries

23 Plaintiffs Nicolas R. Marks (“Marks”) and Lorri Bowling (“Bowling”)
24 (collectively, “Plaintiffs”), individually and as representatives of participants and
25 beneficiaries of the Trader Joe’s Company Retirement Plan (“Plan”) submit this
26 Complaint on behalf of the Plan against the Plan Sponsor Trader Joe’s Company
27 (“Trader Joe’s”) for breaching its ERISA fiduciary duties in the management,
28 operation and administration of the Plan.

1 INTRODUCTION

2 1. A 401(k) plan is an employer-sponsored defined contribution
3 retirement plan that enables employees to make tax-deferred contributions from
4 their salaries to the plan. Employers also may make contributions into employee
5 accounts. Typically, plan participants direct the investment of their accounts,
6 choosing from the lineup of options offered in the plan.

7 2. In a defined contribution plan, participants' retirement benefits are
8 limited to the value of their own individual accounts, which is determined solely by
9 employee and employer contributions plus the amount gained through investment in
10 the options made available in the plan less expenses. *See* 29 U.S.C. §1002(34).

11 3. Because retirement savings in defined contribution plans grow and
12 compound over the course of the employee participants' careers, poor investment
13 performance and excessive fees can dramatically reduce the amount of benefits
14 available when the participant is ready to retire. Over time, even small differences in
15 fees and performance compound and can result in vast differences in the amount of
16 savings available at retirement. As the Supreme Court has explained, "[e]xpenses,
17 such as management or administrative fees, can sometimes significantly reduce the
18 value of an account in a defined-contribution plan." *Tibble v. Edison Int'l*, 135 S. Ct.
19 1823, 1825 (2015).

20 4. The impact of excessive fees on employees' and retirees' retirement
21 assets is dramatic. The U.S. Department of Labor has noted that a 1% higher level of
22 fees over a 35-year period makes a 28% difference in retirement assets at the end of
23 a participant's career. U.S. Dep't of Labor, *A Look at 401(k) Plan Fees*, at 1–2
24 (Aug. 2013).¹

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26
27 ¹ Available at <https://dol.gov/sites/default/files/ebsa/about-ebsa/ouractivities/resources-center/publications/401kfeesEmployee.pdf>. Last visited on December 2, 2019.

1 5. The marketplace for retirement plan services is established and
2 competitive. As of December 31, 2018, the Plan had \$1,629,409,314 in net assets,
3 which makes in one of the top or largest plans (based on assets) to participants. As a
4 result, the Plan has tremendous bargaining power to demand low-cost administrative
5 and investment management services and well-performing, low cost investment
6 funds.

7 6. However, instead of leveraging the Plan’s tremendous bargaining
8 power to benefit participants and beneficiaries, Trader Joe’s chose inappropriate,
9 higher cost mutual fund share classes and caused the Plan to pay unreasonable and
10 excessive fees for recordkeeping and other administrative services.

11 7. ERISA imposes strict fiduciary duties of prudence and loyalty on
12 covered retirement plan fiduciaries. An ERISA fiduciary must discharge his
13 responsibility “with the care, skill, prudence, and diligence” that a prudent person
14 “acting in a like capacity and familiar with such matters” would use. 29 U.S.C. §
15 1104(a)(1). These duties require fiduciaries to act “solely in the interest of [plan]
16 participants and beneficiaries.” *Id.*

17 8. Trader Joe’s, as the Plan Sponsor, breached its fiduciary duty of
18 prudence and loyalty and mismanaged the Plan by paying excessive recordkeeping
19 fees to the Plan’s recordkeeper, Capital Research & Management Co. (“Capital
20 Research”) by failing to limit Capital Research’s asset-based fees to a reasonable
21 amount. This breach cost the Plan millions of dollars over the course of the relevant
22 time period.

23 9. Plaintiffs, individually and as the representatives of a class consisting
24 of the Plan’s participants and beneficiaries, bring this action on behalf of the Plan
25 under 29 U.S.C. §§ 1132(a)(2) and (3), to enforce the Trader Joe’s liability under 29
26 U.S. C. § 1109(a), to make good to the Plan all losses resulting from its breaches of
27 fiduciary duties, and to restore to the Plan any lost profits.

28

1 **JURISDICTION AND VENUE**

2 10. This Court has subject matter jurisdiction over Plaintiffs' claims under
3 ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and 28 U.S.C. § 1331 because this
4 action arises under the laws of the United States of America.

