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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

JAMES BOSWELL and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

Case No. 8:16-CV-00278

DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. 1332, 1441, 1446, AND 1453

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendant Costco Wholesale Corporation ("Costco") hereby removes to this Court the state court action described below pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453, and other applicable law. In support thereof, Costco states as follows:

1. On January 20, 2016, Plaintiffs James Boswell and Malia Levin, on behalf of themselves, and purporting to act on all others similarly situated and the general public (collectively, "Plaintiffs"), filed a complaint (the "Complaint") against Costco, in the Superior Court of the State of California, for the County of Orange (the "State Court"), entitled *James Boswell, et. al. v. Costco Wholesale Corporation*, Case No. 30-2016-00830927-CU-BT-CXC (the "Action"). Costco is the only defendant in the Action. Pursuant to 28 U.S.C. § 1446(a), attached hereto is a true and correct copy of all process, pleadings, and orders served upon Costco in the Action. Also attached are three documents that Plaintiffs did not serve on Costco, but which appear in the State Court's file (a Proof of Service of Summons; a Notice of Case Assignment; and Plaintiffs' payment receipt).

2. Timeliness. On January 22, 2016, Plaintiffs served the Complaint on Costco. Costco's Notice of Removal is timely because it is filed within 30 days of the service of the Complaint.

3. Jurisdiction. The above-described action is a civil action over which this Court has original jurisdiction and, consequently, may be removed pursuant to 28 U.S.C. § 1441(b). Under 28 U.S.C. § 1441(a), a defendant may remove to federal district court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction[.]" Pursuant to 28 U.S.C. §§ 1332(d) and 1453, federal district courts have original jurisdiction over a class action if (1) it involves 100 or more putative class members; (2) any class member

is a citizen of a state that is different from any defendant; and (3) the aggregated amount in controversy exceeds $5 million (exclusive of costs and interests). See, e.g., 28 U.S.C. §§ 1332(d)(2) and (d)(6). All such requirements are met here.

4. Class size. The Complaint alleges that the proposed class (the "Purported Class") consists of "all persons in the California [sic] who, on or after from [sic] January 15, 2012…purchased, for personal or household use, and not for resale or distribution purposes [the product described as] Costco's Kirkland Coconut Oil [(the "Product")]." (Complaint, ¶ 109.) In California, Costco sold over 76,000 units of the Product in 2014, over 383,000 units of the Product in 2015, and over 264,000 units of the Product from January 1, 2016 to the present, and the Action involves over 100 putative members of the Purported Class.

5. Diversity of Citizenship. The parties are minimally diverse. Costco was only a citizen of the State of Washington at all relevant times, including at the time Plaintiffs' Complaint was filed and at the time of the filing of this removal. Costco's state of incorporation is the State of Washington, where it is organized and existing under the laws of the State of Washington. Costco's principal place of business was and is located in the State of Washington as well. Its headquarters are located at 999 Lake Drive in Issaquah, Washington, which is where its officers direct, control and coordinate the corporation's activities (*i.e.*, its "nerve center"). Plaintiffs James Boswell and Malia Levin were citizens of the State of California at all relevant times, including at the time that their Complaint was filed and at the time of the filing of this removal. Furthermore, numerous persons who bought the Product in California from January 20, 2013 to the present were, at all relevant times as described above, either citizens of the State of California and/or, in any event, not citizens of the State of Washington. As such, at all relevant times, including when the Complaint was filed and at the time of the removal, there are members of the Purported Class who were and are citizens of a different state than

Costco, the only defendant in the Action.

6. Amount in Controversy. Although Costco denies that Plaintiffs are entitled to class certification and/or that their purported claims have merit, given the scope of the alleged claims and relief sought, the "matter in controversy," as set forth in 28 U.S.C. §§ 1332(d)(2) and (d)(6), exceeds $5 million. In California, Costco's sales of the Product were over $1,885,000 in 2014, over $10,048,000 in 2015, and over $6,396,000 from January 1, 2016 to the present (thus, exceeding $18 million during this time frame). Plaintiffs contend, among other things, that (1) all of the purported "Class Members…were subjected to the same misleading and deceptive conduct when they purchased [the Product], and suffered economic injury" (Complaint,¶ 113); (2) the Product "may have been worth nothing" (Complaint, ¶ 102); and (3) "Plaintiffs would not have purchased [the Product]" but for Costco's alleged actions. (Complaint, ¶ 104.) In reliance upon these and other allegations, Plaintiffs' Complaint alleges that they are entitled to various forms of relief. For example, in their first cause of action, Plaintiffs "seek an order for disgorgement and restitution of ***all monies*** from the sale of [the Product], which [Plaintiffs contend] were unjustly acquired through acts of unlawful competition." (Complaint, ¶ 131; emphasis added.) With respect to their third cause of action, Plaintiffs seek "(a) actual damages in the amount of ***the total retail sales price*** of [the Product] sold throughout the Class Period to all Class Members, (b) ***punitive damages*** in an amount sufficient to deter and punish, (c) ***injunctive relief*** in the form of modified advertising and a corrective advertising plan, (d) ***restitution***, and (e) ***attorneys' fees*** and costs." (Complaint, ¶ 144; emphasis added.) For another example, in their fourth cause of action, Plaintiffs contend that they have suffered "injury in the form of the lost purchase price that plaintiffs and Class [M]embers paid for [the Product, and that they seek] their actual damages arising as a result of Costco's [purported] breaches of express warranty."

(Complaint, ¶¶ 153, 154.) Furthermore, in their fifth cause of action, Plaintiffs claim that they have sustained "damages… in the amount of [the Product's] purchase price." (Complaint, ¶ 160.) Consequently, this requirement is also met.

7. Venue. The United States District Court for the Central District of California is the judicial district embracing the place where Case No. 30-2016-00830927-CU-BT-CXC was filed by Plaintiffs, and is therefore the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

8. There are no grounds that would justify this Court in declining to exercise jurisdiction pursuant to 28 U.S.C. §§ 1332(d)(3) or requiring it to decline to exercise jurisdiction under 28 U.S.C. §§ 1332(d)(4) or any applicable law.

WHEREFORE, Costco removes to this Court the above action pending against it in the Superior Court of California, County of Orange.

DATED: February 18, 2016

LAW OFFICE OF FRANK J. BROCCOLO

By: /s/ Frank J. Broccolo
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JAMES BOSWELL and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

Case No: 30-2016-00830927-CU-BT-CXC
Judge Kim G. Dunning

CLASS ACTION

COMPLAINT FOR:

VIOLATIONS OF CAL. BUS. & PROF. CODE §§17200 *et seq.*; CAL. BUS. & PROF. CODE §§17500 *et seq.*; CAL. CIV. CODE §§ 1750 *et seq.*; and BREACH OF EXPRESS & IMPLIED WARRANTIES.

DEMAND FOR JURY TRIAL

Plaintiffs James Boswell and Malia Levin, on behalf of themselves, all others similarly situated, and the general public, by and through their undersigned counsel, hereby sue Costco Wholesale Corporation ("Costco" or "Defendant"), and allege the following upon their own knowledge, or where they lack personal knowledge, upon information and belief, including the investigation of their counsel.

INTRODUCTION

1. Costco misleadingly labels and markets its Kirkland Coconut Oil as both inherently healthy, and a healthy alternative to butter and other oils, despite that it is actually inherently *unhealthy*, and a *less healthy* alternative.

2. Plaintiffs relied upon Costco's claims when purchasing Kirkland Coconut Oil and were damaged as a result. They bring this action challenging Costco's labeling and marketing claims relating to the Kirkland Coconut Oil on behalf of themselves, all other similarly-situated consumers in California, and the general public, alleging violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* ("UCL"), and False Advertising Law, *id.* §§ 17500 *et seq.* ("FAL"). Plaintiffs further allege that Costco breached express and implied warranties under state law.

3. Plaintiffs seek an order compelling Costco to (a) cease marketing the Kirkland Coconut Oil using the misleading tactics complained of herein, (b) conduct a corrective advertising campaign, (c) destroy all misleading and deceptive materials, (d) restore the amounts by which it has been unjustly enriched, and (e) pay restitution, damages, and punitive damages as allowed by law.

JURISDICTION & VENUE

4. The California Superior Court has jurisdiction over this matter as a result of Costco's violations of the California Business and Professions Code, California Civil Code, and California common law principles.

