

**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 Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HAROLD BROWER, on behalf of himself,
all others similarly situated, and the general
public,

Plaintiff,

v.

CAMPBELL SOUP COMPANY,

Defendant.

Case No: '16CV1005 BEN JLB

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
CAL. BUS. & PROF. CODE §§17200
ET SEQ.; CAL. BUS. & PROF. CODE
§§17500 ET SEQ.; AND CAL. CIV.
CODE §§ 1750 ET SEQ. ; AND
BREACH OF IMPLIED AND
EXPRESS WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiff Harold Brower, on behalf of himself, all others similarly situated, and the
2 general public, by and through their undersigned counsel, hereby sues defendant Campbell
3 Soup Company (“Campbell”) and, upon information and belief, including through the
4 investigation of his counsel, alleges as follows.

5 **INTRODUCTION**

6 1. Campbell manufactures, markets, and sells to consumers Healthy Request
7 Chunky Grilled Chicken & Sausage Gumbo soup (“Healthy Request Gumbo”). Healthy
8 Request Gumbo contains artificial trans fat in the form of partially hydrogenated soybean oil.

9 2. The consumption of artificial trans fat substantially detracts health. Scientific
10 studies demonstrate there is no threshold intake level of artificial trans fat that does not
11 increase an individual’s risk of heart disease. Trans fat has also been connected to increased
12 risk of diabetes, cancer, and Alzheimer’s disease. Simply put, artificial trans fat is unsafe for
13 human consumption.

14 3. Notwithstanding the scientific consensus that artificial trans fat increases the risk
15 of heart disease and other chronic morbidity, Campbell falsely and misleadingly markets
16 Healthy Request Gumbo with numerous health and wellness claims intended to convince
17 consumers the product is healthy.

18 4. By falsely and misleadingly labeling and advertising its Healthy Request
19 Gumbo, Campbell leveraged the public’s interest in health generally, and in heart health
20 specifically, to create a demand among consumers for Healthy Request Gumbo that would
21 not have existed absent Campbell’s false and misleading advertising.

22 5. Plaintiff relied on Campbell’s false and misleading advertising in purchasing
23 Healthy Request Gumbo, and lost money as a result.

24 6. Plaintiff brings this action challenging Campbell’s claims relating to Healthy
25 Request Gumbo on behalf of himself and all other similarly-situated consumers in California,
26 alleging violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750
27 *et seq.* (“CLRA”), Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*
28

1 (“UCL”), and False Advertising Law, *id.* §§ 17500 *et seq.* (“FAL”). Plaintiff further alleges
2 that Campbell breached express and implied warranties under state law.

3 7. Plaintiff seeks an order compelling Campbell to restore the amounts by which it
4 has been unjustly enriched, and pay restitution, damages, and punitive damages as allowed
5 by law.

6 PARTIES

7 8. Plaintiff Harold Brower is a resident of Escondido, California.

8 9. Defendant Campbell Soup Company is a New Jersey corporation with its
9 principal place of business at 1 Campbell’s Place, Camden, New Jersey 08103.

10 JURISDICTION & VENUE

11 10. This Court has original jurisdiction over this action under 28 U.S.C. §
12 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the
13 sum or value of \$5,000,000, exclusive of interest and costs, and because more than two-thirds
14 of the members of the Class reside in states other than the state of which Campbell is a citizen.

15 11. This Court has personal jurisdiction over Campbell because Campbell is
16 registered to do business in California and conducts business within California and within
17 this judicial district.

18 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Harold
19 Bower resides in and suffered injuries as a result of Campbell’s acts in this district, many of
20 the acts and transactions giving rise to this action occurred in this district, and Campbell (a)
21 is authorized to conduct business in this district, (b) has intentionally availed itself of the laws
22 and markets of this district through the promotion, marketing, distribution, and sale of its
23 products in this district, and (c) is subject to personal jurisdiction in this district.

24 FACTS

25 **I. Artificial Trans Fat Causes Cardiovascular Disease, Type 2 Diabetes, and Other** 26 **Chronic Morbidity**

27 13. A large, broad, and consistent body of scientific evidence shows that consuming
28 artificial trans fat increases the risk of cardiovascular disease. This includes studies performed

1 under a broad range of test conditions, spanning different geographical regions and
2 populations, under both controlled trial conditions and in free-living populations following
3 their usual diets.