5 11. Venue is proper in the Northern District of California under ERISA
6 § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this
7 District, the Trader Joe's resides within this District, and/or the alleged breaches of
8 the duties imposed by ERISA took place in this District.

9 **PARTIES**

10 **The Plan**

11 12. The Plan was established and is maintained by a written plan
12 documents as required by 29 U.S.C. § 1102(a)(1).

13 13. The Plan is an employee pension benefit plan within the meaning of 29
14 U.S.C. § 1002(2)(a), and an "individual account plan" or "defined contribution
15 plan" under 29 U.S.C. §1002(34). Employees who are eligible to participate in the
16 Plan contribute to their individual accounts through payroll deductions.

17 14. As of December 31, 2018 (the last date upon which mandated
18 disclosures were filed with the Department of Labor), the Plan had 46,6602
19 participants and beneficiaries and \$1,629,409,314 (close to two billion dollars) in
20 net assets.

21 **The Defendant – Trader Joe's**

22 15. Trader Joe's is an American chain of grocery stores headquartered in
23 Monrovia, California. On its website, Trader Joe's reports that it has 488 sotres in
24 41 states and the District of Columbia.

25 16. Trader Joe's is the Plan Sponsor under 29 U.S.C. §1002(21)(A)(i) and
26 (iii). Trader Joe's is a fiduciary to the Plan under 29 U.S.C. §1002(21)(A)(i) and (iii)
27 because upon it has the sole authority to appoint and remove members of the Plan
28

1 Committee, amend or terminate, in whole or part, the Plan, and is designated as a
2 fiduciary under the Plan.

3 17. Trader Joe's is also the administrator of the Plan and, as such, is a
4 fiduciary of the Plan with respect to the conduct and transactions from which its
5 liability arises here.

6 **The Plaintiffs**

7 18. Plaintiff Nicolas R. Marks is a resident of Saint Petersburg, Florida.
8 Marks was employed by Trader Joe's from March of 2016 through February 15,
9 2017. Marks was a participant in the Plan under 29 U.S.C. §1002(7) from April 1,
10 2016 until February 15, 2017 because he and his beneficiaries were eligible to
11 receive benefits under the Plan.

12 19. Plaintiff Lorri A. Bowling is a resident of Tampa, Florida. Bowling was
13 employed by Trader Joe's from April of 2014 through September 3, 2015. Bowling
14 was a participant in the Plan under 29 U.S.C. §1002(7) from August 7, 2014 until
15 September 30, 2015 because she and her beneficiaries were eligible to receive
16 benefits under the Plan.

17 **BACKGROUND FACTS**

18 **Trader Joe's Caused Plan Participants to Pay Excessive** 19 **Recordkeeping Fees**

20 20. Trader Joe's chose Capital Research to serve as the Plan recordkeeper
21 and investment platform. Capital Research is a wholly owned subsidiary of The
22 Capital Group Companies, Inc., which is a Delaware company that traces its roots to
23 1931. As of June 30, 2019, Capital Research had approximately \$2.2 trillion in
24 discretionary assets under management.

25 21. Capital Research is the investment adviser to the American Funds
26 family of mutual funds. Its fees are generally based on a percentage of assets under
27 invested in the American Funds. Capital Research's fees are paid by the American
28 Funds to Capital Research based on the previous month's daily net asset levels.

1 Capital Research advertises that the fees it receives from the American Funds “are
2 generally not negotiable.”

3 22. Capital Research also receives fees directly from the Plan for
4 recordkeeping. For example, in 2018, it received a reported \$183,075 in direct
5 compensation for recordkeeping services.

6 23. Trader Joe’s has not disclosed to Plan participants the precise amount
7 of fees and/or income Capital Research collects from the Plan. However, Trader
8 Joe’s has disclosed that Capital Research receives “direct” and “indirect” fees and
9 compensation. Discovery is need to identify exactly how much Capital Research is
10 collecting, however, even with the limited information available to Plan participants
11 it is apparent that Capital Research’s fees and compensation is excessive.

12 24. Recordkeeping is a necessary service for every defined contribution
13 plan. Recordkeeping services for a qualified retirement plan, like the Plan, are
14 *essentially fixed and largely automated*. The cost of recordkeeping and
15 administrative services depends on the number of participants, not the amount of
16 assets in the participant’s account.