5. The aggregate monetary damages and restitution sought herein exceed the minimum jurisdictional limits for the Superior Court and will be established at trial, according to proof.

6. The California Superior Court also has jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law.

7. The Court has personal jurisdiction over Costco because it has significant, systematic, and continuous business operations in California, and has purposely availed itself of the benefits and privileges of conducting business activities within California.

8. Venue is proper in Orange County because plaintiff James Boswell resides in Mission Viejo, California, and a substantial part of the events or omissions giving rise to the claims occurred in Orange County.

PARTIES

9. Plaintiff James Boswell is a resident of Mission Viejo, California.

10. Plaintiff Malia Levin is a resident of Granada Hills, California.

11. Defendant Costco Wholesale Corporation is a Washington Corporation with its principal place of business in Seattle, Washington. Costco is the manufacturer, distributor, and/or marketer of Kirkland Signature Organic Coconut Oil.

12. Costco Wholesale Corporation has over 100 stores in California[1] and is registered to do business in California as entity number C1587907.

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[1] Costco, Costco Locations in California, *available at* http://www.costcohours.us/costco-locations/california.

FACTS

I. Saturated Fat Consumption Increases the Risk of Cardiovascular Heart Disease and Other Morbidity

A. The Role of Cholesterol in the Human Body

13. Cholesterol is a waxy, fat-like substance found in the body's cell walls. The body uses cholesterol to make hormones, bile acids, vitamin D, and other substances. The body synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL cholesterol, and high density lipoproteins, or HDL cholesterol.

14. LDL cholesterol is sometimes called "bad" cholesterol because it carries cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

15. HDL cholesterol is sometimes called "good" cholesterol because it takes excess cholesterol away from tissues to the liver, where it is removed from the body.

B. High Total and LDL Blood Cholesterol Levels are Associated with Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke

16. Total and LDL cholesterol blood levels are two of the most important risk factors in predicting coronary heart disease (CHD), with higher total and LDL cholesterol levels associated with increased risk of CHD.[2]

17. High LDL cholesterol levels are dangerous because "[e]levated blood LDL cholesterol increases atherosclerotic lipid accumulation in blood vessels."[3] That is, if there is

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[2] *See, e.g.*, Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) ("Heart attack and stroke risk can be largely predicted based on total and LDL cholesterol levels in people" because "as cholesterol levels increase so does one's risk of symptomatic and deadly heart disease."), *available at* http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html.

[3] USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011)

too much cholesterol in the blood, some of the excess may become trapped along artery walls. Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque narrows vessels and makes them less flexible, a condition called atherosclerosis.

18. This process can happen to the coronary arteries in the heart and restricts the provision of oxygen and nutrients to the heart, causing chest pain or angina. When atherosclerosis affects the coronary arteries, the condition is called coronary heart disease.

19. Cholesterol-rich plaques can also burst, causing a blood clot to form over the plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or debilitating heart attack or stroke.

20. Thus, "[f]or the health of your heart, lowering your LDL cholesterol is the single most important thing to do."[4]

C. Saturated Fat Consumption Causes Increased Total and LDL Blood Cholesterol Levels, Increasing the Risk of CHD and Stroke

21. The consumption of saturated fat negatively affects blood cholesterol levels because the body reacts to saturated fat by producing cholesterol. More specifically, saturated fat consumption causes CHD, among other things, "increas[ing] total cholesterol and low density lipoprotein (LDL) cholesterol."[5]

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[hereinafter, "USDA, Review of the Evidence"], *available at* http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf.

[4] Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, *available at* https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html.

[5] USDA Review of the Evidence, *supra* n.3.

22. Moreover, "[t]here is a positive linear trend between total saturated fatty acid intake and total and low density lipoprotein (LDL) cholesterol concentration and increased risk of coronary heart disease (CHD)."[6]

23. This linear relationship between saturated fat intake and risk of coronary heart disease is well established and accepted in the scientific community.

24. For example, the Institute of Medicine's Dietary Guidelines Advisory Committee "concluded there is strong evidence that dietary SFA [saturated fatty acids] increase serum total and LDL cholesterol and are associated with increased risk of CVD [cardiovascular disease]."[7]

25. In addition, "[s]everal hundred studies have been conducted to assess the effect of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL) cholesterol concentrations."[8]

26. Importantly, there is "no safe level" of saturated fat intake because "any incremental increase in saturated fatty acid intake increases CHD risk."[9]

27. For this reason, while the Institute of Medicine sets tolerable upper intake levels (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse health effects to almost all individuals in the general population, "[a] UL is not set for saturated fatty acids."[10]

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[6] Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter "IOM, Dietary Reference Intakes"], *available at* http://www.nap.edu/catalog.php?record_id=10490.

[7] USDA Review of the Evidence, *supra* n.3.

[8] IOM, Dietary Reference Intakes, *supra* n.6, at 481.

[9] *Id.* at 422.

[10] *Id.*

28. In addition, "[t]here is no evidence to indicate that saturated fatty acids are essential in the diet or have a beneficial role in the prevention of chronic diseases."[11]

29. Further, "[i]t is generally accepted that a reduction in the intake of SFA will lower TC [total cholesterol] and LDL-cholesterol."[12]

30. For these reasons, "reduction in SFA intake has been a key component of dietary recommendations to reduce risk of CVD."[13]

31. The Institute of Medicine's Dietary Guidelines for Americans, for example, "recommend reducing SFA intake to less than 10 percent of calories."[14] And "lowering the percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD."[15]

32. In short, consuming saturated fat increases the risk of CHD and stroke.[16]

D. In Contrast to Saturated Fat Consumption, the Consumption of Dietary Cholesterol has No Impact on Blood Cholesterol Levels

33. For many years, there has been a common misperception among consumers that dietary cholesterol affects blood cholesterol levels. According to the USDA and Department of Health and Human Services (DHHS), however, "available evidence shows no appreciable relationship between consumption of dietary cholesterol and serum cholesterol."[17]

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[11] *Id.* at 460.

[12] Shanthi Mendis et al., *Coconut fat and serum lipoproteins: effects of partial replacement with unsaturated fats*, 85 Brit. J. Nutr. 583, 583 (2001) [hereinafter "Mendis, Coconut fat"].

[13] USDA Review of the Evidence, *supra* n.3.

[14] *Id.*

[15] *Id.*

[16] *See* Mendis, Coconut fat, *supra* n.12, at 583.

[17] USDA & DHHS, *Dietary Guidelines for Americans*, Part D., Chapter 1, at 17 (2015) [hereinafter "USDA & DHHS, Dietary Guidelines"], *available at*

34. In fact, the USDA and DHHS have concluded that "Cholesterol is not a nutrient of concern for overconsumption."[18]

35. In contrast, the USDA and DHHS state that "[s]trong and consistent evidence from [randomized control trials] shows that replacing [saturated fats] with unsaturated fats, especially [polyunsaturated fats], significantly reduces total and LDL cholesterol."[19]

36. Therefore, the USDA and DHHS specifically recommend replacing "tropical oils (e.g., palm, palm kernel, ***and coconut oils***)" with "vegetable oils that are high in unsaturated fats and relatively low in SFA (e.g., soybean, corn, olive, and canola oils)."[20]

II. Because of its High Saturated Fat Content, the Consumption of Coconut Oil Increases the Risk of Cardiovascular Heart Disease and Other Morbidity

37. Although it is well established that diets generally high in saturated fatty acids increase the risk of CHD,[21] several studies have specifically shown that consuming coconut oil—which is approximately 90 percent saturated fat—increases the risk of CHD and stroke.

38. For example, in 2001 the British Journal of Nutrition published a 62-week intervention study that examined the "effect of reducing saturated fat in the diet . . . on the serum lipoprotein profile of human subjects."[22] The study had two intervention phases. In Phase 1 (8 weeks), "the total fat subjects consumed was reduced from 31 to 25 % energy . . .

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http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf.

[18] *Id.*

[19] *Id.* Part D, Chapter 6, at 12.

[20] *Id.* (emphasis added).

[21] *See* Mendis, Coconut fat, *supra* n.12, at 583.

