

CIVIL ACTION NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____
HONORABLE _____

KRISTOPHER KING

PLAINTIFF

v.

TRADER JOE'S EAST, INC.

DEFENDANT

SERVE: REGISTERED AGENT
Paracorp Incorporated
828 Lane Allen Road, Suite 219
Lexington, KY 40504

COMPLAINT

The Plaintiff, Kristopher King (hereinafter "King" or "Plaintiff") files his Complaint against the Defendant, Trader Joe's East, Inc. (hereinafter "Trader Joe's" or "Defendants"), and in support hereof states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. King is a resident of Louisville, Jefferson County, Kentucky.
2. Trader Joe's East, Inc. is a foreign corporation doing business in Louisville, Jefferson County, Kentucky.
3. The events underlying the claims set forth herein took place in Louisville, Jefferson County, Kentucky.
4. Venue and jurisdiction are proper in this Court.
5. The amount in controversy, including costs and fees, is greater than the minimum jurisdictional amount of this Court.
6. King's causes of action against Trader Joe's are brought pursuant to KRS § 338.031, KRS § 39A.090, KRS § 446.070, KRS § 411.184 and the common laws of Kentucky.

II. BACKGROUND FACTS

7. King is a former employee of Trader Joe's, specifically its location in Louisville, Kentucky.

8. King began his employment at Trader Joe's in October 2011, in the position of Crew Member.

9. On March 6, 2020, due to the outbreak of the global pandemic known as the COVID-19 virus, Governor Beshear declared a State of Emergency for Kentucky in Executive Order 2020-215. In the same Order, Governor Beshear delegated his authority to coordinate efforts giving effect to emergency needs to the Department of Public Health and the Governor's Designee. [A copy of the 3/6/20 Executive Order is attached hereto as Exhibit "1"].

10. Following Governor Beshear's Executive Order 2020-215 and issuance of a State of Emergency for Kentucky, Trader Joe's failed to take any specific steps to promote the health and safety of its employees regarding the spread of COVID-19.

11. On approximately March 11, 2020, Trader Joe's management specifically informed Trader Joe's employees that they were not allowed to wear gloves while on-the-job.

12. Further, Trader Joe's management stated that employees could only wear gloves if stated in a doctor's order and upon application and submission of Americans with Disabilities' paperwork requesting such accommodation by a physician.

13. On or around March 11, 2020, King began experiencing certain symptoms associated with COVID-19, including, but not limited to a dry cough, fever, sore throat, congestion, and headaches. Concerned for his well-being, as well as the well-being of his fellow Trader Joe's co-workers and customers, King called Trader Joe's management, informed them of

his symptoms, and that he would not be coming to work for his regularly scheduled shift due to his illness.

14. The following day, March 12, 2020, King was seen by a physician at The Little Clinic regarding his symptoms and sickness. Specifically, the physician diagnosed King with bronchitis and strep throat, prescribed him with medication, and instructed him to remain off of work until March 14, 2020. [A copy of King's 3/12/20 physician's note is attached as Exhibit "2"].

15. During his appointment at The Little Clinic, the physician opined that while she did not believe King had severe enough symptoms warranting an emergency room visit to be tested for COVID-19, she did precaution King that self-quarantining is always a safe measure to abide by if his symptoms did not recede upon medication.

16. Following his doctor's appointment, King immediately filled his prescription and began taking his medication.

17. On March 13, 2020, King created a private Facebook group with his fellow Trader Joe's employees, specifically regarding concerns that he and other employees had about Trader Joe's lack of support in implementing specific safety measures for its employees.

18. On March 14, 2020 and March 15, 2020, due to still experiencing symptoms associated with COVID-19, King did not return to work at Trader Joe's in an effort to self-quarantine himself and to protect the health and safety of his co-workers and Trader Joe's customers.

19. King called Trader Joe's management on these specific days and informed the Company that he was still experiencing COVID-19 symptoms and believed it was best to self-quarantine.

20. On March 15, 2020, King posted in the Facebook group with fellow Trader Joe's employees. Specifically, King raised the following concerns regarding Trader Joe's lack of implementing any safety measures to protect employees and their health due to the COVID-19 pandemic: "No plan/strategy in place on ways to keep the crew safe;" "Crew getting in trouble for wearing gloves at the register (because of company policy, not CDC recommendations);" and "Mates caring more about the store than crew members (specifically one mate asking a sick crew member if they HAD TO? go home)." [A copy of the 3/15/2020 Facebook post is attached as Exhibit "3"].

