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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No: _____

TROY BACKUS, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

CONAGRA FOODS, INC.

Defendant.

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 WARRANTIES

DEMAND FOR JURY TRIAL

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1 Plaintiff Troy Backus, on behalf of himself, all others similarly situated, and the general public,
2 by and through his undersigned counsel, hereby sues Defendant ConAgra Foods, Inc. ("ConAgra" or
3 "Defendant"), and upon information and belief and investigation of counsel, alleges as follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2) (The
6 Class Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000
7 exclusive of interest and costs and because more than two-thirds of the members of the class defined
8 herein reside in states other than the state of which ConAgra resides.

9 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff resides in
10 and suffered injuries as a result of ConAgra's acts in this District many of the acts and transactions
11 giving rise to this action occurred in this Districts and ConAgra: (1) is authorized to conduct business in
12 this District and has intentionally availed itself of the laws and markets of this District through the
13 distribution and sale of its products in this District; and (2) is subject to personal jurisdiction in this
14 District.

15 **II. INTRADISTRICT ASSIGNMENT**

16 3. This civil action arises out of the events and omissions of Defendant ConAgra Foods,
17 Inc., which occurred in Marin County, California. Pursuant to Civil Local Rule 3-2(c), this action
18 should be assigned to the San Francisco or the Oakland Division. Plaintiff requests the San Francisco
19 Division as it is closer to his home in Marin County.

20 **III. NATURE OF THE ACTION**

21 4. ConAgra manufactures, markets, distributes and sells a large variety of margarine and
22 vegetable oil spread products under the brand name Fleischmann's that contain partially hydrogenated
23 oil (collectively the "Products").

24 5. PHO is a food additive banned in many parts of the world due to its artificial trans fat
25 content.

26 6. Artificial trans fat is a toxin and carcinogen for which there are many safe and
27 commercially viable substitutes.
28

7. ConAgra uses various marketing methods to falsely represent Fleischmann's as healthful and not harmful to the cardiovascular system, but Fleischmann's contains dangerous levels of PHO, and thus trans fat.

8. On June 17, 2015, the FDA determined that PHO is unsafe for use in food. *See* 80 Fed. Reg. 34650 (June 17, 2015) (hereinafter “FDA Final PHO Determination”). Yet ConAgra continues to incorporate this illegal, dangerous additive into Fleischmann’s, even after the FDA tentatively, and then finally declared it unsafe for use in food, rendering products made with PHO unlawful and adulterated.

9. Although safe, low-cost, and commercially acceptable alternatives to PHO exist, including those used in competing brands and even in other ConAgra products, ConAgra unfairly elects *not* to use these safe alternatives in Fleischmann's in order to increase profit at the expense of the health of consumers.

10. Fleischmann's labeling further violates specific FDA regulations, as described in detail herein.

11. Additionally, ConAgra misleadingly markets Fleischmann's with health claims. This false advertising deceives consumers into purchasing a product that is harmful to their health.

12. Plaintiff Troy Backus repeatedly purchased and consumed Fleischmann's during the Class Period defined herein.

13. This action is brought to remedy ConAgra's unfair, deceptive, immoral and unlawful conduct. On behalf of the class defined herein, Plaintiff seeks an order compelling ConAgra to, *inter alia*: (1) cease marketing and selling Fleischmann's using the false, misleading, deceptive, and unconscionable tactics complained of herein; (2) conduct a corrective advertising campaign; (3) destroy all misleading and deceptive materials and products; (4) cease using artificial trans fat as an ingredient in Fleischmann's; (5) award Plaintiff and the Class members restitution, actual damages, and punitive damages to the extent permitted under the law; and (6) pay costs, expenses, and reasonable attorneys' fees.

IV. PARTIES

14. Defendant ConAgra is a Nebraska corporation with its principal place of business in Omaha, NE. ConAgra owns, manufactures and sells Fleischmann's.

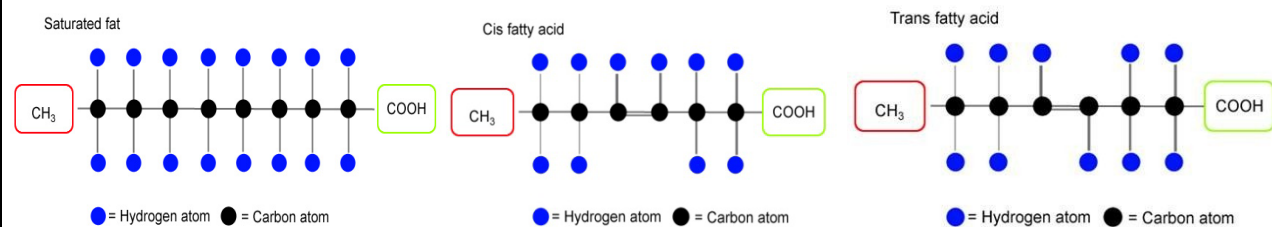
15. Plaintiff Troy Backus is a resident of Marin County, California who repeatedly purchased Fleischmann's for personal and household consumption.

V. NATURE OF TRANS FAT

Artificial trans fat is a toxic, unlawful food additive manufactured via an industrial process called partial hydrogenation, in which hydrogen atoms are added to normal vegetable oil by heating the oil to temperatures above 400°F in the presence of ion donor catalyst metals such as rhodium, ruthenium, and nickel.¹ The resulting product is known as partially hydrogenated oil, or PHO, and it is used in dangerous quantities in Fleischmann's.

PHO was invented in 1901 and patented in 1902 by German chemist Wilhelm Normann. Artificial trans fat molecules differ chemically from the natural fat molecules in other food products.²

Natural fat, except the trace amounts of natural trans fat from ruminant animal sources like beef, milk, and mutton, comes in two varieties: (1) fats that lack carbon double bonds ("saturated fat") and (2) fats that have carbon double bonds with contiguous hydrogen atoms ("cis fat"). Trans fat, in contrast to cis fat, has carbon double bonds with hydrogen atoms on opposite sides of the carbon chain.



PHO was initially thought to be a "wonder product" attractive to the processed food industry because it combines the very low cost of unsaturated cis fat with the "mouth feel" and long

¹ See Alice H. Lichtenstein, *Trans Fatty Acids, Plasma Lipid Levels, and Risk of Developing Cardiovascular Disease*, 95 CIRCULATION 2588, 2588-90 (1997).

² See Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J. MED. 94, 94-8 (1999). See also Walter Willett, *The Scientific Case for Banning Trans Fats*, Scientific American, available at www.scientificamerican.com/article/the-scientific-case-for-banning-trans-fats/ (last visited January 26, 2016).

shelf life of saturated fat. Like processed cis fat, PHO is manufactured from low-cost oil seeds,³ while the saturated fat it replaces in processed food is derived from relatively expensive animal and tropical plant sources.⁴ Given its versatility, ten years ago PHO was used in 40% of processed packaged foods.⁵ Now, that its toxic properties are known, few food companies continue to use PHO. ConAgra, however, has decided not to follow its more responsible peers and cease using PHO, instead unfairly placing its profits over public health.

A. There is a Scientific Consensus That Trans Fat is Extremely Harmful

20. As detailed further herein, PHO causes cardiovascular heart disease, diabetes, cancer, and Alzheimer's disease, and accelerates memory damage and cognitive decline.

21. There is "no safe level" of PHO or artificial trans fat intake.⁶

22. According to the established consensus of scientists, consumers should keep their consumption of trans fat "as low as possible."⁷

23. In addition, "trans fatty acids are not essential and provide no known benefit to human health."⁸ Thus, 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[,] . . . the IOM does **not** set a UL for trans fatty acid because **any** incremental increase in trans fatty acid intake increases the risk of CHD."⁹

24. Today there is no question about the scientific consensus on trans fat. Dr. Julie Louise

³ e.g., corn oil, soybean oil, cottonseed oil

⁴ e.g., butter, cream, palm oil, coconut oil

⁵ Mary Carmichael, *The Skinny on Bad Fat*, Newsweek, Dec. 1, 2003, at 66. *See also* Kim Severson, *Hidden Killer. It's Trans Fat. It's Dangerous. And It's In Food You Eat Every Day*, S.F. Chron., Jan. 30, 2002.