[22] *Id.*

by reducing the quantity of coconut fat (CF) in the diet from 17.8 to 9.3 % energy intake."[23] "At the end of Phase 1, there was a 7.7 % reduction in cholesterol and 10.8 % reduction in LDL and no significant change in HDL and triacylglycerol."[24]

39. In Phase 2 (52 weeks), the total fat consumed by subjects was reduced from 25 to 20 % energy by reducing the coconut fat consumption from 9.3 to 4.7 % energy intake.[25] At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and an 11% mean reduction in LDL cholesterol.[26]

40. The authors of the study noted that "[a] sustained reduction in blood cholesterol concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et al. 1994)." Further, "[i]n primary prevention, a reduction of cholesterol by 20% has produced a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and 22% less total mortality (Grundy, 1997)."[27]

41. Based on these relationships, researchers estimated that "the reduction in coronary morbidity and mortality brought about by the current dietary intervention would be of the order of about 6-8 %."[28]

42. Simply put, the results of the yearlong study showed that reducing coconut oil consumption "results in a lipid profile that is associated with a low cardiovascular risk."[29]

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[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 586.

[27] *Id.* at 588.

[28] *Id.*

[29] *Id.* at 587.

43. The detrimental health effects of consuming coconut oil are not limited to long-term consumption. To the contrary, a 2006 study published in the Journal of the American College of Cardiology found that consuming a single high-fat meal containing fat from coconut oil "reduces the anti-inflammatory potential of HDL and impairs arterial endothelial function."[30] In the study, researchers examined the effect of consuming a single isocaloric meal that contained "1 g of fat/kg of body weight," with "coconut oil (fatty acid composition: 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)" as the source of fat.[31] They found that consuming the coconut oil meal significantly "reduces the anti-inflammatory potential of HDL and impairs arterial endothelial function."[32] In contrast, when the fat from the same isocaloric meal came from "safflower oil (fatty acid composition: 75% polyunsaturated, 13.6% monounsaturated, and 8.8% saturated fat)," "the anti-inflammatory activity of HDL improve[d]."[33]

44. Other studies have similarly demonstrated that coconut oil consumption negatively affects blood plasma markers when compared to other fats.

45. A 2011 study published in the American Journal of Clinical Nutrition found that consuming coconut oil, unlike consuming palm olein and virgin olive oil, decreased postprandial lipoprotein(a), which is associated with an increased the risk of cardiovascular disease.[34]

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[30] Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio. 715 (2006).

[31] *Id.*

[32] *Id.*

[33] *Id.* at 715.

[34] P.T. Voon et al., *Diets high in palmitic acid (16:0), lauric and myristic acids (12:0 + 14:0), or oleic acid (18:1) do not alter postprandial or fasting plasma homocysteine and inflammatory markers in healthy Malaysian adults*, 94 Am. J. Clin. Nutr. 1451 (2011).

46. Similarly, a study comparing the effects of consuming coconut oil, beef fat, and safflower oil found that coconut oil consumption had the worst effect on subjects' blood lipid profiles.[35] The authors noted that "[o]f these fats, only CO [coconut oil] appears to consistently elevate plasma cholesterol when compared with other fats."[36]

47. Finally, in another study, researchers found that that subjects who consumed 30 percent of energy from fat, with 66.7% coming from coconut oil, had "increased serum cholesterol, LDL, and apo B."[37] (Apo B is a protein involved in the metabolism of lipids and is the main protein constituent of VLDL (very low-density lipoproteins) and LDL. Concentrations of apo B tend to mirror those of LDL, so the higher the level of apo B, the greater the risk of heart disease.) In sum, the study found that consuming coconut oil increased all three cholesterol markers, signifying an increased risk of cardiovascular disease.[38]

III. Costco's Kirkland Signature Coconut Oil

A. Costco's Sale of Kirkland Coconut Oil

48. Costco has distributed, marketed, and sold its Kirkland Coconut Oil on a nationwide basis, including throughout California.

49. Kirkland Coconut Oil is available in pack of two 42.3 fluid ounce jars, which are sold for approximately $25 to $28.

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[35] Raymond Reiser et al., *Plasma lipid and lipoprotein response of humans to beef fat, coconut oil and safflower oil*, 42 Am. J Clin. Nutr. 190, 190 (1985).

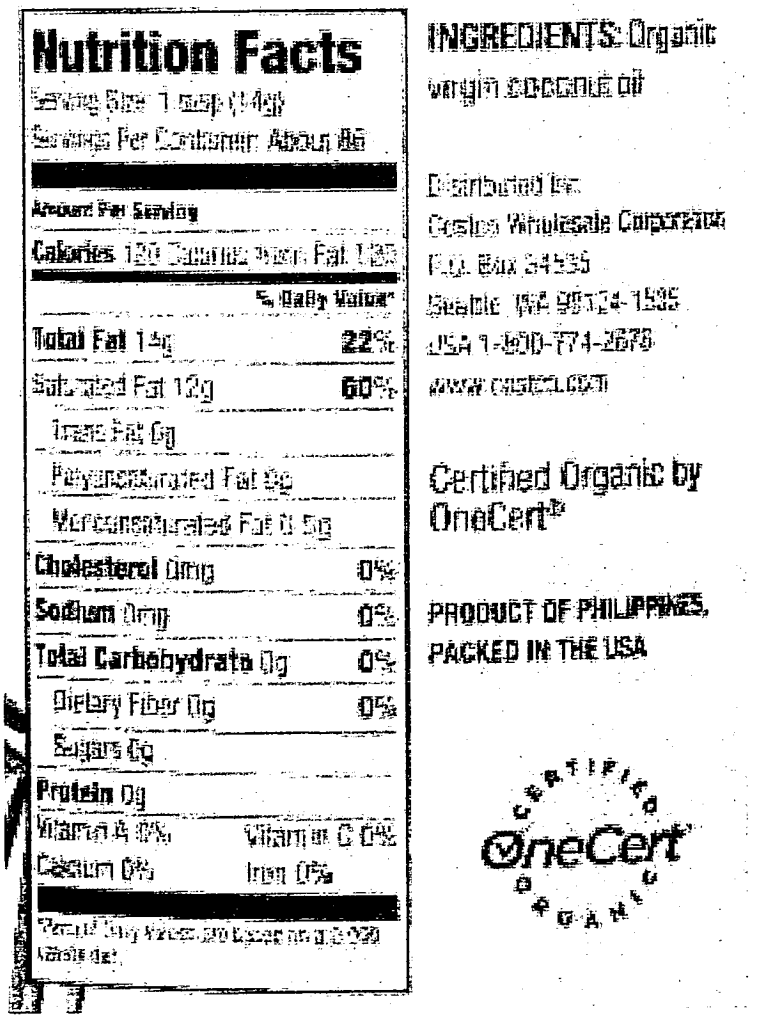
[36] *Id.*

[37] V. Ganji & C.V. Kies, *Psyllium husk fiber supplementation to the diets rich in soybean or coconut oil: hypercholesterolemic effect in healthy humans*, 47 Int. J. Food Sci. Nutr. 103 (Mar. 1996).

[38] *Id.*

B. The Composition of Costco's Kirkland Coconut Oil

50. The Nutrition Facts box and ingredient list for Costco's Kirkland Coconut Oil is depicted below.



51. Each 1 tablespoon, or 15ml serving of the Kirkland Coconut Oil contains 120 calories—all of which come from fat. In each 14-gram serving there are 14 grams of fat.

52. Further, Kirkland Coconut Oil contains 12 grams of saturated fat per 14-gram serving.

53. In other words, Kirkland coconut oil is 100% fat, 86% of which is saturated fat.

C. The Composition of Butter and Other Cooking Oils For Which Costco Claims Kirkland Coconut Oil is a Healthy Substitute

54. The USDA's National Nutrient Database for Standard Reference lists a 14-gram serving of butter as being composed of 12 grams of fat, 7 of which are saturated, 3 of which are monounsaturated, and 0.5 of which are polyunsaturated.[39]

55. The USDA's National Nutrient Database for Standard Reference lists a 14-gram serving of Canola oil as being composed of 14 grams of fat, 1 of which is saturated, 9 of which are monounsaturated, and 4 of which are polyunsaturated.[40]

56. The USDA's National Nutrient Database for Standard Reference lists a 1 tablespoon serving of Olive oil as being composed of 13.5 grams of fat, 2 of which are saturated, 10 of which are monounsaturated, and 1 of which is polyunsaturated.[41]

57. Costco's Kirkland Coconut Oil is higher in saturated fat, lower in monounsaturated fat, and lower in polyunsaturated fat, than all of these "alternatives."