17 25. Recordkeeping for 401(k) plans like the Plan and its participants is
18 fundamentally the same as keeping records for a brokerage account with a few
19 additional points of data. It is a system where costs are driven purely by the number
20 of inputs and the number of transactions. In essence, it is a computer-based
21 bookkeeping system

22 26. The greatest cost incurred in incorporating a new retirement plan into a
23 recordkeeper’s system is for upfront setup costs. After the Plan account is set up,
24 individual accounts are opened by entering the participant’s name, age, SSN, date of
25 hire, and marital status. The system also records the amount of a participant’s
26 compensation he or she wishes to contribute each pay period through automated
27 payroll deductions. Participants can go on line and change their contribution rate at
28 any time.

1 27. The cost of recordkeeping services depends on the number of
2 participants, not on the amount of assets in the participant's account. Thus, the cost
3 of providing recordkeeping services to a participant with a \$100,000 account
4 balance is the same for a participant with \$1,000 in her retirement account.

5 28. ERISA, through 29 U.S.C. §1106(a)(1)(C) and 29 U.S.C. §1108(b)(2),
6 requires the Plan to pay "no more than reasonable compensation" for recordkeeping
7 services to a "party in interest" such as Capital Research.

8 **The Plan Paid Unreasonable Record Keeping Fees to Capital Research**

9 29. Trader Joe's chose to pay Capital Research asset-based recordkeeping
10 fees. Those fees were paid in three ways:

11 a. Capital Research received direct payments from the Plan for
12 recordkeeping;

13 b. Capital Research received revenue sharing payments from the
14 mutual funds offered as past or present Plan choices.

15 c. Capital Research received the difference between the higher
16 operating cost of investor class shares of mutual funds on the Plan
17 menu and the lower operating cost of institutional share classes of the
18 same funds on the Plan menu.

19 30. A single mutual fund with one portfolio and one investment adviser
20 may offer more than one "class" of its shares to investors. Each class represents a
21 similar interest in the mutual fund's portfolio. The principal difference between the
22 classes is that the mutual fund will charge different fees and expenses depending on
23 the class chosen.

24 31. For example, an Investor class share in a mutual fund may charge an
25 annual expense ratio of 1%, while the Institutional class share in that same fund with
26 the same advisors and the same investments charges an annual expense ratio of
27 0.50%. Thus, an investor who purchases an Institutional class share will realize a
28

1 0.50% greater annual return on his/her investment compared to an investor who
2 owns an Investor class share.

3 32. In a revenue sharing arrangement, a mutual fund or other investment
4 vehicle directs a portion of the expense ratio—the asset-based fees it charges to
5 investors—to the 401(k) plan’s recordkeeper putatively for providing recordkeeping
6 and administrative services for the mutual fund. These revenue sharing fees increase
7 the operating costs of the mutual fund, which are paid by the Plan participants who
8 invest in those funds.

9 33. Because revenue sharing payments are asset based, they bear no
10 relation to a reasonable recordkeeping fee and can provide excessive compensation.
11 Again, it is important to emphasize that fees obtained through revenue sharing are
12 tethered not to any actual services provided to the Plan; but rather, to a percentage of
13 assets in the Plan and/or investments in mutual funds in the Plan. As the assets in the
14 *Plan increase, so too increases the recordkeeping fees that Capital Research pockets*
15 *from the Plan and its participants. One commentator likened this fee arrangement to*
16 *hiring a plumber to fix a leaky gasket, but paying the plumber not on actual work*
17 *provided but based on the amount of water that flows through the pipe. If asset*
18 *based fees are not monitored, the fees sky rocket as more money flows into the Plan.*

19 34. Prudent fiduciaries monitor the total amount of revenue sharing a
20 recordkeeper receives to ensure that the recordkeeper is not receiving unreasonable
21 compensation. A prudent fiduciary ensures that the recordkeeper rebates to the plan
22 all revenue sharing payments that exceed a reasonable per participant recordkeeping
23 fee that can be obtained from the recordkeeping market through competitive bids.

24 35. Trader Joe’s elected to pay for Capital Research’s recordkeeping
25 services by offering retail Investor share classes of American Funds rather than
26 lower priced Institutional class shares. Capital Research kept the difference between
27 the operating costs of the higher cost Investor class shares and the lower cost
28 Institutional shares.

1 36. Capital Research also received revenue sharing from non-American
2 Funds offered by the Plan. Capital Research credited a portion of that revenue
3 sharing to Plan recordkeeping costs.

4 37. As a result of this arrangement, Capital Research was paid an asset-
5 based fee for recordkeeping that was calculated based on the amount of assets
6 invested in American Funds multiplied by the difference in the cost of the share
7 classes of the funds.

8 38. Although the percentages appear small, the extra fees cost the Plan
9 participants approximately a million dollars per year.