21. On March 17, 2020, the Commissioner of Public Health and the Governor's Designee issued an Order permitting businesses providing "food, grocery and consumer goods" to remain open. However, this Order was "subject to limitations provided in prior orders" and businesses remaining open "must, to the extent practicable, implement Centers for Disease Control ("CDC") guidance, including:

- maintaining a distance of 6 feet between persons;
- ensuring employees practice appropriate hygiene measures, including regular, thorough handwashing;
- ensuring that employees who are sick remain home; and
- regularly cleaning and disinfecting frequently touched objects and surfaces."

[A copy of the 3/17/2020 Executive Order is attached as Exhibit "4"].

22. King self-quarantined himself until March 21, 2020, when he then reported to work at Trader Joe's.

23. Upon arriving at work that day, March 21, 2020, King presented his doctor's note to Trader Joe's Mate, Travis Todd, and again informed him that he had been self-quarantining due to COVID-19 symptoms, which were no longer present.

24. Later during his shift on March 21, 2020, Trader Joe's Captain, Craig Wood (hereinafter "Wood"), whom is a member of management, requested a sit-down meeting with King.

25. During the meeting, Wood presented King with two screenshots of the Facebook posts that King had posted on the Trader Joe's Facebook group page with King's fellow co-workers and reprimanded King for the same.

26. King admitted that he had created the Facebook group and that he stood by the concerns and complaints as specifically mentioned in them regarding Trader Joe's lack of implementing any safety policies for its employees due to the COVID-19 pandemic and in response to Governor Beshear's Executive Orders and mandates from the CDC.

27. Additionally during the meeting, King requested and complained that Trader Joe's should implement the following safety protocols and provide the following products to abide by Governor Beshear's Executive Orders and mandates from the CDC in an attempt to promote the health and well-being of its employees, specifically its Crew Members: 1) sanitizer and cleaning products that meet the CDC and EPA guidelines; 2) sanitizer and gloves at every register; 3) gloves need to be changed after every customer interaction; 4) mandate that Crew Members wipe down the credit card machines after every use; 5) a regular sanitizing and cleaning schedule of the entire store; and 6) the right to wear masks and/or gloves and/or aprons if an employee so chooses to.

28. During the conversation and meeting on March 21, 2020, Wood made multiple requests for King to voluntarily quit and/or resign from his employment at Trader Joe's, to which King declined each and every time.

29. At the conclusion of the meeting on March 21, 2020, and after King voiced his complaints about Trader Joe's lack of action regarding employee safety and health due to the COVID-19 pandemic and voiced his requests of what Trader Joe's should implement in order to abide by Governor Beshear's Executive Orders and mandates from the CDC, Wood told King that he was going to evaluate King's employment situation, but that "I don't see your [King's] Crew Member status looking good moving forward."

30. Following Wood's extremely threatening and retaliatory comment in response to King's warranted and legally protected complaints and requests based upon Governor Beshear's Executive Orders and mandates from the CDC regarding the safety and health of Trader Joe's employees, King requested that he take unpaid time off for the remainder of his shift on March 21, 2020 and for the entirety of his shift for March 22, 2020. King's request was granted.

31. King returned to work for his regularly scheduled shift on March 23, 2020.

32. On March 28, 2020, only one (1) week after bringing his complaint and specific requests to act in accordance with Governor Beshear's Executive Orders and mandates from the CDC regarding the health and safety of Trader Joe's employees to Wood, Trader Joe's, specifically Wood, terminated King's employment, effective immediately.

33. Trader Joe's pretextual reasons for terminating King were citing to two (2) unsubstantiated incidents in 2019 regarding behavior, as well as specifically referencing the creation of the Facebook group page and posts with other Trader Joe's employees in an effort to voice their concerns and complaints about Trader Joe's complete lack of implementing safety

protocols, which would abide by Governor Beshear's Executive Orders and mandates from the CDC.