58. Thus, using Kirkland Coconut Oil as a substitute for butter, margarine, canola oil, or olive oil would result in increased saturated fat consumption.

IV. Costco Markets Kirkland Coconut Oil with Misleading Health and Wellness Claims

A. Costco Strategically Markets Kirkland Coconut Oil as a Health Product

59. Costco strategically markets the Kirkland Coconut Oil as being healthy in order to increase sales.

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[39] USDA Agricultural Research Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001, Butter, salted, *available at* http://ndb.nal.usda.gov/ndb/foods.

[40] *Id.* NDB No. 04582, Oil, canola.

[41] *Id.* NDB No. 04053, Oil, olive.

60. It is well known that the average consumer is willing to pay more for healthier foods. Nielsen's 2015 Global Health & Wellness Survey, for instance, found that "88% of those polled are willing to pay more for healthier foods."[42]

61. Costco is well aware of this and therefore employs a marketing strategy intended to convince consumers that the Kirkland Coconut Oil is "healthy," despite that it is almost entirely composed of saturated fat.

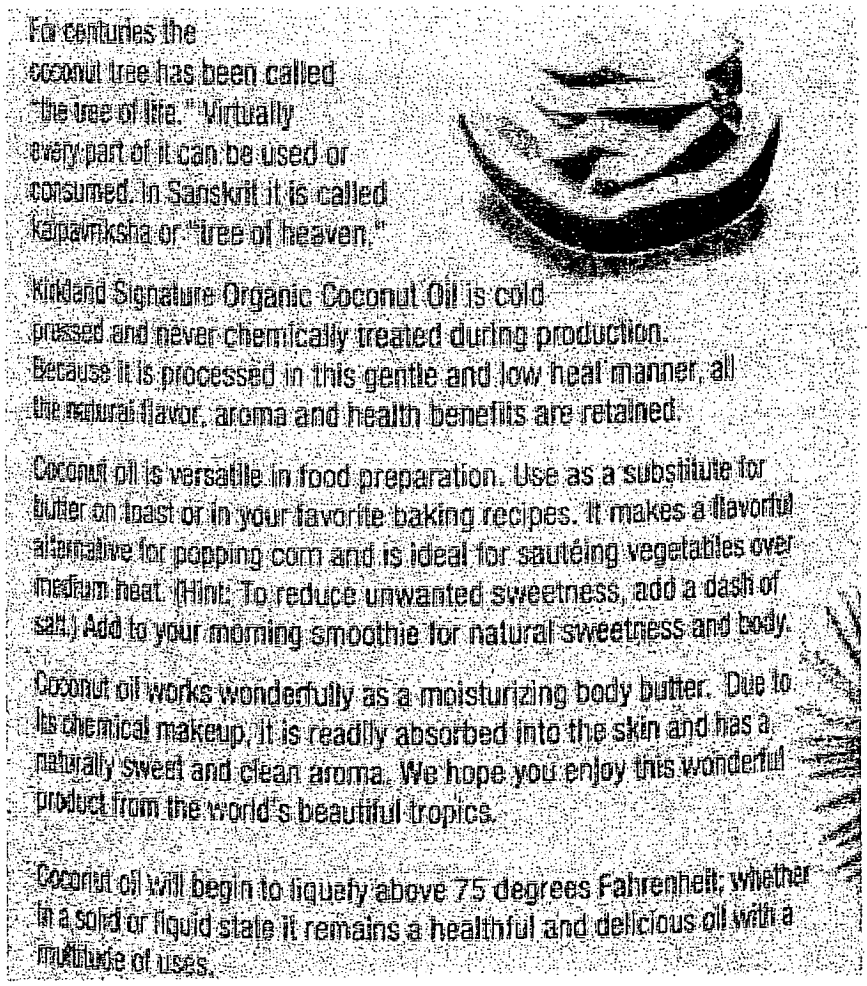
B. Costco Places Misleading Health and Wellness Claims Directly on Kirkland Coconut Oil's Label

62. Through statements placed directly on the Kirkland Coconut Oil label, Costco markets and advertises the product as both inherently healthy, and a healthy alternative to butter and other oils, despite that Kirkland Coconut Oil's total fat and saturated fat content make it unhealthy, and a less healthy alternative.

63. The front of the Kirkland Coconut Oil label is depicted below:

[42] Nancy Gagliardi, Forbes, *Consumers Want Healthy Foods--And Will Pay More For Them*, (Feb. 18, 2015) (citing Neilson, *We are what we eat, Healthy eating trends around the world*, at 11 (Jan. 2015)).

64. The back of the Kirkland Coconut Oil label is depicted below.



65. Costco deceptively markets Kirkland Coconut Oil with a variety of labeling claims intended to convince consumers that the product is healthy, and to conceal or distract from the fact Kirkland Coconut Oil is pure fat, almost all of which is saturated fat.

66. For example, on its label, Costco describes Kirkland Coconut Oil as coming from "the tree of life" and "tree of heaven," which misleadingly conveys that it is a healthy product that has healthy, life-sustaining qualities, rather than a product that adversely affects cholesterol levels and increases risk of CHD, stroke, and other morbidity.

67. Costco also claims that Kirkland Coconut Oil is healthy because of its production process. Specifically, Costco claims, that "Because it is processed in this gentle

manner . . . all . . . health benefits are retained." This claim taken individually, and especially in context of the label as a whole, is false and misleading because the Kirkland Coconut Oil contains 12 grams of saturated fat per serving, such that its consumption increases risk of cardiovascular disease, rather than benefiting health.

68. Costco further claims that Kirkland Coconut Oil, "whether in a solid or liquid state [ ] remains a healthful and delicious oil." This claim, taken individually and in context of the label as a whole, is false and misleading because the Kirkland Coconut Oil is not "healthful" given its saturated fat content.

69. The Kirkland Coconut Oil packaging also contains a number of comparisons to butter and other oils, suggesting that it is a healthier alternative. In conjunction with the express claim that Kirkland Coconut Oil is healthy, Costco recommends consumers "Use as a substitute for butter on toast or in your favorite baking recipes."

70. The Kirkland Coconut Oil label also lists a "CONVERSION CHART" displaying "1 CUP OF BUTTER = 1 CUP OF COCONUT OIL" and "1 CUP OF OIL = 1 CUP OF COCONUT OIL."

71. Costco's marketing suggests that replacing butter and other oils with Kirkland Coconut Oil is a healthy choice, despite that doing so increases consumption of saturated fat and decrease consumption of unsaturated fat, and despite that "Strong and consistent evidence from RCTs [randomized controlled trials] and statistical modeling in prospective cohort studies shows that replacing SFA with PUFA [polyunsaturated fat] reduces the risk of CVD events and coronary mortality." [43]

72. These claim taken individually and especially in context of the label as a whole are false and misleading because Kirkland Coconut Oil is not healthy, and is not a healthy alternative to butter or other cooking oils, but rather increases consumers' risk of cardiovascular diseases and other morbidity.

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[43] USDA & HHS, Dietary Guidelines for Americans, supra n.17, Part D, Chapter 6 at 12.

73. In sum, the totality of Costco's Kirkland Coconut Oil label conveys the concrete message to a reasonable consumer that the product is healthy, and a more healthful alternative to butter and other oils. Costco intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

V. Costco's Kirkland Coconut Oil Labeling Violates California and Federal Law

A. Any violation of federal food labeling statutes or regulations is a violation of California law

74. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 *et. seq.* (the "Sherman Law"), California has expressly adopted the federal food labeling requirements as its own, *see id.* § 110665 ("Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant thereto.").

75. The Federal Food Federal Food, Drug, and Cosmetic Act (FDCA) expressly authorizes state regulations, such as the Sherman Law, that are "identical to the requirement[s]" of the FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

76. Because the Sherman Law's requirements are identical to the requirements of the FDCA and its implementing regulations, the Sherman law is explicitly authorized by the FDCA.

B. Kirkland Coconut Oil's False and Misleading Labeling Claims Render it Misbranded

77. Costco's deceptive statements on the label of the Kirkland Coconut Oil violate Health & Safety Code § 109875 and 21 U.S.C. § 343(a), which deem a food product misbranded when its label contains any statement that is "false or misleading in any particular."

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78. In addition, the Kirkland Coconut Oil's label is misleading, and thus misbranded, because "it fails to reveal facts that are material in light of other representations." 21 C.F.R § 1.21.