10 39. Over the past six years, the Plan paid the following recordkeeping fees
11 in the amount of roughly \$140 per participant. A reasonable recordkeeping fee for
12 the Plan is \$40 per plan participant.

13 40. The Plan paid much higher than a reasonable fee for Capital Research's
14 services, which caused the Plan to pay millions of dollars in excessive
15 recordkeeping fees.

16 41. Had the Trader Joe's negotiated with Capital Research to cap the
17 amount of revenue sharing to a reasonable fee or ensure that all unreasonable fees
18 were returned to the Plan, as other loyally and prudently administered plans do, the
19 Plan participants would have benefitted from lower administrative costs and fees.

20 42. Despite having nearly two billion dollars in Plan assets, Trader Joe's
21 failed to negotiate a preferred rate for recordkeeping with Capital Research. In doing
22 so, Trader Joe's breached (and continues to breach) its fiduciary duty to the Plan.

23 **The Committee Failed to Seek Competitive Bids for Recordkeeping**

24 43. Trader Joe's appointed the following individuals to serve on the
25 Investment Committee ("Committee") for the Plan: (1) Dan Blane; (2) Bryan
26 Palbaum; (3) Mitch Nadler; (4) Sharon Drabeck; and (5) Laurie Mead. The
27 Committee was charged with ensuring that the Plan was administered consistent
28 with all of ERISA's requirements.

1 44. There are numerous recordkeepers in the marketplace who are capable
2 of providing a high level of services to the Plan, and who will readily respond to a
3 request for proposal. These recordkeepers primarily differentiate themselves based
4 on price, and vigorously compete for business by offering the best price.

5 45. To ensure that plan administrative and recordkeeping expenses are and
6 remain reasonable for the services provided, prudent fiduciaries of large defined
7 contribution plans put the plan's recordkeeping and administrative services out for
8 competitive bidding at regular intervals of approximately three years, and monitor
9 recordkeeping costs regularly within that period.

10 46. A competitive bidding process for the Plan's recordkeeping services
11 would have produced a reasonable recordkeeping fee for the Plan. This competitive
12 bidding process would have enabled Trader Joe's to select a recordkeeper charging
13 reasonable fees, or to negotiate a reduction in recordkeeping fees and a proper rebate
14 of any excess expenses paid by Plan participants for recordkeeping services with
15 Capital Research.

16 47. The failure by the Committee and Trader Joe's to seek competitive
17 bids, and negotiate proper rebates of unreasonable fees, was a breach of their duty of
18 prudence to the Plan and caused the Plan to pay excessive recordkeeping fees.

19 **Capital Research is Investing Plan Participant Funds for Its Own Benefit**

20 48. In what is tantamount to an admission of excessive fees and a breach of
21 the duty of prudence, at the end of each fiscal year, Capital Research returns a
22 portion of the excessive fees that it has been collecting on a monthly basis from the
23 Plan and its participants.

24 49. Rather than negotiate a reasonable fee, Trader Joe's allows Capital
25 Research to charge the Plan, by what all parties seem to agree, excessive fees on a
26 monthly basis. This money, the money that Capital Research returns at the end of
27 the year, should have been in Plan participants' individual accounts and invested in
28 stocks, bonds, and other retirement investment vehicles for the benefit of Plan

1 participants. Instead, Capital Research collects excessive fees on a monthly basis,
2 invests the excessive fees for its own benefit, makes money for itself by investing
3 Plan participants' retirement savings, and finally returns a portion of the excessive
4 fees to the Plan at the end of the fiscal year.

5 50. With this arrangement, Trader Joe's allows Capital Research to fund its
6 own investment and/or earn interest on money that belongs to the Plan Participants.
7 This is a rank violation of ERISA's fundamental principle to act solely in the
8 interest of plan participants and beneficiaries. This arrangement shows a failure of
9 process and a breach of the duty of prudence.

10 **ERISA'S FIDUCIARY DUTY STANDARDS**

11 51. ERISA imposes strict fiduciary duties of loyalty and prudence upon
12 Trader Joe's as Plan fiduciaries. Under ERISA, a fiduciary is expected to "discharge
13 his duties with respect to a plan solely in the interest of the participants and
14 beneficiaries and for the exclusive purpose of providing benefits to participants and
15 their beneficiaries." *See* 29 U.S.C. § 1104(a)(1)(A)(I)

16 52. A "prudent" fiduciary in discharging his or her duties, also must act
17 "with the care, skill, prudence, and diligence under the circumstances then
18 prevailing that a prudent man acting in a like capacity and familiar with such matters
19 would use in the conduct of an enterprise of a like character and with like aims," *see*
20 29 U.S.C. § 1104(a)(1)(B).