34. On April 2, 2020, The New York Times published an article regarding Trader Joe's response to COVID-19, including specific excerpts from King regarding his employment at Trader Joe's, his creation of the Facebook page to create a forum where employees could discuss the company's lack of implementing proper safety measures, and his termination only a week after creating the Facebook page. [A copy of the 4/2/2020 New York Times Article is attached as Exhibit "5"].

35. Trader Joe's spokeswoman, Kenya Friend-Daniel, is quoted in the article stating that she "did not dispute the details of Mr. King's firing, though she said the company allowed employees to communicate on Facebook." Further, the article states that "[t]he store manager in Louisville did not respond to a request for comment." [Exhibit "5"].

36. Upon information and belief, and only after the release of the New York Times article, Trader Joe's, specifically the Louisville, Kentucky store which King had been an employee, began to implement many of the requests that King had complained about in not only the Facebook posts, but also during his March 21, 2020 meeting with Wood.

37. Trader Joe's retaliated against King and terminated King's employment in violation of Kentucky public policy because King complained and made numerous specific requests for Trader Joe's to implement safety measures in its store in accordance with Governor Beshear's Executive Orders and mandates from the CDC.

38. Trader Joe's decision to terminate King immediately after and directly due to King's complaints and requests to the Company's management to adhere to and implement safety measures to abide by Governor Beshear's Executive Orders and mandates from the CDC constitutes oppressive, malicious, and intentional conduct.

III. CLAIMS AND CAUSES OF ACTION

A. PUBLIC POLICY WRONGFUL DISCHARGE – KRS § 338.010, et seq.

39. King re-alleges all allegations contained in paragraphs 1 through 38 above as if fully set forth herein.

40. Trader Joe's discharged King in violation of Kentucky public policy because King brought legitimate complaints and concerns to Trader Joe's regarding workplace safety amid the global COVID-19 pandemic.

41. The complaints King made to Trader Joe's management regarding workplace safety constitute the exercise of a legally protected right conferred by well-established Kentucky law.

42. Specifically, Kentucky's public policy on workplace safety is codified in KRS § 338.011:

The General Assembly finds that occupational accidents and diseases produce personal injuries and illness including loss of life as well as economic loss. Therefore, the General Assembly declares that it is the purpose and policy of the Commonwealth of Kentucky to promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private, covered by this chapter, arising out of exposure to harmful conditions and practices at places of work and otherwise to preserve our human resources by providing for education and training, inspection of workplaces, consultation, services, research, reports and statistics, and other means of furthering progress in the field of occupational safety and health.

43. KRS § 338.031 states:

Each employer. . . [s]hall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees[.]

44. King is entitled to recover from Trader Joe's the damages sustained by reason of Trader Joe's violation of this Kentucky statute.

45. As a result of Trader Joe's actions, King has suffered monetary damages in an amount in excess of the minimum jurisdictional limits of this Court.

B. PUBLIC POLICY WRONGFUL DISCHARGE – KRS § 39A.010, et seq.

46. Plaintiff reaffirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 45, inclusive herein, as though fully set forth at this point in their entirety.

47. Trader Joe's discharged King in violation of Kentucky public policy because King brought legitimate complaints and concerns to Trader Joe's regarding Governor Beshear's executive orders concerning workplace safety amid the global COVID-19 pandemic.

48. The complaints King made to Trader Joe's management regarding workplace safety constitute the exercise of a legally protected right conferred by well-established Kentucky law.

49. King's decision to make complaints and report concerns regarding workplace safety, employee endangerment, and violation of recently enacted executive orders were legally protected activities, provided for by the Kentucky Revised Statutes.

50. Kentucky's public policy related to executive power in times of disaster or emergency is set forth in KRS § 39A.010:

The General Assembly realizes the Commonwealth is subject at all times to disaster or emergency occurrences which can range from crises affecting limited areas to widespread catastrophic events, and that response to these occurrences is a fundamental responsibility of elected government in the Commonwealth. . . . [I]n order to protect life and property of the people of the Commonwealth, and to protect public peace, health, safety, and welfare, and the environment; and in order to ensure the continuity and effectiveness of government in time of emergency, disaster, or catastrophe in the Commonwealth, it is hereby declared to be necessary . . . [t]o confer upon the Governor, the county judges/executive of the counties, the mayors of the cities and urban-county governments of the Commonwealth, and the chief executive of other local governments the emergency powers provided in KRS Chapters 39A to 39F [and to] authorize the establishment of a statewide comprehensive emergency management program and integrated emergency management system, the

promulgation of orders or administrative regulations, and the taking of other steps necessary and appropriate to carry out the provisions of KRS Chapters 39A to 39F.