C. Kirkland Coconut Oil is Misbranded Because it Bears Prohibited Claims that it is Healthy

79. The label of Kirkland Coconut Oil bears an implied nutrient content claim, because it bears a statement suggesting that because of its nutrient content the product may help consumers maintain healthy dietary practices, and that statement is made in connection with an implicit claim or statement about nutrients, to wit: "Kirkland Signature Organic Coconut Oil is cold pressed and never chemically treated during production. Because it is processed in this gentle and low heat manner, all the natural flavor, aroma and health benefits are retained."

80. Kirkland Coconut Oil does not meet the requirements for use of the nutrient content claim "health benefits" that are set forth in 21 C.F.R. § 101.65(d).

81. Specifically, to "use the term "healthy" or related terms (e.g., "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness")" foods must satisfy specific "conditions for fat, saturated fat, cholesterol, and other nutrients." 21 C.F.R § 101.65(d)(2).

82. Kirkland Coconut Oil, which is a food "not specifically listed" in the table contained in 21 C.F.R § 101.65(d)(2)(i), is therefore governed by section (F) of the table. *See* 101.65(d)(2)(i)(F).

83. Under 21 C.F.R. § 101.65(d)(2)(i)(F), a food must (1) be "Low fat as defined in § 101.62(b)(2)," (2) be "Low saturated fat as defined in § 101.62(c)(2)," and (3) contain "At least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber." *See* 21 C.F.R. § 101.65(d)(2)(i)(F) (incorporating by reference total fat requirement, 21 C.F.R. § 101.62(b)(2), and saturated fat requirement, 21 C.F.R. § 101.62(c)(2)).

84. Section 101.62(b)(2)(i)(B) provides the applicable definition of "low fat" for Kirkland Coconut Oil because it has a RACC of less than 30 grams.

85. Under section 101.62(b)(2)(i)(B), a food is low fat only if it "contains 3 g or less of fat per reference amount customarily consumed and per 50 g of food."

86. Kirkland Coconut Oil contains 14 grams of total fat per RACC and 50 grams of total fat per 50 grams.

87. Thus, Kirkland Coconut Oil does not meet the definition of low fat as required by section 101.65(d)(2)(i)(F).

88. Under section 101.62(c)(2), a food is "low saturated fat" only if it "contains 1 g or less of saturated fatty acids per reference amount customarily consumed and not more than 15 percent of calories from saturated fatty acids."

89. Kirkland Coconut Oil contains 12 grams of saturated fat per RACC and approximately 86% of calories come from saturated fat.

90. Thus, Kirkland Coconut Oil does not meet the definition of low saturated fat as required by section 101.65(d)(2)(i)(F).

91. Further, Kirkland Coconut Oil does not contain "at least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber."

92. Therefore, Kirkland Coconut Oil cannot bear the term "health benefits" on its label, and is accordingly misbranded.

IV. Plaintiffs' Purchase, Reliance and Injury

93. Plaintiff James Boswell believes he has purchased the Kirkland Coconut Oil approximately 4 times. He thinks that he first purchased the Kirkland Coconut Oil in or around June or July of 2014, from the Costco located at 115 Technology Drive, in Irvine, California 92618. Mr. Boswell recalls purchasing a pack of two 42.3 ounce jars for approximately $25 to $28. Mr. Boswell believes he has also purchased the Kirkland Coconut Oil from the Costco located at 27972 Cabot Road, Laguna Niguel, California 92677. Mr.

Boswell believes he purchased the Kirkland Coconut Oil most recently in or around July 2015 from the Costco located at 115 Technology Drive, in Irvine.

94. Plaintiff Malia Levin believes she has purchased the Kirkland Coconut Oil approximately 10 times. To the best of her recollection, she first purchased the Kirkland Coconut Oil approximately three years ago from the Costco located at 6100 Sepulveda Boulevard, in Van Nuys, California 91411. She believes she purchased a pack of two 42.3 ounce jars for approximately $26. Ms. Levin believes she purchased the Kirkland Coconut Oil most recently between March and June of 2015 from the same Costco located at 6100 Sepulveda Boulevard.

95. When deciding to purchase Kirkland Coconut Oil, plaintiffs relied on the following labeling claims:

a. "For centuries the coconut tree has been called 'the tree of life'"

b. "In Sanskrit it is called kalpavriksha or 'tree of heaven'"

c. "whether in a solid or liquid state it remains a healthful and delicious oil"

d. "Because it is processed in this gentle manner . . . all . . . health benefits are retained"

e. "Use as a substitute for butter" and

f. "CONVERSION CHART" displaying "1 CUP OF BUTTER = 1 CUP OF COCONUT OIL" and "1 CUP OF OIL = 1 CUP OF COCONUT OIL."

96. Based on these representations, plaintiffs believed Kirkland Coconut Oil was healthy, healthier than butter and other oils, and would not raise or otherwise detriment their blood cholesterol levels or cause increased risk of CHD, stroke, or other morbidity.

97. When purchasing Kirkland Coconut Oil, plaintiffs were seeking a product that had the qualities described on the Kirkland Coconut Oil label, namely, a healthy oil that was healthier than butter and other cooking oils, and which would not increase risk of CHD, stroke, and other morbidity.

98. These representations, however, were false and misleading, and had the capacity, tendency, and likelihood to confuse or confound plaintiffs and other consumers acting reasonably (including the putative Class members) because, as described in detail herein, Kirkland Coconut Oil is not healthy, but instead its consumption increases the risk of CHD, stroke, and other morbidity.

99. Plaintiffs are not nutritionists, food experts, or food scientists, but rather lay consumers who did not have the specialized knowledge that Costco had. Plaintiffs acted reasonably in relying on the health and wellness claims that Costco intentionally placed on Kirkland Coconut Oil's label with the intent to induce average consumers into purchasing the product.

100. Costco's Kirkland Coconut Oil costs more than similar products without misleading labeling, and would have cost less absent the false and misleading statements complained of herein.

101. Plaintiffs paid more for Kirkland Coconut Oil, and would only have been willing to pay less, or unwilling to purchase it at all, absent the false and misleading labeling.

102. For these reasons, Costco's Kirkland Coconut Oil was worth less than what Plaintiffs paid for it, and may have been worth nothing given its high total fat and saturated fat content, subjecting plaintiffs to increased risk of CHD, stroke, and other morbidity.

103. Instead of receiving a product that had actual healthful qualities, Plaintiffs and the Class received a coconut oil which is not healthy, but rather its consumption causes increased risk of CHD, stroke, and other morbidity.

104. Plaintiffs would not have purchased the Kirkland Coconut Oil if they knew it is misbranded pursuant to California and FDA regulations, or that its labeling claims were false.

105. Plaintiffs lost money as a result of Costco's deceptive claims and practices in that they did not receive what they paid for when purchasing Kirkland Coconut Oil.

106. Plaintiffs detrimentally altered their position and suffered damages in an amount equal to the amount they paid for the Kirkland Coconut Oil, or at least some portion thereof.

107. The senior officers and directors of Costco allowed the Kirkland Coconut Oil to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

CLASS ACTION ALLEGATIONS

108. California Code of Civil Procedure section 382 provides that "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

109. While reserving the right to redefine or amend the class definition prior to seeking class certification, plaintiffs bring this suit as a class action pursuant to Cal. Code Civ. P. § 382 on behalf of themselves and a Class of all persons in the California who, on or after from January 15, 2012 (the "Class Period"), purchased, for personal or household use, and not for resale or distribution purposes Costco's Kirkland Coconut Oil (the "Class").

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

111. Questions of law and fact common to plaintiffs and the Class include:

a. whether Costco communicated a message regarding healthfulness of Kirkland Coconut Oil through its packaging and advertising;

b. whether that message was material, or likely to be material, to a reasonable consumer;

c. whether the challenged claims are false, misleading, or reasonably likely to deceive a reasonable consumer because of the high total and saturated fat content of Kirkland Coconut Oil;

d. whether Costco's conduct violates public policy;

e. whether Costco's conduct violates state or federal food statutes or regulations;

f. the proper amount of damages, including punitive damages;

g. the proper amount of restitution;

h. the proper scope of injunctive relief; and

i. the proper amount of attorneys' fees.