⁶ Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2005).

⁷ *Id.*

⁸ Food Labeling; Health Claim; Phytosterols and Risk of Coronary Heart Disease, Proposed Rule, 75 Fed. Reg. 76526, 76542 (Dec. 8, 2010).

⁹ *Id.* (emphasis added).

1 Gerberding, who served for both of President Bush's two terms as head of the United States Centers for
2 Disease Control and Prevention, writes:

3 The scientific rationale for eliminating exposure to artificial trans fatty acids in foods
4 is rock solid. There is no evidence that they provide any health benefit, and they are
5 certainly harmful. These compounds adversely affect both low- and high-density
6 lipoprotein cholesterol levels and increase the risk for coronary heart disease, even at
7 relatively low levels of dietary intake. Gram for gram, trans fats are far more potent
8 than saturated fats in increasing the risk for heart disease, perhaps because they also
9 have pro-inflammatory properties and other adverse effects on vascular
10 endothelium . . . Eliminating exposure to these dangerous fats could have a powerful
11 population impact—potentially protecting 30,000 to 100,000 Americans from death
12 related to heart disease each year.¹⁰

13 25. Dr. Mozaffarian of Harvard Medical School writes in the New England Journal of
14 Medicine:

15 Given the adverse effects of trans fatty acids on serum lipid levels, systemic
16 inflammation, and possibly other risk factors for cardiovascular disease and the
17 positive associations with the risk of CHD, sudden death from cardiac causes, and
18 possibly diabetes, the potential for harm is clear. The evidence and the magnitude of
19 adverse health effects of trans fatty acids are in fact far stronger on average than
20 those of food contaminants or pesticide residues, which have in some cases received
21 considerable attention.¹¹

22 26. Given its nature as an artificial chemical not naturally found in any food and the
23 considerable harm that it causes to human health, Dr. Walter Willett, also at Harvard Medical School,
24 finds the most direct analogue of trans fat to be not any natural fat but contaminants such as pesticides.

25

¹⁰ Julie Louise Gerberding, *Safer Fats for Healthier Hearts: The Case for Eliminating Dietary Artificial*
26 *Trans Fat Intake*, 151 ANN. INTERN. MED. 137-38 (2009)

27 ¹¹ Dariush Mozaffarian et al., *Trans Fatty Acids and Cardiovascular Disease*, 354 N. ENGL. J. MED.
28 1601-13 (2006).

1 He states that the addition of artificial trans fat to food by companies like ConAgra “is a food safety
2 issue . . . this is actually contamination.”¹²

3 **B. The Artificial Trans Fat in Fleischmann’s Causes Cardiovascular Disease**

4 27. Trans fat raises the risk of CHD more than any other known consumed substance.¹³

5 28. Removing trans fat equivalent to 2% of total calories from the American diet “would
6 prevent approximately 30,000 premature coronary deaths per year, and epidemiologic evidence
7 suggests this number is closer to 100,000 premature deaths annually.”¹⁴

8 29. From “10 to 19 percent of CHD events in the United States could be averted by reducing
9 the intake of trans fat.”¹⁵

10 30. By raising LDL levels and lowering HDL levels, trans fat causes a wide variety of
11 dangerous heart conditions, including vasodilation, coronary artery disease, and primary cardiac arrest.

12 31. In a joint Dietary Guidelines Advisory Committee Report, the Department of Health and
13 Human Services and the U.S. Department of Agriculture recognized “[t]he relationship between trans
14 fatty acid intake and LDL cholesterol is direct and progressive, increasing the risk of cardiovascular
15 disease.”¹⁶

16 32. The American Heart Association warns, “trans fats raise your bad (LDL) cholesterol
17 levels and lower your good (HDL) cholesterol levels. Eating trans fats increases your risk of developing
18 heart disease.”¹⁷

19 33. After a review of literature on the connection between the consumption of artificial trans
20

21 ¹² Rebecca Coombes, *Trans fats: chasing a global ban*, 343 BRITISH MED. J. (2011).

22 ¹³ Mozaffarian, 354 NEW ENG. J. MED. at 1603.

23 ¹⁴ Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J. MED. 94, 94-
24 8 (1999).

25 ¹⁵ Mozaffarian, 354 NEW ENG. J. MED. at 1611.

26 ¹⁶ Dep’t of Health & Human Serv. & U.S. Dep’t of Agric., 2005 Dietary Guidelines Advisory
27 Committee Report, Section 10 (2005).

28 ¹⁷ Am. Heart Ass’n., *Trans Fat Overview*, available at
http://www.heart.org/HEARTORG/GettingHealthy/FatsAndOils/Fats101/Trans-Fats_UCM_301120_Article.jsp (last visited January 26, 2016).

1 fat and coronary heart disease, the FDA concluded:

2 [B]ased on the consistent results across a number of the most persuasive types of
3 study designs (i.e., intervention trials and prospective cohort studies) that were
4 conducted using a range of test conditions and across different geographical regions
5 and populations . . . the available evidence for an adverse relationship between trans
6 fat intake and CHD risk is strong.¹⁸

7 34. The FDA further found “[t]o date, there have been no reports issued by authoritative
8 sources that provide a level of trans fat in the diet . . . below which there is no risk of [Coronary Heart
9 Disease].”¹⁹ Rather, there “is a positive linear trend between trans fatty acid intake and LDL cholesterol
10 concentration, and therefore there is a positive relationship between trans fatty acid intake and the risk
11 of CHD.”²⁰

12 35. This evidence of trans fat’s horrific impact on the health of Americans is more than 20
13 years old. Dr. Walter Willett of Harvard Medical School found in 1994:

14 [E]ven the lower estimates from the effects [of PHO] on blood lipids would suggest
15 that more than 30,000 deaths per year may be due to the consumption of partially
16 hydrogenated vegetable fat. Furthermore, the number of attributable cases of
17 nonfatal coronary heart disease will be even larger.²¹

18 36. By taking blood samples from 179 survivors of cardiac arrest and 285 randomly-selected
19 control patients and comparing the top fifth with the bottom fifth of participants by trans fat intake,
20 another study published in the American Heart Association’s *Circulation* found that the largest
21 consumers of trans fat have three times the risk of suffering primary cardiac arrest, even after
22

23
24 ¹⁸ Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., Questions & Answers About
Trans Fat Nutrition Labeling.

25 ¹⁹ 75 Fed. Reg. 76526, 76542 (Dec. 8, 2010).

26 ²⁰ *Id.*

27 ²¹ W.C. Willett et al., *Trans Fatty Acids: Are the Effects only Marginal?* 84 AM. J. PUB. HEALTH 722,
28 723 (1994).

controlling for a variety of medical and lifestyle risk factors.²²

37. Australian researchers observed that heart attack patients possess elevated amounts of trans fat in their adipose tissue compared to controls, strongly linking heart disease with long-term consumption of trans fat.²³

38. While cholesterol dysregulation and pro-inflammatory effects are the best-documented pathways through which trans fat causes heart disease and death, another study isolated an additional method by which trans fat causes atherosclerosis, namely by degrading the function of TGF- β , a protein responsible for preventing the development of atherosclerotic lesions.²⁴

39. TGF- β also functions to suppress cancerous tumors. The same scientists suggest that the degradation of TGF- β may be the reason that trans fat consumption is strongly linked to multiple forms of cancer.²⁵

C. The Artificial Trans Fat in Fleischmann's Causes Type-2 Diabetes

40. Artificial trans fat also causes type-2 diabetes.²⁶

41. In particular, trans fat disrupts the body's glucose and insulin regulation system by incorporating itself into cell membranes, causing the insulin receptors on cell walls to malfunction, and in turn elevating blood glucose levels and stimulating further release of insulin.