51. Pursuant to KRS § 39A.090, “The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.”

52. King’s complaints to Trader Joe’s are consistent with the plea to obey Governor Beshear’s Executive Orders, and constitute a protected activity.

53 King was terminated due to participating in a protected activity, specifically for the complaints and concerns that he raised to Trader Joe’s about its refusal to abide by Kentucky’s safety, emergency, and disaster law and/or for demanding compliance with Governor Beshear’s Executive Orders pursuant to such Kentucky law.

54. King is entitled to recover from Trader Joe’s the damages sustained by reason of Trader Joe’s violation of this Kentucky statute.

55. As a result of Trader Joe’s actions, King has suffered monetary damages in an amount in excess of the minimum jurisdictional limits of this Court.

**C. PRIVATE CAUSE OF ACTION FOR TRADER JOE’S VIOLATION OF
KRS § 338.010, et seq.**

56. Plaintiff reaffirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 55, inclusive herein, as though fully set forth at this point in their entirety.

57. KRS § 338.010, *et seq.* provides no civil remedy for individuals, including King, who suffer damages from the violation of the statute.

58. King is within the class of individuals that KRS § 338.010, *et seq.* is intended to protect.

59. King’s injuries are of the type that KRS § 338.010, *et seq.* was designed to prevent.

60. KRS § 446.070 provides individuals, like King, are entitled to recover damages suffered due to Trader Joe's violation of KRS § 338.010, *et seq.*

61. KRS § 446.070 states: "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

62. As a result of Trader Joe's actions and violations of KRS § 338.010, *et seq.*, King is entitled to monetary damages pursuant to KRS § 446.070, in an amount in excess of the minimum jurisdictional limits of this Court.

**D. PRIVATE CAUSE OF ACTION FOR TRADER JOE'S VIOLATION OF
KRS § 39A.010, et seq.**

63. Plaintiff reaffirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 62, inclusive herein, as though fully set forth at this point in their entirety.

64. KRS § 39A.010, *et seq.* provides no civil remedy for individuals, including King, who suffer damages from the violation of the statute.

65. King is within the class of individuals that KRS § 39A.010, *et seq.* is intended to protect.

66. King's injuries are of the type that KRS § 39A.010, *et seq.* was designed to prevent.

67. KRS § 446.070 provides individuals, like King, are entitled to recover damages suffered due to Trader Joe's violation of KRS § 39A.010, *et seq.*

68. KRS § 446.070 states: "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

69. As a result of Trader Joe's actions and violations of KRS 39A.010 *et seq.*, King is entitled to monetary damages pursuant to KRS § 446.070, in an amount in excess of the minimum jurisdictional limits of this Court.

E. PUNITIVE DAMAGES (KRS § 411.184)

70. Plaintiff reaffirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 69, inclusive herein, as though fully set forth at this point in their entirety.

71. Due to Trader Joe's oppressive, malicious, and intentional conduct toward King, King requests that he be awarded punitive damages against Trader Joe's, in the amount in excess of the minimum jurisdictional limits of this Court.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Kristopher King, respectfully prays that he be awarded the following relief and all other relief to which he may be entitled against the Defendant, Trader Joe's East, Inc.:

- A. Trial by jury as to all claims;
- B. Judgment against Defendant on all claims asserted herein;
- C. Compensatory damages including, but not limited to, past and future lost wages and past and future lost benefits;
- D. Compensatory damages including, but not limited to, emotional distress, mental anguish, humiliation and embarrassment;
- E. All statutory remedies provided by Kentucky's public policy wrongful discharge laws;

F. Punitive damages, pursuant to KRS § 411.184, against the Defendant based upon its reckless disregard for and/or intentional conduct toward King's rights and to punish and deter similar future unlawful conduct;

G. An award of Plaintiff's attorney fees, costs and expenses;

H. Statutory interest on all monetary damage awards, verdicts, or judgments; and

I. All additional and other relief to which King may be entitled.

Respectfully submitted,

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