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

113. Plaintiffs' claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Costco's conduct. Specifically, all Class Members, including plaintiffs, were subjected to the same misleading and deceptive conduct when they purchased Kirkland Coconut Oil, and suffered economic injury because Kirkland Coconut Oil product is misrepresented. Absent Costco's business practice of deceptively and unlawfully labeling Kirkland Coconut Oil, plaintiffs and Class members would not have purchased the product.

114. Plaintiffs will fairly and adequately represent and protect the interests of the Class, have no interests incompatible with the interests of the Class, and have retained counsel competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising of foods.

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

116. Questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

117. Costco has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law,

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

118. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

119. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

120. The acts, omissions, misrepresentations, practices, and non-disclosures of Costco as alleged herein constitute business acts and practices.

Fraudulent

121. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test.

122. As set forth herein, the Costco's claims relating to Kirkland Coconut Oil are likely to deceive reasonable consumers and the public.

Unlawful

123. The acts alleged herein are "unlawful" under the UCL in that they violate at least the following laws:

- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*
- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and
- The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*

Unfair

124. Costco's conduct with respect to the labeling, advertising, and sale of Kirkland Coconut Oil was unfair because Costco's conduct was immoral, unethical, unscrupulous, or

substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

125. Costco's conduct with respect to the labeling, advertising, and sale of Kirkland Coconut Oil was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

126. Costco's conduct with respect to the labeling, advertising, and sale of Kirkland Coconut Oil was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

127. Costco profited from its sale of the falsely, deceptively, and unlawfully advertised Kirkland Coconut Oil to unwary consumers.

128. Plaintiffs and Class Members are likely to be damaged by Costco's deceptive trade practices, as Costco continues to disseminate misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

129. Costco's conduct caused and continues to cause substantial injury to plaintiffs and the other Class Members, who have suffered injury in fact as a result of Costco's unlawful conduct.

130. In accordance with Bus. & Prof. Code § 17203, plaintiffs, on behalf of themselves, the Class, and the general public, seek an order enjoining Costco from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

131. Plaintiffs, on behalf of themselves and the Class also seek an order for disgorgement and restitution of all monies from the sale of Kirkland Coconut Oil, which were unjustly acquired through acts of unlawful competition.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law,

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

132. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

133. Under the FAL, "[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services" to disseminate any statement "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

134. It is also unlawful under the FAL to disseminate statements concerning property or services that are "untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." *Id.*

135. As alleged herein, the advertisements, labeling, policies, acts, and practices of Costco relating to its Kirkland Coconut Oil misled consumers acting reasonably as to the healthfulness of Kirkland Coconut Oil.

136. Plaintiffs suffered injury in fact as a result of Costco's actions as set forth herein because plaintiffs purchased Kirkland Coconut Oil in reliance on Costco's false and misleading marketing claims that the product, among other things, is inherently healthy, is healthier than butter and other oils, and does not negatively affect blood cholesterol levels.

137. Costco's business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Costco has advertised the Kirkland Coconut Oil in a manner that is untrue and misleading, which Costco knew or reasonably should have known.

138. Costco profited from its sales of the falsely and deceptively advertised Kirkland Coconut Oil to unwary consumers.

139. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiffs and the Class are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Costco was unjustly enriched.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

140. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

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

142. Costco's false and misleading labeling and other policies, acts, and practices described herein were designed to, and did, induce the purchase and use of Costco's Kirkland Coconut Oil for personal, family, or household purposes by plaintiffs and other Class Members, and violated and continue to violate at least the following sections of the CLRA:

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

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

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

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

143. Costco profited from its sales of the falsely, deceptively, and unlawfully advertised Kirkland Coconut Oil to unwary consumers.

144. As a result, plaintiffs and the Class have suffered harm, and therefore seek (a) actual damages in the amount of the total retail sales price of the Kirkland Coconut Oil sold

throughout the Class Period to all Class Members, (b) punitive damages in an amount sufficient to deter and punish, (c) injunctive relief in the form of modified advertising and a corrective advertising plan, (d) restitution, and (e) attorneys' fees and costs.

145. Costco's wrongful business practices regarding the Kirkland Coconut Oil constituted, and constitute, a continuing course of conduct in violation of the CLRA.

146. Pursuant to California Civil Code § 1782, on or around December 10, 2015, plaintiff Malia Levin notified Costco in writing by certified mail, return receipt requested of their claims and the particular violations of § 1770 of the Act, but Costco failed to remedy the violations within 30 days thereafter.

147. Plaintiffs, on behalf of themselves and the Class, seek injunctive relief under Civil Code § 1782(d).

148. In addition, because Costco failed to implement remedial measures, plaintiff Malia Levin only, on behalf of herself and the Class, seeks actual and punitive damages, including attorneys' fees.

149. In compliance with Cal. Civ. Code § 1782(d), plaintiffs' affidavits of venue are filed concurrently herewith, attached to the Complaint.

FOURTH CAUSE OF ACTION

Breaches of Express Warranties,

Cal. Com. Code § 2313(1)

150. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

151. Through the Kirkland Coconut Oil label, Costco made affirmations of fact or promises, or description of goods, which were "part of the basis of the bargain," in that plaintiffs and the Class purchased the product in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

152. Costco breached its express warranties by selling a product that is not healthy, not healthier than butter or other oils, and that negatively affects cholesterol levels, increasing risk of CHD, stroke, and other morbidity.

153. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiffs and Class members paid for Kirkland Coconut Oil.

154. As a result, plaintiffs seek, on behalf of themselves and other Class Members, their actual damages arising as a result of Costco's breaches of express warranty.

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability,

Cal. Com. Code § 2314

155. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

156. Costco, through its acts set forth herein, in the sale, marketing, and promotion of Kirkland Coconut Oil, made representations to plaintiffs and the Class that, among other things, the product is healthy.

157. Costco is a merchant with respect to the goods of this kind which were sold to plaintiffs and the Class, and there was, in the sale to plaintiffs and other consumers, an implied warranty that those goods were merchantable.

158. However, Costco breached that implied warranty in that Kirkland Coconut Oil is not healthy, is not healthier than butter or other oils, and negatively affects cholesterol levels, increasing risk of CHD and stroke, as set forth in detail herein.

159. As an actual and proximate result of Costco's conduct, plaintiffs and the Class did not receive goods as impliedly warranted by Costco to be merchantable in that they did not conform to promises and affirmations made on the container or label of the goods.

160. Plaintiffs and the Class have sustained damages as a proximate result of the foregoing breach of implied warranty in the amount of Kirkland Coconut Oil's purchase price.

PRAYER FOR RELIEF

161. Wherefore, plaintiffs, on behalf of themselves, all others similarly situated, and the general public, pray for judgment against Costco as to each and every cause of action, and the following remedies:

A. An Order declaring this action to be a proper class action, appointing plaintiffs as class representatives, and appointing undersigned counsel as class counsel;

B. An Order requiring Costco to bear the cost of class notice;

C. An Order enjoining Costco from using any challenged labeling or marketing claim that is found to be false, misleading, or unlawful;

D. An Order compelling Costco to conduct a corrective advertising campaign;

E. An Order compelling Costco to destroy all misleading and deceptive advertising materials and Kirkland Coconut Oil labels;

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

G. An award of attorneys' fees and costs;

H. An Order requiring Costco to pay compensatory damages where permitted by law; and

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

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: January 20, 2016

/s/ Paul K. Joseph

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Attorneys for Plaintiffs and the Proposed Class

9:25 1/20/16

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

COSTCO WHOLESALE CORPORATION

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

JAMES BOSWELL and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
01/20/2016 at 02:48:07 PM
Clerk of the Superior Court
By Sarah Loose,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): Orange County Superior Court
Civil Complex Center; 751 West Santa Ana Blvd., Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):
30-2016-00830927-CU-BT-CXC

Judge Kim G. Dunning

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):
Jack Fitzgerald; 3636 Fourth Ave., Suite 202, San Diego, CA 92103; 619-692-3840

DATE: 01/20/2016
(Fecha)

ALAN CARLSON, Clerk of the Court
Clerk, by *(Secretario)* Sarah Loose, Deputy *(Adjunto)*

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

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):* Costco Wholesale Corporation
   under: ☑ CCP 416.10 (corporation)
   ☐ CCP 416.20 (defunct corporation)
   ☐ CCP 416.40 (association or partnership)
   ☐ other *(specify):*
   ☐ CCP 416.60 (minor)
   ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.90 (authorized person)
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