21 53. ERISA also imposes explicit co-fiduciary liabilities on plan fiduciaries.
22 29 U.S.C. §1105(a) provides a cause of action against a fiduciary for (1) knowingly
23 participating in a breach by another fiduciary; (2) enabling a breach by another
24 fiduciary; or (3) knows of a breach of duty by another fiduciary and fails to cure
25 such breach of duty.

26 54. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil
27 action plan under 29 U.S.C. §1109 to enforce a breaching fiduciary's liability to the
28 Plan.

1 a. The Class includes as many as 40,000 members and is so large that
2 joinder of all members is impracticable.

3 b. There are questions of law and fact common to the Class because
4 Trader Joe's owed fiduciary duties to the Plan and to all participants
5 and beneficiaries and took the actions and omissions alleged herein as to the
6 Plan and not as to any individual participant. Thus, common questions of law
7 and fact include the following, without limitation:

8 (i) who are the fiduciaries liable for the remedies provided by 29
9 U.S.C. §1109(a);

10 (ii) whether the fiduciaries of the Plan breached their fiduciary
11 duties to the Plan;

12 (iii) what are the losses to the Plan resulting from each breach of
13 fiduciary duty; and

14 (iv) what Plan-wide equitable and other relief the court should
15 impose in light of Trader Joe's breach of duty.

16 c. Plaintiffs' claims are typical of the claims of the Class because
17 Plaintiffs were harmed by Trader Joe's misconduct.

18 d. Plaintiffs will adequately represent the Class because they were
19 participants in the Plan, have no interests that conflict with the Class,
20 are committed to the vigorous representation of the Class, and have
21 engaged experienced and competent attorneys to represent the Class.

22 e. Prosecution of separate actions for these breaches of fiduciary duties
23 by individual participants and beneficiaries would create the risk of (A)
24 inconsistent or varying adjudications that would establish incompatible
25 standards of conduct for Trader Joe's with respect to the discharge of
26 its fiduciary duties to the Plan and personal liability to the Plan under
27 29 U.S.C. §1109(a), and (B) adjudications by individual participants
28 and beneficiaries regarding these breaches of fiduciary duties and

1 remedies for the Plan would, as a practical matter, be dispositive of the
2 interests of the participants and beneficiaries not parties to the
3 adjudication or would substantially impair or impede those
4 participants' and beneficiaries' ability to protect their interests.
5 Therefore, this action should be certified as a class action under Rule
6 23(b)(1)(A) or (B) or (b)(3).

7 60. A class action is the superior method for the fair and efficient
8 adjudication of this controversy because joinder of all participants and beneficiaries
9 is impracticable, the losses suffered by individual participants and beneficiaries may
10 be small and impracticable for individual members to enforce their rights through
11 individual actions, and the common questions of law and fact predominate over
12 individual questions. Given the nature of the allegations, no class member has an
13 interest in individually controlling the prosecution of this matter, and Plaintiffs are
14 *aware of no difficulties likely to be encountered in the management of this matter as*
15 a class action. Alternatively, then, this action may be certified as a class under Rule
16 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).

17 61. Plaintiffs' counsel are competent and experienced in litigating ERISA
18 class actions. They will fairly and adequately represent the interests of the Classes
19 and satisfy Rule 23(g)'s requirements.

20 **FIRST CLAIM FOR RELIEF**

21 **Breach of the Duty of Prudence**
22 **Unreasonable Recordkeeping Fees**

23 62. Plaintiffs repeat and reallege each of the allegations in the foregoing
24 paragraphs as if fully set forth herein.

25 63. The scope of the fiduciary duties and responsibilities of Trader Joe's
26 includes defraying reasonable expenses of administering the Plan for the sole and
27 exclusive benefit of Plan participants and beneficiaries, and acting with the care,
28 skill, diligence, and prudence required by ERISA

1 64. ERISA imposes strict fiduciary duties of prudence and loyalty on
2 covered retirement plan fiduciaries. An ERISA fiduciary must discharge his
3 responsibility “with the care, skill, prudence, and diligence” that a prudent person
4 “acting in a like capacity and familiar with such matters” would use. 29 U.S.C. §
5 1104(a)(1). These duties require fiduciaries to act “solely in the interest of [plan]
6 participants and beneficiaries.” *Id.*

7 65. Similarly, “us[ing] revenue sharing to benefit [the plan sponsor and
8 recordkeeper] at the Plan’s expense” while “failing to monitor and control
9 recordkeeping fees” and “paying excessive revenue sharing” is a breach of fiduciary
10 duties. *Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014).