4 14. For this reason, the most respected nutrition experts and expert panels uniformly
5 conclude that artificial trans fat consumption is harmful to human health and increases the
6 risk of cardiovascular disease.

7 15. For example, the American Heart Association warns, “*trans* fats raise your bad
8 (LDL) cholesterol levels and lower your good (HDL) cholesterol levels. Eating *trans* fats
9 increases your risk of developing heart disease.”¹

10 16. Similarly, the Department of Health and Human Services (DHHS) and U.S.
11 Department of Agriculture’s (USDA) jointly-issued Dietary Guidelines Advisory Committee
12 Report states that “[t]he relationship between *trans* fatty acid intake and LDL cholesterol is
13 direct and progressive, increasing the risk of cardiovascular disease.”²

14 17. The Institute of Medicine (IOM) likewise concludes that “there is a positive
15 linear trend between trans fatty acid intake and LDL cholesterol concentration, and therefore
16 increased risk of [Coronary Heart Disease].” The IOM further states that there is “no safe
17 level” of trans fat intake because “any incremental increase in trans fatty acid intake increases
18 the risk of CHD.”³

19 18. Trans fat causes coronary heart disease, a form of cardiovascular disease,
20 primarily by “rais[ing] the concentration of the most dangerous form of serum cholesterol
21

23 ¹ Am. Heart Ass’n., *Trans Fat Overview*, available at
24 <http://www.americanheart.org/presenter.jhtml?identifier=3045792>.

25 ² Dep’t of Health & Human Serv. & U.S. Dep’t of Agric., *2005 Dietary Guidelines Advisory*
26 *Committee Report*, Section 10.

27 ³ Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat,*
28 *Protein and Amino Acids (Macronutrients)*, chapters 8 and 11, National Academy Press,
Washington, DC, pp. 335–432 (2002), available at <http://www.nap.edu>.

1 (LDL cholesterol)” and “lower[ing] a protective form of serum cholesterol (HDL
2 cholesterol).”⁴

3 19. These effects have been shown in both controlled intervention trials and
4 observational studies.⁵

5 20. For example, several crossover diet trials have shown that trans fatty acids “not
6 only raise LDL cholesterol levels but also lower HDL cholesterol levels.”⁶

7 21. In addition to these controlled trials, epidemiologic or observational studies have
8 found that trans fatty acid intake increases risk of CHD. Specifically, an absolute increase in
9 trans fat consumption of 2 percent of energy is associated with an increase in risk of CHD
10 between 36 and 93 percent.⁷

13
14 ⁴ Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J.
15 MED. 94 (1999).

16 ⁵ See, e.g., Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply*
17 *Are Associated With Myocardial Infarction*, 134 J. NUTR. 874 (2004) (“Metabolic
18 [intervention] studies have clearly shown that trans fatty acids (TFAs) elevate [bad] LDL and
lower [good] HDL cholesterol.”).

19 ⁶ See, e.g., A. Aro et al., *Stearic acid, trans fatty acids, and dairy fat: effects on serum and*
20 *lipoprotein lipids, apolipoproteins, lipoprotein(a), and lipid transfer proteins in healthy*
21 *subjects*, 65 AM. J. CLIN. NUTR. 1419 (1997); Nicole M. De Roos et al., *Replacement of*
22 *Dietary Saturated Fatty Acids by Trans Fatty Acids Lowers Serum HDL Cholesterol and*
23 *Impairs Endothelial Function in Healthy Men and Women*, 21 AM. HEART ASSOC. 1233
24 (2001) (healthy men and women who maintained a high-trans fat diet had 21 percent lower
25 protective HDL levels than those on a high-saturated fat diet); M. Abbey & P. Nestel, *Plasma*
26 *cholesteryl ester transfer protein activity is increased when trans-elaidic acid is substituted*
for cis-oleic acid in the diet, 106 ATHEROSCLEROSIS 99 (1994) (Trans fatty acid “increases
low density lipoprotein (LDL) cholesterol and decreases high density lipoprotein (HDL)
cholesterol”).

27 ⁷ Ascherio, A. et al, *Dietary fat and risk of coronary heart disease in men: cohort follow up*
28 *study in the United States*, 313 BR. MED. J. 84 (1996); W. C. Willett et al., *Intake of trans fatty*
acids and risk of coronary heart disease among women, 341 LANCET 581 (1993).