EXHIBIT 2

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

COSTCO WHOLESALE CORPORATION

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

JAMES BOSWELL and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
01/20/2016 at 02:48:07 PM
Clerk of the Superior Court
By Sarah Loose,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): Orange County Superior Court
Civil Complex Center; 751 West Santa Ana Blvd., Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):
30-2016-00830927-CU-BT-CXC

Judge Kim G. Dunning

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):
Jack Fitzgerald; 3636 Fourth Ave., Suite 202, San Diego, CA 92103; 619-692-3840

DATE: 01/20/2016
(Fecha)

ALAN CARLSON, Clerk of the Court
Clerk, by
(Secretario) Sarah Loose , Deputy
(Adjunto)

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

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):* Costco Wholesale Corporation
   under: ☑ CCP 416.10 (corporation)
   ☐ CCP 416.20 (defunct corporation)
   ☐ CCP 416.40 (association or partnership)
   ☐ other *(specify):*
   ☐ CCP 416.60 (minor)
   ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.90 (authorized person)
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

EXHIBIT 2

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)
The Law Office of Jack Fitzgerald, PC
Jack Fitzgerald (SBN 257370)
3636 Fourth Ave., Suite 202
San Diego, CA 92103
TELEPHONE NO: 619-692-3840 FAX NO
ATTORNEY FOR (Name): Plaintiffs James Boswell and Malia Levin

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
01/20/2016 at 02:48:07 PM
Clerk of the Superior Court
By Sarah Loose,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 751 West Santa Ana Blvd.
MAILING ADDRESS: 751 West Santa Ana Blvd.
CITY AND ZIP CODE: Santa Ana 92701
BRANCH NAME: Civil Complex Center

CASE NAME:
James Boswell and Malia Levin v. Costco Wholesale Corporation

CIVIL CASE COVER SHEET
☑ **Unlimited** (Amount demanded exceeds $25,000)
☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
30-2016-00830927-CU-BT-CXC

JUDGE: Judge Kim G. Dunning
DEPT: CX104

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
☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☑ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☐ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ 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. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☑ 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)*:
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: January 20, 2016
Jack Fitzgerald
(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.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

EXHIBIT 3

THE LAW OFFICE OF PAUL K. JOSEPH, PC
PAUL K. JOSEPH (287057)
paul@pauljosephlaw.com
4125 W. Pt. Loma Blvd. No. 206
San Diego, CA 92110
Phone: (619) 767-0356
Fax: (619) 331-2943

THE LAW OFFICE OF JACK FITZGERALD, PC
JACK FITZGERALD (SBN 257370)
jack@jackfitzgeraldlaw.com
TREVOR M. FLYNN (SBN 253362)
trevor@jackfitzgeraldlaw.com
MELANIE PERSINGER (SBN 275423)
melanie@jackfitzgeraldlaw.com
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, California 92103
Phone: (619) 692-3840
Fax: (619) 362-9555
Counsel for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JAMES BOSWELL and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a Washington Corporation,

Defendant.

30-2016-00830927-CU-BT-CXC

Judge Kim G. Dunning

CONSUMERS LEGAL REMEDIES ACT VENUE AFFIDAVIT [CCP § 1780(d)]

I, James Boswell, declare as follows:

1. I am the Plaintiff in this action. I make this affidavit as required by California Civil Code § 1780(d).

2. The Complaint in this action is filed in a proper place for the trial of this action because defendant is doing business in this county.

3. The Complaint in this action is further filed in a proper place for the trial of this action because the transactions that are the subject of the action occurred in this county.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 13th day of January, 2016, at Mission Viejo, California.

James Boswell

THE LAW OFFICE OF PAUL K. JOSEPH, PC
PAUL K. JOSEPH (287057)
paul@pauljosephlaw.com
4125 W. Pt. Loma Blvd. No. 206
San Diego, CA 92110
Phone: (619) 767-0356
Fax: (619) 331-2943

THE LAW OFFICE OF JACK FITZGERALD, PC
JACK FITZGERALD (SBN 257370)
jack@jackfitzgeraldlaw.com
TREVOR M. FLYNN (SBN 253362)
trevor@jackfitzgeraldlaw.com
MELANIE PERSINGER (SBN 275423)
melanie@jackfitzgeraldlaw.com
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, California 92103
Phone: (619) 692-3840
Fax: (619) 362-9555
Counsel for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JAMES BOSWELL and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a Washington Corporation,

Defendant.

30-2016-00830927-CU-BT-CXC

Judge Kim G. Dunning

CONSUMERS LEGAL REMEDIES ACT VENUE AFFIDAVIT [CCP § 1780(d)]

I, Malia Levin, declare as follows:

1. I am the Plaintiff in this action. I make this affidavit as required by California Civil Code § 1780(d).

2. The Complaint in this action is filed in a proper place for the trial of this action because defendant is doing business in this county.

3. The Complaint in this action is further filed in a proper place for the trial of this action because the transactions that are the subject of the action occurred in this county.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of January, 2016, at Granada Hills, California.

Malia Levin

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO: FAX NO *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
CASE MANAGEMENT STATEMENT *(Check one):* ☐ **UNLIMITED CASE** (Amount demanded exceeds $25,000) ☐ **LIMITED CASE** (Amount demanded is $25,000 or less)	CASE NUMBER:

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: Time: Dept.: Div.: Room:

Address of court *(if different from the address above)*:

☐ **Notice of Intent to Appear by Telephone, by *(name)*:**

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. ☐ This statement is submitted by party *(name)*:
   b. ☐ This statement is submitted **jointly** by parties *(names)*:

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*:
   b. ☐ The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
   b. ☐ The following parties named in the complaint or cross-complaint
      (1) ☐ have not been served *(specify names and explain why not)*:
      (2) ☐ have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) ☐ have had a default entered against them *(specify names)*:
   c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and date by which they may be served)*:

4. **Description of case**
   a. Type of case in ☐ complaint ☐ cross-complaint *(Describe, including causes of action)*:

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. July 1, 2011]

Cal. Rules of Court, rules 3 720–3 730
www courts ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☐ days *(specify number):*
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. E-mail address:
f. Fax number:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative dispute resolution (ADR)**
a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
b. **Referral to judicial arbitration or civil action mediation** (if available).
(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in *(check all that apply and provide the specified information)*:

	The party or parties completing this form **are willing** to participate in the following ADR processes *(check all that apply)*:	If the party or parties completing this form in the case **have agreed** to participate in or have already completed an ADR process or processes, indicate the status of the processes *(attach a copy of the parties' ADR stipulation)*:
(1) Mediation	☐	☐ Mediation session not yet scheduled ☐ Mediation session scheduled for (*date*): ☐ Agreed to complete mediation by (*date*): ☐ Mediation completed on (*date*):
(2) Settlement conference	☐	☐ Settlement conference not yet scheduled ☐ Settlement conference scheduled for (*date*): ☐ Agreed to complete settlement conference by (*date*): ☐ Settlement conference completed on (*date*):
(3) Neutral evaluation	☐	☐ Neutral evaluation not yet scheduled ☐ Neutral evaluation scheduled for (*date*): ☐ Agreed to complete neutral evaluation by (*date*): ☐ Neutral evaluation completed on (*date*):
(4) Nonbinding judicial arbitration	☐	☐ Judicial arbitration not yet scheduled ☐ Judicial arbitration scheduled for (*date*): ☐ Agreed to complete judicial arbitration by (*date*): ☐ Judicial arbitration completed on (*date*):
(5) Binding private arbitration	☐	☐ Private arbitration not yet scheduled ☐ Private arbitration scheduled for (*date*): ☐ Agreed to complete private arbitration by (*date*): ☐ Private arbitration completed on (*date*):
(6) Other (*specify*):	☐	☐ ADR session not yet scheduled ☐ ADR session scheduled for (*date*): ☐ Agreed to complete ADR session by (*date*): ☐ ADR completed on (*date*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. **Insurance**
    a. ☐ Insurance carrier, if any, for party filing this statement *(name):*
    b. Reservation of rights: ☐ Yes ☐ No
    c. ☐ Coverage issues will significantly affect resolution of this case *(explain):*

12. **Jurisdiction**
    Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.
    ☐ Bankruptcy ☐ Other *(specify):*
    Status:

13. **Related cases, consolidation, and coordination**
    a. ☐ There are companion, underlying, or related cases.
        (1) Name of case:
        (2) Name of court:
        (3) Case number:
        (4) Status:
        ☐ Additional cases are described in Attachment 13a.
    b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by *(name party):*