11 66. Trader Joe’s breached its fiduciary duty of prudence to the Plan by,
12 among other things, (1) paying Capital Research unreasonable recordkeeping fees;
13 (2) failing to adequately leverage the Plan’s size to properly reduce fees; (3) failing
14 to seek competitive bids for recordkeeping services during the relevant time period;
15 and (4) allowing Capital Research to collect and keep excessive fees from Plan
16 participants on a monthly basis, invest that money for the benefit of Capital
17 Research, only to refund a portion of the money (excessive fees) to the Plan at the
18 end of the fiscal year.

19 67. Plan participants were damaged as a result of Trader Joe’s breach of its
20 fiduciary duty because it paid excessive recordkeeping costs and realized a lower
21 return on Plan investments.

22 68. Trader Joe’s is personally liable under 29 U.S.C. §1109(a) to make
23 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
24 duties alleged in this claim and is subject to other equitable or remedial relief as
25 appropriate

26 69. Total Plan losses will be determined at trial after complete discovery in
27 this case and are illustrated herein based upon the limited information that has been
28 made available to Plan participants to date.

1 **SECOND CLAIM FOR RELIEF**

2 **Failure to Monitor Fiduciaries**

3 70. Plaintiffs repeat and reallege each of the allegations in the foregoing
4 paragraphs as if fully set forth herein.

5 71. Trader Joe's is responsible for the appointment and removal of the
6 Committee members who are named fiduciaries to the Plan.

7 72. Because Trader Joe's had explicit fiduciary responsibility to appoint
8 and remove the Committee members, Trader Joe's had a fiduciary responsibility to
9 monitor the performance of the other fiduciaries, including the Committee members.

10 73. A monitoring fiduciary must ensure that the monitored fiduciaries are
11 performing their fiduciary obligations, including those with respect to the
12 investment and holding of plan assets, and must take prompt and effective action to
13 protect the plan and participants when they are not doing so

14 74. *To the extent any of Trader Joe's fiduciary responsibilities were*
15 *delegated to another fiduciary, Trader Joe's monitoring duty included an obligation*
16 *to ensure that any delegated tasks were being performed prudently and loyally.*

17 75. Trader Joe's breached its fiduciary monitoring duties by, among other
18 things: (a) failing to monitor its appointees' fiduciary process, which would have
19 alerted any prudent fiduciary to the potential breach because of the excessive
20 recordkeeping fees in violation of ERISA; and (b) failing to remove appointees
21 whose performance was inadequate in that they continued to make imprudent
22 decisions, all to the detriment of Plan participants' retirement savings.

23 76. Trader Joe's failed to implement or follow any rational process for
24 monitoring the performance of the Committee or determining whether the
25 Committee was were fulfilling its fiduciary duties.

26 77. As a consequence of Trader Joe's breaches of its fiduciary duty to
27 monitor, the Plan suffered substantial losses. Had Trader Joe's discharged its
28 fiduciary monitoring duties prudently as described above, the losses suffered by the

1 Plan would have been avoided. Therefore, as a direct result of the breaches of
2 fiduciary duty alleged herein, the Plan, and the Plaintiffs and Class members, lost
3 millions of dollars in their retirement savings.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment as follows:

6 A. A determination that this action may be maintained as a class action
7 under Federal Rule of Civil Procedure 23, that Plaintiffs shall serve as class
8 representatives and Plaintiffs' counsel shall serve as Class Counsel;

9 B. A Declaration that Trader Joe's breached ERISA fiduciary duties as
10 described above;

11 C. find and adjudge that Trader Joe's liable to make good to the Plan all
12 losses to the Plan resulting from each breach of fiduciary duties, and to otherwise
13 restore the Plan to the position it would have occupied but for the breaches of
14 fiduciary duty;

15 D. determine the method by which Plan losses under 29 U.S.C. §1109(a)
16 should be calculated;

17 E. award to the Plaintiffs and the Class their attorney's fees and costs
18 under 29 U.S.C. §1132(g)(1) and the common fund doctrine;

19 F. order the payment of interest to the extent it is allowed by law; and

20 G. grant other injunctive or equitable, or remedial, relief as the Court
21 deems appropriate.

22 Dated: December 30, 2019

Respectfully submitted,

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