1 22. The consumption of artificial trans fat, therefore, is a serious public health issue
2 and has grave consequences for Americans.

3 23. According to the Centers for Disease Control and Prevention (CDC), elimination
4 of artificial trans fat from the food supply could prevent 10,000 to 20,000 coronary events
5 and 3,000 to 7,000 coronary deaths annually.⁸

6 24. Further, while the evidence of the harmful effects of trans fatty acids is
7 undeniable, they also “provide no known benefit to human health.”⁹

8 25. In addition to increasing the risk of CHD, the consumption of trans fat also
9 contributes to an increased risk in other ailments, including type 2 diabetes; breast, prostate,
10 and colorectal cancer; Alzheimer’s disease; and cognitive decline, among others.

11 26. For example, one study found that every 2% increase in energy intake from
12 artificial trans fat increases the relative risk of type 2 diabetes by 39 percent.¹⁰

13 27. Another study showed 75 percent more women contracted breast cancer in the
14 highest quintile of *trans* fat consumption than did those in the lowest.¹¹

15 ///

16 ///

17 ///

18 ///

19 ///

20 _____
21 ⁸ W. H. Dietz & K. S. Scanlon, *Eliminating the Use of Partially Hydrogenated Oil in Food*
22 *Production and Preparation*, 108 J. AM. MED. ASS. 143 (2012).

23 ⁹ Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat,*
24 *Fatty Acids, Cholesterol, Protein, and Amino Acids* 423 (2005).

25 ¹⁰ Jorge Salmeron et al., *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*, 73 AM.
26 J. CLIN. NUTR. 1019, 1023 (2001).

27 ¹¹ Véronique Chajès et al., *Association between Serum Trans-Monounsaturated Fatty Acids*
28 *and Breast Cancer Risk in the E3N-EPIC Study*, 167 AM. J. EPIDEMIOLOGY 1312, 1316
(2008).

1 28. In other studies, those in the highest quintile of *trans* fat intake had more than
2 double the risk of developing prostate cancer than those in the lowest quintile,¹² and 86
3 percent greater risk of developing colorectal cancer.¹³

4 29. Researchers have also found “increased risk of incident Alzheimer disease
5 among persons with high intakes of . . . *trans*-unsaturated fats,”¹⁴ and “[h]igher intakes of . .
6 . *trans* fat since midlife . . . were [] highly associated with worse cognitive decline.”¹⁵

7 30. In sum, there is no question that consuming trans fat is extremely harmful and
8 “[t]he scientific rationale for eliminating exposure to artificial *trans* fatty acids in foods is
9 rock solid.”¹⁶

10 31. On this basis, in November 2013, the Food and Drug Administration (FDA)
11 announced its tentative decision to ban artificial trans fat in food because “current scientific
12 evidence . . . identifies significant health risks caused by the consumption of *trans* fat” and
13 expert panels all conclude “there is no threshold intake level for industrially-produced *trans*
14 fat that would not increase an individual’s risk of [coronary heart disease]”¹⁷

15 32. The FDA further noted that trans fat has been “connected to a number of other
16 adverse effects on health,” like “insulin resistance” and “diabetes risk,” and may impair the
17

18 ¹² Jorge Chavarro et al., *A Prospective Study of Blood Trans Fatty Acid Levels and Risk of*
19 *Prostate Cancer*, 47 PROC. AM. ASSOC. CANCER RESEARCH 95, 99 (2006).

20 ¹³ L.C. Vinikoor et al., *Consumption of Trans-Fatty Acid and its Association with Colorectal*
21 *Adenomas*, 168 AM. J. EPIDEMIOLOGY 289, 294 (2008).

22 ¹⁴ Martha Clare Morris et al., *Dietary Fats and the Risk of Incident Alzheimer Disease*, 60
23 ARCH. NEUROL. 194, 198-99 (2003).

24 ¹⁵ Elizabeth E. Devore et al., *Dietary Fat Intake and Cognitive Decline in Women with Type*
25 *2 Diabetes*, 32 DIABETES CARE 635 (2009).

26 ¹⁶ Julie Louise Gerberding, *Safer Fats for Healthier Hearts: The Case for Eliminating Dietary*
27 *Artificial Trans Fat Intake*, 151 ANN. INTERN. MED. 137 (2009).