14. **Bifurcation**
    ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

15. **Other motions**
    ☐ The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*

16. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☐ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date

    c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated *(specify):*

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. **Economic litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

18. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

19. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*

20. Total number of pages attached *(if any):* _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statues of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May <u>Not</u> Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May <u>Not</u> Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the telephone directories under "Arbitrators" or "Mediators"

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA) For information regarding DRPA, contact:

- Community Service Programs, Inc. (949) 250-4058
- Orange County Human Relations (714) 480-6572

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of $300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of $300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) programs is available on the Court's website at www.occourts.org.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name & Address)*:	*FOR COURT USE ONLY*
Telephone No.: Fax No. (Optional): E-Mail Address (Optional): ATTORNEY FOR *(Name)*: Bar No:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: ☐ Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 ☐ Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 ☐ Harbor – Newport Beach Facility – 4601 Jamboree Rd., Newport Beach, CA 92660-2595 ☐ North – 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92838-0500	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION	CASE NUMBER:

Plaintiff(s)/Petitioner(s),_____

_____

and defendant(s)/respondent(s), _____

_____

agree to the following dispute resolution process:

☐ Mediation

☐ Arbitration (must specify code)
- ☐ Under section 1141.11 of the Code of Civil Procedure
- ☐ Under section 1280 of the Code of Civil Procedure

☐ Neutral Case Evaluation

The ADR process must be completed no later than 90 days after the date of this Stipulation or the date the case was referred, whichever is sooner.

☐ I have an *Order on Court Fee Waiver* (FW-003) on file, and the selected ADR Neutral(s) are eligible to provide pro bono services.

☐ The ADR Neutral Selection and Party List is attached to this Stipulation.

We understand that there may be a charge for services provided by neutrals. We understand that participating in an ADR process does not extend the time periods specified in California Rules of Court rule 3.720 et seq.

Date: _____ _____ _____
(SIGNATURE OF PLAINTIFF OR ATTORNEY) (SIGNATURE OF PLAINTIFF OR ATTORNEY)

Date: _____ _____ _____
(SIGNATURE OF DEFENDANT OR ATTORNEY) (SIGNATURE OF DEFENDANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Jack Fitzgerald (SBN 257370)
THE LAW OFFICE OF JACK FITZGERALD, PC
3636 Fourth Ave., Suite 202
San Diego, CA 92103
TELEPHONE NO.: 619-692-3840 FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
01/27/2016 at 11:00:00 AM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, FOR THE COUNTY OF ORANGE
STREET ADDRESS: 751 West Santa Ana Boulevard
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92702
BRANCH NAME: Civil Complex Center

PLAINTIFF/PETITIONER: JAMES BOSWELL AND MALIA LEVIN, ET AL.
DEFENDANT/RESPONDENT: COSTCO WHOLESALE CORPORATION, A WASHINGTON CORPO

CASE NUMBER: 30-2016-00830927-CU-BT-CXC

PROOF OF SERVICE OF SUMMONS

Ref. No. or File No.: ıes Boswell Vs. Costco Wholesale Corporat

(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):

Consumers Legal Remedies Act Venue Affidavit [CCP 1780(d)]; Case Management Statement (Blank)

3. a . Party served (specify name of party as shown on documents served):
Costco Wholesale Corporation, a Washington Corporation

   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) (specity name and relationship to the party named in item 3a):
Gladys Aguilar - Person Authorized to Accept

4. Address where the party was served: **c/o CT Corporation System, 818 West 7th Street, Suite 930**
Los Angeles, CA 90017

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): **1/22/2016** (2) at (time): **9:25 AM**
   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.

Form Adopted for Mandatory Use
Judicial Council of California
POS-010 [Rev. January 1, 2007]

PROOF OF SERVICE OF SUMMONS

Code of Civil Procedure, § 417.10
414241

EXHIBIT 8

PLAINTIFF/PETITIONER: JAMES BOSWELL AND MALIA LEVIN, ET AL.	CASE NUMBER:
DEFENDANT/RESPONDENT: COSTCO WHOLESALE CORPORATION, A WASHINGTON CORPO	30-2016-00830927-CU-BT-CXC

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 Acknowledment of Receipt and postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement 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):
   Costco Wholesale Corporation, a Washington Corporation
   under the following Code of Civil Procedure section:
   - ☑ 416.10 (corporation)
   - ☐ 416.20 (defunct corporation)
   - ☐ 416.30 (joint stock company/association)
   - ☐ 416.40 (association or partnership)
   - ☐ 416.50 (public entity)
   - ☐ 415.95 (business organization, form unknown)
   - ☐ 416.60 (minor)
   - ☐ 416.70 (ward or conservatee)
   - ☐ 416.90 (authorized person)
   - ☐ 415.46 (occupant)
   - ☐ other:

7. **Person who served papers**
   a. Name: **Thomas Miller**
   American Messenger Service, Inc.
   b. Address: **205 S. Broadway, Suite 925 Los Angeles, CA 90012**
   c. Telephone Number: **(866) 444-0891**
   d. **The fee** for service was: $ $94.70
   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.: **20130634464**
   (iii) County: **Los Angeles**

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: **Tuesday, January 26, 2016**

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

Thomas A. Miller Jr.
(SIGNATURE)

SUPERIOR COURT OF CALIFORNIA

ORANGE

751 W. Santa Ana Blvd

Santa Ana , CA 92701

(657) 622-5300

www.occourts.org

NOTICE OF CASE ASSIGNMENT

Case Number: **30-2016-00830927-CU-BT-CXC**

Your case has been assigned for all purposes to the judicial officer indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action.

ASSIGNED JUDGE	COURT LOCATION	DEPARTMENT/ROOM	PHONE
Hon. Kim G. Dunning	Civil Complex Center	CX104	(657) 622-5300
Hearing:	**Date:**	**Time:**	
JUDGE	**COURT LOCATION**	**DEPARTMENT/ROOM**	**PHONE**
Hon.			

[x] ADR Information attached.

SCHEDULING INFORMATION

Judicial Scheduling Calendar Information

Individual courtroom information and the items listed below may be found at: www.occourts.org.

Case Information, Court Local Rules, filing fees, forms, Civil Department Calendar Scheduling Chart, Department phone numbers, Complex Civil E-filing, and Road Map to Civil Filings and Hearings.

Ex Parte Matters

Rules for Ex Parte Applications can be found in the California Rules of Court, rules 3.1200 through 3.1207 at: www.courtinfo.ca.gov. Trials that are in progress have priority; therefore, you may be required to wait for your ex parte hearing.

Noticed Motions

* The following local Orange County Superior Court rules are listed for your convenience:
  - Rule 307 - Telephonic Appearance Litigants - Call CourtCall, LLC at (310) 914-7884 or (888) 88-COURT.
  - Rule 380 - Fax Filing, Rule 450 - Trial Pre-Conference (Unlimited Civil)
* All Complex Litigation cases are subject to mandatory Electronic Filing, unless excused by the Court.
* Request to Enter Default and Judgment are strongly encouraged to be filed as a single packet.

Other Information

Hearing dates and times can be found on the Civil Department Calendar Scheduling Chart.

All fees and papers must be filed in the Clerk's Office of the Court Location address listed above.

Date: 01/20/2016

Sarah Stone, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

751 W. Santa Ana Blvd
Santa Ana, CA 92701

PAYMENT RECEIPT

E-Filing Transaction #: 4492443

Receipt #: 11732565

Clerk ID: sloose **Transaction No:** 11908348 **Transaction Date:** 01/20/2016 **Transaction Time:** 03:36:32 PM

Case Number	Fee Type	Qty	Fee Amount$	Balance Due	Amount Paid	Remaining Balance
30-2016-00830927-CU-BT-CXC	194 - Complaint or other 1st paper	1	$435.00	$435.00	$435.00	$0.0
30-2016-00830927-CU-BT-CXC	34 - Complex Case Fee - Plaintiff	1	$1,000.00	$1,000.00	$1,000.00	$0.0

Sales Tax:	$0.00		
Total:	**$1,435.00**	**Total Rem. Bal:**	**$0.0**
E-Filing:	$1,435.00		
Total Amount Tendered:	$1,435.00		
Change Due:	**$0.00**		
Balance:	**$0.00**		

$45 will be charged for each returned check. www.occourts.org

ORIGINAL