42. Researchers at Northwestern University's medical school found that mice show multiple markers of type-2 diabetes after eating a high trans fat diet for only four weeks.²⁷

43. By the eighth week of the study, mice fed the diet high in trans fat showed a 500%

²² Rozenn N. Lemaitre et al., *Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac Arrest*, 105 CIRCULATION 697, 697-701 (2002).

²³ Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction*, 134 J. NUTR. 874, 874-79 (2004).

²⁴ Chen, C.L. et al., *A mechanism by which dietary trans fats cause atherosclerosis*, J. of Nutr. Biochemistry 22(7) 649-655 (2011).

²⁵ *Id.*

²⁶ Am. Heart Ass'n., *Trans Fat Overview*.

²⁷ Sean W. P. Koppe et al., *Trans fat feeding results in higher serum alanine aminotransferase and increased insulin resistance compared with a standard murine high-fat diet*, 297 AM. J. PHYSIOL. GASTROINTEST LIVER PHYSIOL. 378 (2009).

increase compared to the control group in hepatic interleukin-1 β gene expression, one such marker of diabetes, indicating the extreme stress even short-term exposure to artificial trans fat places on the body.²⁸

44. A 14-year study of 84,204 women found that for every 2 percent increase in energy intake from artificial trans fat, the relative risk of type-2 diabetes was increased by 39 percent.²⁹

D. The Artificial Trans Fat in Fleischmann's Causes Breast, Prostate, and Colorectal Cancer

45. Trans fat is a carcinogen which causes breast, prostate, and colorectal cancer.

46. A 13-year study of 19,934 French women showed 75 percent more women contracted breast cancer in the highest quintile of trans fat consumption than did those in the lowest.³⁰

47. In a 25-year study of 14,916 American physicians, those in the highest quintile of trans fat consumption had more than double the risk of developing prostate cancer than the doctors in the lowest quintile.³¹

48. A study of 1,012 American males observing trans fat intake and the risk of prostate cancer found "[c]ompared with the lowest quartile of total trans-fatty acid consumption, the higher quartiles gave odds ratios (ORs) equal to 1.58," meaning those in the highest quartile are 58% more likely to contract prostate cancer than those in the lowest.³²

49. A 600-person study found an 86 percent greater risk of colorectal cancer in the highest trans fat consumption quartile.³³

50. A 2,910-person study found "trans-monounsaturated fatty acids . . . were dose-

²⁸ *Id.*

²⁹ Jorge Salmeron et al., *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*, 73 AM. J. CLINICAL NUTRITION 1019, 1023 (2001).

³⁰ Véronique Chajès et al., *Association between Serum Trans-Monounsaturated Fatty Acids and Breast Cancer Risk in the E3N-EPIC Study*, 167 AM. J. EPIDEMIOLOGY 1312, 1316 (2008).

³¹ Jorge Chavarro et al., *A Prospective Study of Blood Trans Fatty Acid Levels and Risk of Prostate Cancer*, 47 PROC. AM. ASSOC. CANCER RESEARCH 95, 99 (2006).

³² Xin Liu et al., *Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate Cancer: Modification by RNASEL R462Q Variant*, 28 CARCINOGENESIS 1232, 1232 (2007).

³³ L.C. Vinikoor et al., *Consumption of Trans-Fatty Acid and its Association with Colorectal Adenomas*, 168 Am. J. of Epidemiology 289, 294 (2008).

1 dependently associated with colorectal cancer risk,” which showed “the importance of type of fat in the
2 etiology and prevention of colorectal cancer.”³⁴

3 **E. The Artificial Trans Fat in Fleischmann’s Causes Alzheimer’s Disease and Cognitive**
4 **Decline**

5 51. Trans fat causes Alzheimer’s Disease and cognitive decline.

6 52. In a study examining 815 Chicago area seniors, researchers found “increased risk of
7 incident Alzheimer disease among persons with high intakes of . . . trans-unsaturated fats.”³⁵

8 53. The study “observed a strong increased risk of Alzheimer disease with consumption of
9 trans-unsaturated fat.”³⁶

10 54. In a study of 1,486 women with type-2 diabetes, researchers found “[h]igher intakes of .
11 . . trans fat since midlife . . . were [] highly associated with worse cognitive decline”³⁷

12 55. The study cautioned “[d]ietary fat intake can alter glucose and lipid metabolism and is
13 related to cardiovascular disease risk in individuals with type 2 diabetes. Because insulin, cholesterol,
14 and vascular disease all appear to play important roles in brain aging and cognitive impairments,
15 dietary fat modification may be a particularly effective strategy for preventing cognitive decline,
16 especially in individuals with diabetes.”³⁸ (citations omitted).

17 56. Artificial trans fat also damages the brains of those who consume it. A study conducted
18 by UCSD School of Medicine of 1,018 men, mostly younger men, found trans fat consumption to be
19 strongly correlated with impaired memory.³⁹ The authors of the study, appearing last year in
20

21 ³⁴ Evropi Theodoratou et al., *Dietary Fatty Acids and Colorectal Cancer: A Case-Control Study*, 166
22 AM. J. EPIDEMIOLOGY 181 (2007).

23 ³⁵ Martha Clare Morris et al., *Dietary Fats and the Risk of Incident Alzheimer Disease*, 60 ARCH.
24 NEUROL. 194, 198-99 (2003).

25 ³⁶ *Id.*

26 ³⁷ Elizabeth E. Devore et al., *Dietary Fat Intake and Cognitive Decline in Women with Type 2 Diabetes*,
27 32 DIABETES CARE 635 (2009).

28 ³⁸ *Id.*

³⁹ Golomb, B. et al., *Trans Fat Consumption is Adversely Linked to Memory in Working-Age Adults*, J.
of Am. Hearth Assoc. 130:A15572 (2014).

Circulation, the American Heart Association's peer-reviewed journal, conclude that "Greater dTFA [dietary trans fatty acid] was significantly associated with worse word memory in adults aged 20-45 years, often critical years for career building."

57. Performing a word memory test, each additional gram per day of trans fat consumed was associated with 0.76 fewer words correctly recalled. The authors suggest trans fat's well-established pro-oxidant effect and its damage to cell energy processes is the pathway by which trans fat consumption damages memory ability. The young men with the highest trans fat consumption scored 12 fewer recalled words on the 104-word test.⁴⁰

F. The Artificial Trans Fat in Fleischmann's Causes Organ Damage

58. Artificial trans fat damages vital organs, including the heart, by causing chronic systemic inflammation, where the immune system becomes persistently overactive, damages cells, and causes organ dysfunction.⁴¹

G. Artificial Trans Fat Is So Inherently Dangerous It Has Been Banned by an Increasing Number of American and European Jurisdictions

59. In 2008, California became the first state to ban all restaurant food with artificial trans fat. Trans fats now may not be served in California's schools or restaurants in an amount greater than half a gram per serving, nor contain any ingredient with more than this amount.⁴²

60. New York City banned trans fat in restaurants in 2006. Similar laws exist in Philadelphia; Baltimore; Stamford, Connecticut; and Montgomery County, Maryland.

61. A 2004 Danish law restricted all foods to fewer than 2 percent of calories from artificial

⁴⁰ *Id.*

⁴¹ See Lopez-Garcia et al., *Consumption of Trans Fat is Related to Plasma Markers of Inflammation and Endothelial Dysfunction*, 135 J. NUTR. 562-66 (2005); see also Baer et al., *Dietary fatty acids affect plasma markers of inflammation in healthy men fed controlled diets; a randomized crossover study*, 79 AM. J. CLIN. NUTR. 969-73 (2004); Mozaffarian & Clarke, *Quantitative effects on cardiovascular risk factors and coronary heart disease risk of replacing partially hydrogenated vegetable oils with other fats and oils*, 63 Euro. J. OF CLIN. NUTR. S22-33 (2009); Mozaffarian et al., *Trans Fatty acids and systemic inflammation in heart failure* 80 AM. J. CLIN. NUTR. 1521-25 (2004).

⁴² Cal. Educ. Code § 49431.7; Cal. Health & Saf. Code § 114377.

trans fat. Switzerland made the same restriction in 2008.⁴³

62. After conducting a surveillance study of Denmark's 2004 trans fat ban, researchers concluded the change "did not appreciably affect the quality, cost or availability of food" and did not have "any noticeable effect for the consumers."⁴⁴

63. Similar bans have been introduced in Austria and Hungary. Brazil, Argentina, Chile, and South Africa have all taken steps to reduce or eliminate artificial trans fats from food.⁴⁵

64. In 2006, a trans fat task force co-chaired by Health Canada and the Heart and Stroke Foundation of Canada recommended capping trans fat content at 2 percent of calories for tub margarines and spreads and 5 percent for all other foods. On September 30, 2009, British Columbia became the first province to impose these rules on all restaurants, schools, hospitals, and special events.⁴⁶

65. In its European Food and Nutrition Action Plan 2015-2020, the World Health Organization identified one of its goals as "making the European Region trans fat-free."⁴⁷ The European Commission is preparing legislation to ban the use of trans fats in 28 nations in the European Union.⁴⁸

66. On June 17, 2015, the FDA released its Final Determination Regarding Partially Hydrogenated Oils, in which it declared "PHOs are not GRAS [Generally Recognized as Safe] for any use in human food."⁴⁹

67. The FDA will begin filing its own enforcement actions against companies that use PHOs

⁴³ Andrew Collier, *Deadly Fats: Why Are We still Eating Them?*, The Independent (UK), June 10, 2008.

⁴⁴ Mozaffarian, 354 New Eng. J. Med. at 1610; *see also* Steen, Stender, *High Levels of Industrially Produced Trans Fat in Popular Fast Food*, 354 NEW ENG. J. MED. 1650, 1652 (2006).

⁴⁵ Coombes, *Trans fats: chasing a global ban*, 343 BRITISH MED. J. 5567 (2011).

⁴⁶ *Province Restricts Trans Fat in B.C.*, British Columbia Ministry of Healthy Living and Sport Press Release (2009), *available at* http://www2.news.gov.bc.ca/news_releases_2005-2009/2009HLS0013-000315.htm (last visited January 26, 2016).

⁴⁷ Regional Committee for Europe, *European Food and Nutrition Action Plan 2015-2020*, 64th session.

⁴⁸ Basu, J. *European trans fat report 'could lead to ban'*, Food Navigator.com, April 15, 2015.

⁴⁹ FDA Final PHO Determination, 80 Fed. Reg. 34650, 34651 (June 17, 2015).

1 in 2018.

2 **VI. PLAINTIFF'S PURCHASES OF FLEISCHMANN'S**

3 68. Plaintiff Troy Backus purchased Fleischmann's during the Class Period defined herein.

4 69. Mr. Backus purchased approximately once a month for many years.

5 70. The most frequent location of Mr. Backus' purchases of Fleischmann's was the Safeway
6 located at 137 Corte Madera Town Center, Corte Madera, CA. His most recent purchase was
7 approximately October 2015.

8 71. Plaintiff first discovered ConAgra's unlawful acts described herein in October 2015
9 when he learned that Fleischmann's is dangerous and fraudulently marketed.

10 72. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier
11 ConAgra's unlawful acts described herein because the dangers of artificial trans fats were known to
12 Defendant, but not to him, throughout the Class Period defined herein. Plaintiff is not a nutritionist,
13 food expert, or food scientist, but rather a lay consumer who did not have the specialized human
14 nutrition knowledge of ConAgra. Even today the nature and extensive utilization of artificial trans
15 fats—including that they necessarily exist where partially hydrogenated oil is used an ingredient in a
16 food product—is generally unknown to the average consumer. When purchasing Fleischmann's during
17 the Class Period, Plaintiff read and relied on various health and wellness claims appearing on its
18 packaging (as further described herein), which individually and especially in the context of its
19 packaging as a whole, misleadingly implied that Fleischmann's is healthy. Plaintiff would not have
20 purchased Fleischmann's absent these advertisements.

21 73. Because Plaintiff expected these statements to be true and honest when they are in fact
22 false and misleading, he did not receive the benefit of his purchases.

23 74. Plaintiff intends to, and desires to, and will purchase the Products when he is able to do
24 so with the assurance they will be free of PHO and not contain false or misleading labeling claims.

25 26 **VII. SPECIFIC MISREPRESENTATIONS, MATERIAL OMISSIONS, AND DECEPTIVE** 27 **ACTS**

28 75. During the Class Period, Fleischmann's was made with PHO yet contained deceptive

health and wellness claims.

76. An exemplar of front and back label of Fleischmann's are as follows:



77. Fleischmann's contains the following health claims:

78. **Misleading "maintain your healthy lifestyle" claim:** During the Class Period, ConAgra marketed Fleischmann's with the phrase, "The delicious taste of Fleischmann's enhances your favorite foods while maintaining your healthy lifestyle."

79. This language was part of an intentional campaign to deceptively market Fleischmann's as healthful.

1 80. **Misleading “70% Less Saturated Fat” claim:** During the Class Period, ConAgra
2 marketed Fleischmann’s with the phrase “70% Less Saturated Fat” than butter in large script across the
3 front of the package.

4 81. This language was part of an intentional campaign to deceptively market Fleischmann’s
5 as healthful.

6 82. ConAgra’s conduct is especially egregious because butter does not contain any artificial
7 trans fat, a fact that is relevant but deceptively omitted

8 83. **Misleading “100% Less Cholesterol” claim:** During the Class Period, Defendant
9 marketed Fleischmann’s with the phrase “100% Less Cholesterol” in large script across the front of the
10 package.

11 84. This language was part of an intentional campaign to deceptively market Fleischmann’s
12 as healthful.

13 85. ConAgra’s conduct is especially egregious because butter does not contain any artificial
14 trans fat, which raises “bad (LDL) cholesterol and lower[s] . . . good (HDL) cholesterol levels” thereby
15 “increase[ing] your risk of developing heart disease.”⁵⁰

16 **VIII. FLEISCHMANN’S UNLAWFULLY OMITTS ITS ARTIFICIAL FLAVOR**

17 86. In addition to its misleading labeling with respect to trans fats, Fleischmann’s is further
18 unlawfully mislabeled in that it does not properly disclose added artificial butter flavor as required by
19 FDA regulations and California law.

20 87. Fleischmann’s labeling, packaging, and marketing include explicit comparisons of the
21 Products to natural butter, as well as pictorial representations of it in a context where butter is normally
22 used.

23 88. ConAgra represents its spread as a “butter alternative[]” and advertises it with slogans
24 such as, “Savor the delicious, buttery flavor you love. . . .”

25 _____
26 ⁵⁰ Am. Heart Ass’n., *Trans Fat Overview*, available at
27 [http://www.heart.org/HEARTORG/GettingHealthy/FatsAndOils/Fats101/Trans-](http://www.heart.org/HEARTORG/GettingHealthy/FatsAndOils/Fats101/Trans-Fats_UCM_301120_Article.jsp)
28 [Fats_UCM_301120_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/FatsAndOils/Fats101/Trans-Fats_UCM_301120_Article.jsp) (last visited January 26, 2016).

1 89. These comparisons and direct representations establish that the characterizing flavor of
 2 the Products is butter. This is the characterizing flavor that Fleischmann's communicates to
 3 consumers.

4 90. Fleischmann's ingredients include both natural and artificial flavors which simulate,
 5 resemble, or reinforce the characterizing butter flavor.

6 91. 21 C.F.R. § 101.22(i) requires that if "the label, labeling, or advertising of a food makes
 7 any direct or indirect representations with respect to the primary recognizable flavor(s), by word,
 8 vignette, e.g., depiction . . . or other means . . . such flavor shall be considered the characterizing flavor
 9 and shall be declared." If the food contains artificial flavor, "the name of the food on the principal
 10 display panel or panels of the label shall be accompanied by the common or usual name(s) of the
 11 characterizing flavor . . . and the name of the characterizing flavor shall be accompanied by the word(s)
 12 "artificial" or "artificially flavored"" 21 C.F.R. § 101.22(i)(2).

13 92. Because Fleischmann's makes clear representations that it is intended to replace butter
 14 and that its characterizing flavor is butter but does not include FDA-required labeling regarding this
 15 characterizing flavor on the principal display panel, it is misbranded under FDA regulations and
 16 violates federal and state food label regulations and California's UCL.

17 **IX. FLEISCHMANN'S UNNECESSARILY CONTAINS PHO AND ARTIFICIAL TRANS**
 18 **FAT**

19 93. ConAgra's use of PHO in Fleischmann's is unnecessary. There are several safe
 20 substitutes for PHO and artificial trans fat. Indeed, both ConAgra and its competitors use these safe
 21 substitutes such as palm oil.

22 94. Most manufacturers of competing spread products have responsibly decided to refrain
 23 from adding artificial trans fat to their products. Such brands sold in the United States include I Can't
 24 Believe It's Not Butter!, Country Crock, Promise, Land O'Lakes, and Smart Balance, including
 25 specific varieties is identified in Appendix A hereto.

26 95. Although commercially viable alternative formulations and substitutes for PHO were
 27 and are available, ConAgra elects not to use them in Fleischmann's in order to increase its profits at the
 28 expense of consumers' health.

X. DEFENDANT’S PRACTICES ARE “UNFAIR” WITHIN THE MEANING OF THE CALIFORNIA UNFAIR COMPETITION LAW

96. ConAgra’s practices as described herein are “unfair” within the meaning of the California Unfair Competition Law because its conduct is immoral, unethical, unscrupulous, and substantially injurious to consumers, and the utility of this conduct to ConAgra does not outweigh the gravity of the harm to ConAgra’s victims.

97. Plaintiff’s claims for unfair business practices are independent of his claims for false advertising. Even absent Fleischmann’s false advertising, the sale of Fleischmann’s violates the UCL and implied warranty of merchantability.

98. In particular, while ConAgra’s use of PHO in Fleischmann’s may have some utility to Defendant in that it allows Defendant to realize higher profit margins than if it used safer PHO substitutes, this utility is small and far outweighed by the gravity of the serious health harm Defendant inflicts upon consumers.

99. ConAgra’s conduct injures competing manufacturers of similar products that do not engage in its unfair behavior, especially given its large market share and limited refrigerated retail shelf space.

100. Moreover, ConAgra’s practices violate public policy as declared by specific constitutional, statutory, or regulatory provisions, including the California Health & Safety Code § 114377 and California Education Code § 49431.7.

101. ConAgra’s actions also violate public policy by causing the United States and California to pay—via Medicare, Medicaid, Affordable Care Act Exchange subsidies, veterans’ health programs, public employee and retiree health insurance—for treatment of trans fat-related illnesses.

102. Further, the injury to consumers from ConAgra’s practices is substantial, not outweighed by benefits to consumers or competition, and not an injury consumers themselves could reasonably have avoided.

XI. DEFENDANT’S PRACTICES ARE “UNLAWFUL” WITHIN THE MEANING OF THE CALIFORNIA UNFAIR COMPETITION LAW

103. ConAgra’s practices as described herein are “unlawful” within the meaning of the

California Unfair Competition Law because PHO is not Generally Recognized as Safe (GRAS). Therefore, ConAgra's use of PHO renders its products adulterated within the meaning of 21 U.S.C. § 342(a)(2)(C).

104. The PHO used in Fleischmann's appears nowhere on the FDA's list of the hundreds of substances it considers GRAS.⁵¹

105. PHO also fails to meet the fundamental requirement for GRAS status—that the substance is safe. In fact, the FDA has explicitly recognized that there is no safe level of artificial trans fat consumption.

106. Under the Food Additives Amendment of 1958, which amended the FDCA, all food additives are unsafe unless they (1) fall within a specified exemption to the statute's definition of food additive, or (2) their use is pursuant to FDA approval. Because the PHO used in Fleischmann's does not meet either of these exceptions, they are, and long have been, unsafe, and unlawful for use in food.

107. ConAgra's use of PHO in Fleischmann's thus constitutes adulteration under 21 U.S.C. § 342 and Cal. Health & Safety Code § 110545.

108. On November 8, 2013, the FDA made its initial tentative determination that PHO is unsafe, and therefore is not GRAS.⁵²

109. On June 17, 2015, after extensive public comment, the FDA determined trans fat is not GRAS.⁵³

110. At no point during the class period was there a scientific consensus PHO was safe. Indeed, for more than two decades, the scientific consensus has been that it is unsafe.

XII. RELIANCE AND INJURY

111. When purchasing Fleischmann's, Plaintiff was seeking products of particular qualities, including products that did not negatively affect blood cholesterol levels or the health of his cardiovascular system, and products made with safe, lawful ingredients.

⁵¹ See 21 C.F.R. §§ 181, 182, 184 and 186.

⁵² 78 Fed. Reg. 67169 (November 8, 2013).

⁵³ 80 Fed. Reg. 34650 (June 17, 2015).

112. Plaintiff read and relied on, for his Fleischmann's purchases, the product's packaging and the health and wellness message it conveyed, which was a substantial factor in each of his purchases.

113. Specifically, Plaintiff relied on statements that Fleischmann's would allow him to "maintain" a "healthy lifestyle" and that "70% Less Saturated Fat" and "100% Less Cholesterol" per serving than butter was a fair comparison of the two products.

114. Plaintiff was further injured by ConAgra's omission of information that would have been important to his purchasing decisions.

115. Plaintiff purchased Fleischmann's believing it had the qualities he sought based on the product's deceptive labeling and the natural assumption that food sold in stores by large companies would not have unsafe and unlawful ingredients.

116. Instead, they were actually unsatisfactory to him for the reasons described herein.

117. Fleischmann's costs more than similar products without false and misleading labeling, and would have cost less, for example demanded less in the marketplace, absent ConAgra's false and misleading statements and material omissions. Plaintiff lost money as a result of ConAgra's conduct because he purchased products that were detrimental to his health and were unfairly offered for sale in violation of federal and California law.

118. Plaintiff purchased Fleischmann's instead of competing products based on the false statements and misrepresentations described herein.

119. Plaintiff suffered physical injury when he repeatedly consumed Fleischmann's because consuming artificial trans fat in *any* quantity, including the quantity he actually consumed, inflames and damages vital organs and substantially increases the risk of heart disease, diabetes, cancer, and death.

120. Fleischmann's contains an unsafe amount of artificial trans fat which renders it unfit for human consumption.

121. Like most consumers, Mr. Backus is a busy person and cannot reasonably inspect every ingredient of every food that he purchases for himself and other, and he was unaware that the Products were dangerous when he purchased them.

XIII. DELAYED DISCOVERY

122. Plaintiff did not discover that ConAgra's behavior was unfair and unlawful and

Defendant's labeling was false, deceptive or misleading until October 2015 when he learned the true extent of the dangers of consuming trans fat, and that ConAgra was still selling the product illegally. Until this time, he lacked the knowledge regarding the facts of his claims against ConAgra.

123. Plaintiff is a reasonably diligent consumer who exercised reasonable diligence in his purchase, use, and consumption of the Products. Nevertheless, he would not have been able to discover ConAgra's deceptive practices and lacked the means to discover them given that, like nearly all consumers, he is not an expert on nutrition and does not typically read or have ready access to scholarly journals such as *The Journal of Nutrition*,⁵⁴ *The European Journal of Clinical Nutrition*,⁵⁵ and *The New England Journal of Medicine*,⁵⁶ where the scientific evidence of artificial trans fat's dangers was published. Furthermore, ConAgra's labeling practices actively impeded Plaintiff's and Class members' abilities to discover the dangerous effects of the Products throughout the Class Period.

XIV. CLASS ACTION ALLEGATIONS

124. Plaintiff brings this action on behalf of himself and all others similarly situated (the "Class"), excluding ConAgra's officers, directors, and employees, and the Court, its officers and their families.

125. The Class is defined as follows:

PHO Class (Causes of Action One to Three)

All persons who purchased in the United States, on or after January 1, 2008, for household or personal use, Fleischmann's products manufactured or distributed by ConAgra, Inc. and containing partially hydrogenated oil.

⁵⁴ Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction*, 134 J. Nutr. 874, 874-79 (2004).

⁵⁵ A. Tavani et al., *Margarine Intake and Risk of Nonfatal Acute Myocardial Infarction in Italian Women*, 51 Eur. J. Clin. Nutr. 30-32 (1997) (estimating a 50 percent greater risk of heart attack in women with high consumption of margarine, an association "independent of body mass index, history of hypertension and hyperlipidemia").

⁵⁶ Mozaffarian, 354 New Eng. J. Med. at 1611 ("10 to 19 percent of CHD events in the United States could be averted by reducing the intake of trans fat").

Misleading Claims Subclass (All Causes of Action)

All persons who purchased in the United States, on or after January 1, 2008, for household or personal use, Fleischmann's products in packaging containing one or more of the following phrases: "The delicious taste of Fleischmann's enhances your favorite foods while maintaining your healthy lifestyle," "70% less saturated fat," or "100% less cholesterol" manufactured or distributed by ConAgra, Inc. and containing partially hydrogenated oil.

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

- a. Whether ConAgra communicated a health and wellness message through Fleischmann's packaging;
- b. Whether that message was material, or likely to be material, to a reasonable consumer;
- c. Whether that message was false, at variance with the truth, misleading, likely to deceive, and/or had the capacity to deceive the public and/or a reasonable consumer;
- d. Whether ConAgra's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers;
- e. Whether the slight utility Defendant realizes as a result of its conduct outweighs the gravity of the harm the conduct causes to its victims;
- f. Whether ConAgra's conduct violates public policy as declared by specific constitutional, statutory, or regulatory provisions;
- g. Whether the injury to consumers from Defendant's practices is substantial;
- h. Whether Defendant fraudulently omitted material information in advertising Fleischmann's as healthy;
- i. Whether the class is entitled to actual damages, restitution, rescission, punitive damages, attorneys' fees and costs, injunctive, and/or any other relief;
- j. Whether the statute of limitations should be tolled on behalf of the Class;

- k. Whether ConAgra's conduct constitutes violations of the California's False Advertising Law;
- l. Whether ConAgra's conduct was immoral, unscrupulous, or offensive of public policy because Defendant advertised Fleischmann's to people deliberately seeking a healthy option despite knowing of the dangers from its artificial trans fat content;
- m. Whether ConAgra's conduct constitutes a violation of the California Consumer Legal Remedies Act;
- n. Whether Defendant's conduct constitutes a violation of the unlawful prong of California's Unfair Competition Law;
- o. Whether members of the Class are entitled to restitution and, if so, the correct measure of restitution;
- p. Whether members of the Class are entitled to an injunction and, if so, its terms; and
- q. Whether members of the Class are entitled to any further relief.

127. By purchasing Fleischmann's, all Class members were subjected to the same wrongful conduct.

128. Absent ConAgra's material deceptions, misstatements, and omissions, Plaintiff and other Class members would not have purchased Fleischmann's.

129. Plaintiff's claims are typical of the Class' claims.

130. All Class members were subjected to the same economic harm when they purchased Fleischmann's and suffered economic injury.

131. Plaintiff will fairly and adequately protect the interests of the Class, has no interests that are incompatible with the interests of the Class, and has retained counsel competent and experienced in class litigation.

132. The Class is sufficiently numerous, as it includes thousands of individuals who purchased Fleischmann's throughout the United States during the Class Period.

133. Class representation is superior to other options for the resolution of the controversy.

1 The relief sought for each Class member is small, as little as two dollars for some Class members.
 2 Absent the availability of class action procedures, it would be infeasible for Class members to redress
 3 the wrongs done to them.

4 134. ConAgra has acted on grounds applicable to the Class, thereby making final injunctive
 5 relief or declaratory relief appropriate concerning the Class as a whole.

6 135. Questions of law and fact common to the Class predominate over any questions
 7 affecting only individual members.

8 136. Class treatment is appropriate under Fed. R. Civ. P. 23(a) and both Fed. R. Civ. P.
 9 23(b)(2) and 23(b)(3). Plaintiff will, if notice is required, confer with ConAgra and seek to present the
 10 Court with a stipulation and proposed order on the details of a class notice plan.

11 **XV. CAUSES OF ACTION**

12 **First Cause of Action**

13 **California Unfair Competition Law, Unfair Prong**

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

15 137. In this and every cause of action, Plaintiff realleges and incorporates by reference each
 16 and every allegation contained elsewhere in this Complaint, as if fully set forth herein.

17 138. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business
 18 act or practice.”

19 139. The business practices and omissions of ConAgra as alleged herein constitute “unfair”
 20 business acts and practices in that ConAgra’s conduct is immoral, unethical, unscrupulous, and
 21 substantially injurious to consumers and the utility of its conduct does not outweigh the gravity of the
 22 harm to consumers.

23 140. Further, ConAgra’s practices are unfair because they violate public policy as declared by
 24 specific constitutional, statutory, or regulatory provisions, including those embodied in the FDCA,
 25 California Health & Safety Code, and California Education Code.

26 141. Further, ConAgra’s practices are unfair because the injury to consumers from
 27 ConAgra’s practices is substantial, not outweighed by benefits to consumers or competition, and not
 28 one consumers themselves could reasonably have avoided or should be obligated to avoid.

142. In accordance with Cal. Bus. & Prof Code § 17203, Plaintiff seeks an order enjoining ConAgra from continuing to conduct business through unfair acts and practices and to commence a corrective advertising campaign.

143. Plaintiff also seeks an order for the disgorgement and restitution of all revenue received by ConAgra from the sale of Fleischmann's.

Second Cause of Action

California Unfair Competition Law, Unlawful Prong

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

144. ConAgra has made and distributed, in interstate commerce and in this District, products that contain unlawful food additives. Fleischmann's was placed into interstate commerce by Defendant and sold throughout the country and in this District.

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

146. ConAgra's conduct is "unlawful" because it violates the Federal Food, Drug, and Cosmetic Act ("FDCA"), specifically, the Food Additives Amendment of 1958, which deems a food additive unsafe unless it has met one of two exceptions, neither of which the PHO used in the Fleischmann's has met. 21 U.S.C. §§ 348, 342.

147. ConAgra's conduct also violates the following portions of the FDCA:

- 21 U.S.C. § 331(a), prohibiting the "introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded";
- 21 U.S.C. § 331(b), prohibiting the "adulteration or misbranding of any food, drug, device, tobacco product, or cosmetic in interstate commerce";
- 21 U.S.C. § 331(c), prohibiting the "receipt in interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise";
- 21 U.S.C. § 331(k), prohibiting "the doing of any other act with respect to, a food, drug, device, tobacco product, or cosmetic, if such act is done while such article is held for

1 sale (whether or not the first sale) after shipment in interstate commerce and results in
2 such article being adulterated or misbranded”;

- 3 • 21 U.S.C. § 342(a), which deems any food adulterated if it “contains any poisonous or
4 deleterious substance which may render it injurious to health”;
- 5 • 21 U.S.C. § 348, prohibiting the use of any food additive unless it has been deemed
6 GRAS;

7 148. ConAgra’s conduct violates 21 C.F.R. 101.22 because it fails to label its product to
8 reflect the characterizing flavor of butter despite making “direct or indirect representations with respect
9 to the primary recognizable flavor(s), by word, vignette, e.g., depiction . . . or other means.”

10 149. Fleischmann’s also fails to properly label its use of artificial flavors to simulate,
11 resemble or reinforce the characterizing flavor.

12 150. Defendant’s conduct violates The California Sherman Food, Drug, and Cosmetic Law
13 (“Sherman Law”), Cal. Health & Safety Code § 110100, which adopts all FDA regulations as state
14 regulations. ConAgra’s conduct violates the following sections of the Sherman Law:

- 15 • § 110085, adopting all FDA food additive regulations as state regulations;
- 16 • § 110100, adopting all FDA regulations as state regulations;
- 17 • § 110398, “It is unlawful for any person to advertise any food, drug, device, or cosmetic that is
18 adulterated or misbranded.”;
- 19 • § 110620, “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
20 food that is adulterated.”;

21 151. The use of artificial trans fat in Fleischmann’s constitutes a violation of the FDCA and
22 the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

23 152. Defendant’s unlawful acts allowed it to sell more units of Fleischmann’s than it would
24 have otherwise, and at a higher price, and higher margin.

25 153. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining
26 ConAgra from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and
27 practices and to commence a corrective advertising campaign. Plaintiff intends to purchase the Products
28 in the future when Defendant ceases its unfair business practices and removes trans fat.

1 154. Plaintiff also seeks an order for the disgorgement and restitution of all revenue received
2 by ConAgra from the sale of Fleischmann's.

3 **Third Cause of Action**

4 **Breach of Implied Warranty of Merchantability**

5 155. ConAgra, through its acts and omissions set forth herein, in the sale, marketing and
6 promotion of the Products, made representations to Plaintiff and the Class that Fleischmann's was safe
7 to consume.

8 156. Plaintiff and the Class bought the Products manufactured, advertised, and sold by
9 Defendant, as described herein.

10 157. ConAgra is a merchant with respect to the goods of this kind which were sold to
11 Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied
12 warranty that those goods were merchantable.

13 158. ConAgra breached that implied warranty, however, in that the Products are not fit for
14 their ordinary purpose and do not conform with the representations on their labels, as set forth in detail
15 herein.

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

19 160. Plaintiff and Class have sustained damages as a proximate result of the foregoing breach
20 of implied warranty in the amount of the Products' purchase price.

21
22 **Fourth Cause of Action**

23 **California Unfair Competition Law (Unlawful Prong)**

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

25 161. ConAgra has made and distributed, in interstate commerce and in this District, products
26 that make false and misleading statements of fact regarding its content. Fleischmann's was placed into
27 interstate commerce by Defendant and sold throughout the United States.

1 162. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business
2 act or practice.”

3 163. The acts, omissions, misrepresentations, practices, and non-disclosures of ConAgra as
4 alleged herein constitute “unlawful” business acts and practices in that Defendant’s conduct violates the
5 California False Advertising Law, and the California Consumer Legal Remedies Act, as alleged herein.

6 164. ConAgra’s conduct is further “unlawful” because it violates § 43(a) the Lanham Act, 15
7 U.S.C. § 1125(a), in that Defendant’s advertising constitutes false statements of fact in interstate
8 commerce about its own and other products, which were material in that they were likely to influence
9 consumers’ purchasing decisions, and which had a tendency to deceive, or actually deceived a
10 substantial segment of Defendant’s audience, resulting in injury.

11 165. ConAgra’s conduct is further “unlawful” because it violates the Federal Food, Drug, and
12 Cosmetic Act (“FDCA”), specifically, (1) 21 U.S.C. § 343(a), which deems food misbranded when the
13 label contains a statement that is “false or misleading in any particular,” (2) 21 C.F.R. § 101.13(i)(3),
14 which bars nutrient content claims that are “false or misleading in any respect,” (3) 21 C.F.R. § 101.14
15 requiring claims to be “complete, truthful, and not misleading,” and which “enables to public to
16 comprehend the information” and (4) 21 U.S.C. § 343(r)(3)(C) requiring claims to present “a balanced
17 representation of the scientific literature relating to the relationship between a nutrient and a disease or
18 health-related condition to which the claim refers,” be “stated in a manner so that the claim is an
19 accurate representation of the authoritative statement,” be in compliance with “section 201(n)”, and the
20 product “not [to] contain . . . any nutrient in an amount which increases to persons in the general
21 population the risk of a disease or health-related condition which is diet-related.”

22 166. ConAgra further violates the FDCA’s implementing regulation, 21 C.F.R. § 1.21,
23 because Fleischmann’s packaging fails to reveal material facts, namely the dangers of PHO described
24 in detail herein, “in light of other representations,” namely the specific statements described herein as
25 misleading. In particular, its comparison of Fleischmann’s and butter omitted the material fact that
26 butter is free of PHO, while Fleischmann’s contains it in dangerous amounts.

27 167. ConAgra’s conduct further violates the California Sherman Food, Drug, and Cosmetic
28 Law (“Sherman Law”), Cal. Health & Safety Code § 110660, which deems food products

“misbranded” if their labeling is “false or misleading in any particular,” and Health & Safety Code § 110670, which bars nutrient content claims voluntarily placed on the front of a product label that fail to comply with the federal regulation for nutrient content claims (i.e., “may not be false or misleading in any respect”). ConAgra’s conduct also violates the following sections of the Sherman Law:

- § 110100, adopting all FDA regulations as state regulations;
- § 110290, “In determining whether the labeling or advertisement of a food . . . is misleading, all representations made or suggested by statement, word, design, device, sound, or any combination of these shall be taken into account. The extent that the labeling or advertising fails to reveal facts concerning the food . . . or consequences of customary use of the food . . . shall also be considered.”;
- § 110390, “It is unlawful for any person to disseminate any false advertisement of any food An advertisement is false if it is false or misleading in any particular.”;
- § 110395, “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food . . . that is falsely advertised.”;
- § 110398, “It is unlawful for any person to advertise any food, drug, device, or cosmetic that is adulterated or misbranded.”;
- § 110400, “It is unlawful for any person to receive in commerce any food . . . that is falsely advertised or to deliver or proffer for delivery any such food”;
- § 110670, “Any food is misbranded if its labeling does not conform with the requirements for nutrient content or health claims as set forth in Section 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the regulations adopted pursuant thereto.”;
- § 110680, “Any food is misbranded if its labeling or packaging does not conform to the requirements of Chapter 4 (commencing with Section 110290).”;
- § 110705, “Any food is misbranded if any word, statement, or other information required pursuant to this part to appear on the label or labeling is not prominently placed upon the label or labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”;

- § 110760 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.”);
- § 110765, “It is unlawful for any person to misbrand any food.”; and
- § 110770, “It is unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.”.

168. All of the challenged labeling statements made by ConAgra thus constitute violations of the FDCA and the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

169. ConAgra leveraged its deception to induce Plaintiff and members of the Class to purchase products that were of lesser value and quality than advertised.

170. Plaintiff suffered injury in fact and lost money or property as a result of ConAgra’s deceptive advertising: he was denied the benefit of the bargain when he decided to purchase Fleischmann’s over competing products that are less expensive and/or contain no artificial trans fat.

171. Had Plaintiff been aware of ConAgra’s false and misleading advertising tactics, he would not have purchased Fleischmann’s.

172. Defendant’s deceptive advertising allowed it to sell more units of Fleischmann’s than it would have otherwise, and at a higher price.

173. In accordance with Cal. Bus. & Prof Code § 17203, Plaintiff seeks an order enjoining ConAgra from continuing to conduct business through unlawful, unfair, and fraudulent acts and practices; to commence a corrective advertising campaign; and restitution of all monies from the sale of Fleischmann’s.

174. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of Fleischmann’s, which were acquired through acts of unfair competition.

Fifth Cause of Action

California Unfair Competition Law, Fraudulent Prong

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

175. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

176. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute “fraudulent” business acts and practices in that Defendant’s conduct has a likelihood, capacity or tendency to deceive Plaintiff, the Classes, and the general public.

177. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

178. Plaintiff further seeks an order for the restitution of all monies from the sale of Fleischmann’s which were acquired through acts of unlawful, unfair, and/or fraudulent competition.

Sixth Cause of Action

California Unfair Competition Law, Unfair Prong

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

179. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

180. Plaintiff suffered injury in fact and lost money or property as a result of ConAgra’s deceptive advertising: he was denied the benefit of the bargain when he decided to purchase Fleischmann’s over competing products, which are less expensive and/or contain no artificial trans fat.

181. Had Plaintiff been aware of ConAgra’s false and misleading advertising tactics, he would not have purchased Fleischmann’s.

182. Defendant’s deceptive advertising allowed it to sell more units of Fleischmann’s, and at a higher price.

183. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute “unfair” business acts and practices because ConAgra’s conduct is:

- a. immoral, unethical, unscrupulous, and offends public policy;
- b. the gravity of ConAgra’s conduct outweighs any conceivable benefit of such conduct; and
- c. the injury to consumers caused by Defendant’s conduct is substantial, not outweighed by any countervailing benefits to consumers or competition, and not one that consumers themselves could reasonably have avoided.

184. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and fraudulent acts and practices; to commence a corrective advertising campaign; and restitution of all monies from the sale of Fleischmann's.

Seventh Cause of Action

California False Advertising Law

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

185. In violation of Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the advertisements, labeling, policies, acts, and practices described herein were designed to, and did, result in the purchase and use of Fleischmann's without the knowledge that they contained toxic artificial trans fat.

186. Defendant knew and reasonably should have known that the labels on Fleischmann's were untrue and misleading.

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

Eighth Cause of Action

California Consumer Legal Remedies Act

Cal. Civ. Code §§ 1750 *et seq.*

188. 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.

189. Defendant's policies, acts and practices were designed to, and did, result in the purchase and use of Fleischmann's primarily for personal, family, or household purposes, and violated and continue to violate 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.

190. As a result, Plaintiff and the Class have suffered irreparable harm and are entitled to injunctive relief and restitution.

191. As a further result, Plaintiff and the Class have suffered damages, and because the conduct was deliberate, immoral, oppressive, made with malice and/or contrary to public policy, they are entitled to punitive or exemplary damages.

192. In compliance with Civ. Code § 1782, Plaintiff sent Defendant written notice of his claims on December 11, 2015. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified Defendant in writing by certified mail of the particular violations of § 1770 of the Act as to Fleischmann's and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act. Defendant's wrongful business practices regarding Fleischmann's constituted, and constitute, a continuing course of conduct in violation of the CLRA since Defendant is still representing that Fleischmann's has characteristics, uses, benefits, and abilities which are false and misleading, and have injured Plaintiff and the Class.

193. Defendant received Plaintiff's written notice on December 15, 2015.

Ninth Cause of Action

Breach of Express Warranty

194. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

195. During the class period, Defendant made written representations to the public, including Plaintiff, by its advertising and packaging that Fleischmann's contains "70% Less Saturated Fat" and "100% Less Cholesterol" per serving than butter and allows people to "maintain[] [their] healthy lifestyle."

196. These promises printed on the label became part of the basis of the bargain between the parties and thus constituted an express warranty.

197. Thereon, Defendant sold the goods to Plaintiff and other consumers who bought the goods from Defendant.

198. However, Defendant breached this express warranty in that Fleischmann's contains PHO, a toxic substance known to increase the risk of coronary heart disease, cancer, Alzheimer's disease, type-2 diabetes, stroke, and other ailments.

199. As a result of this breach, Plaintiff and other consumers in fact did not receive goods as warranted by Defendant.

200. As a proximate result of this breach of warranty by Defendant, Plaintiff and other consumers have been damaged in an amount to be determined at trial.

XVI. PRAYER FOR RELIEF

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

- A. An order confirming that this class action is properly maintainable as a nationwide class action as defined above, appointing Plaintiff Troy Backus and his undersigned counsel to represent the Class, and requiring Defendant to bear the cost of class notice;
- B. An order requiring ConAgra to pay restitution and damages to Plaintiff and class members in the amount of \$25 million, or such greater amount to be determined at trial;
- C. An order requiring Defendant to disgorge any benefits received from Plaintiff and its unjust enrichment realized as a result of its improper and misleading advertising and marketing of Fleischmann's;
- D. An Order declaring the conduct complained of herein violates the Unfair Competition Law;
- E. An Order requiring Defendant to pay restitution and damages to Plaintiff and members of the Misleading Claims Subclass so that they may be restored any money which was acquired by means of any deceptive and fraudulent acts;
- F. An award of punitive damages to the extent allowable by law in an amount to be proved at trial;
- G. An order requiring Defendant to cease and desist its deceptive, unconscionable and fraudulent practices;
- H. An order requiring Defendant to engage in a corrective advertising campaign;

- 1 I. An award of prejudgment and post judgment interest;
2 J. An award of attorneys' fees and costs; and
3 K. Such other and further relief as this Court may deem just, equitable or proper.

4 **XVII. JURY DEMAND**

5 Plaintiff requests a trial by jury.

6 DATED: January 26, 2016

Respectfully Submitted,

7
8 /s/ Gregory S. Weston
9 **THE WESTON FIRM**
10 GREGORY S. WESTON
11 DAVID ELLIOT
12 1405 Morena Blvd., Suite 201
13 San Diego, CA 92110
14 Telephone: (619) 798-2006
15 Facsimile: (313) 293-7071

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Counsel for Plaintiff

XVIII. APPENDIX A: COMPETING TRANS FAT FREE PRODUCTS

- Each of the following vegetable oil spread and sticks distributed by Unilever:
 - Country Crock Original Spread
 - Country Crock Calcium Plus Vitamin D Spread
 - Country Crock Churn Style Spread
 - Country Crock Light Spread
 - Country Crock Spreadable Sticks
 - Promise Active Spread
 - Promise Buttery Spread
 - Promise Light Spread
 - I Can't Believe It's Not Butter Original Spread
 - I Can't Believe It's Not Butter Light Spread
 - I Can't Believe It's Not Butter Olive Oil Spread
 - I Can't Believe It's Not Butter Deliciously Simple Spread
 - I Can't Believe It's Not Butter All-Purpose Sticks
- Each of the following vegetable oil spreads and sticks distributed by Land O'Lakes:
 - Fresh Buttery Taste Spread Tub
 - Fresh Buttery Taste Spread with Olive Oil Tub
- Each of the following vegetable oil spreads distributed by Boulder Brands USA, Inc.:
 - Smart Balance Original
 - Smart Balance Light with Flaxseed Oil
 - Smart Balance Omega-3
 - Smart Balance Light Omega-3
 - Smart Balance EVOO
 - Smart Balance Light with EVOO
 - Smart Balance Organic
 - Smart Balance Low Sodium

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Troy Backus

(b) County of Residence of First Listed Plaintiff Marin
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Gregory S. Weston
The Weston Firm
1405 Morena Blvd., Suite 201, San Diego, CA 92110, (619) 798-2006

DEFENDANTS

ConAgra Foods, Inc.

County of Residence of First Listed Defendant Douglas County, NE
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

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

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

IV. NATURE OF SUIT (Place an "X" in One Box Only)

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)

Brief description of cause:

California Consumer Legal Remedies Act, Unfair Competition Law, and False Advertising Law

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$
25,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/25/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Gregory S. Weston

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.