28 ¹⁷ 78 Fed. Reg. 67169, 67169, 67172 (Nov. 8, 2013).

1 growth of fetuses and breastfeeding infants. In sum, trans fat is unsafe “under any condition
2 of use in food.”¹⁸

3 33. After considering comments, including from the food and beverage industry, on
4 June 17, 2015, the FDA, “[b]ased on the available scientific evidence and the findings of
5 expert scientific panels . . . made a final determination that there is no longer a consensus
6 among qualified experts that partially hydrogenated oils (PHOs), which are the primary
7 dietary source of industrially-produced *trans* fatty acids (IP-TFA) are generally recognized
8 as safe (GRAS) for any use in human food.” The FDA gave the food industry three years to
9 remove all artificial trans fat from processed foods, with its ban effective June 18, 2018.¹⁹

10 **II. As a Key Component of its Strategic Marketing Campaign, Campbell Leverages**
11 **Health and Wellness Claims—and a Purported American Heart Association**
12 **“Certification”—to Drive Sales of Healthy Request Gumbo**

13 34. Health and wellness claims are a crucial component of Campbell’s strategic
14 marketing campaign, which was and is designed to increase sales by leveraging the “wellness
15 profile of our soups in a competitively advantaged way.”²⁰

16 35. According to Douglas Conant, Campbell’s President and Chief Executive
17 Officer, “Wellness is a critical component of our corporate strategy,” and “[w]ellness trends
18 have started to place Campbell’s and, in particular, our U.S. soup business onto a new growth
19 trajectory.”²¹

20 ///

21 ///

22 ///

23
24 ¹⁸ *Id.* at 67172.

25 ¹⁹ 80 Fed. Reg. 34650, 34650 (June 17, 2015).

26
27 ²⁰ Campbell News Release (Feb. 21, 2007).

28 ²¹ Campbell News Release (Feb. 22, 2006).

1 36. Because of these “wellness trends,” Campbell has intentionally attempted to
2 “rebrand” itself as “one of the world’s leading providers of healthy and nutritious foods.”²²

3 37. Campbell’s “Healthy Request” line of soups has been central to Campbell’s
4 attempt to reimage or rebrand itself as a health food company.

5 38. In 2006, Campbell launched a major initiative to expand its “Healthy Request”
6 line of soups. This expansion increased the number of “Healthy Request” soups, including
7 introducing four varieties of “Chunky Healthy Request Soup.”²³

8 39. The “Healthy Request” brand has been an effective driver of sales for Campbell,
9 which stated in 2011 that “Healthy Request soups are some of the top performing varieties in
10 Campbell’s soup portfolio, with compound annual sales growth of 21 percent over the past
11 five years.”²⁴

12 40. To reinforce the image that “[w]ellness is central to Campbell’s mission,” the
13 company created Campbell’s Center for Nutrition & Wellness, which it describes as being
14 “comprised of professionals in research, nutrition science, food and agricultural science,
15 technology, culinary arts and communications.” Campbell further states that, “[a]dvised by
16 world class scientific researchers renowned in their fields of study, the Center serves as a
17 nutrition communications resource for outreach to consumers, retailers, the health
18 professional community and the media. The mission of the Center is to provide reliable,
19 science based information about nutrition and wellness and the role of Campbell’s brands in
20 healthful lifestyles.”²⁵ As part of this supposedly “reliable, science based” approach,
21

22
23 ²² Campbell’s 2014 Corporate Social Responsibility Report, *Opportunities: Nutrition*
24 *Awareness Overview*, available at
<http://www.campbellcsr.com/Opportunities/nutritionawareness.html>.

25 ²³ Campbell News Release (Feb. 21, 2007).

26
27 ²⁴ Campbell News Release (Oct. 20, 2011).

28 ²⁵ Campbell News Release (Feb 22, 2006).

1 Campbell claims to “evaluate our products for nutrients that the government recommends to
2 limit in the diet.”²⁶

3 41. As another key component of its Healthy Request initiative, Campbell labels
4 some of its products with American Heart Association (AHA) “certifications.” As Campbell
5 notes, “[a]mong the products that display the [AHA] Heart-Check mark are *all of our*
6 *Campbell’s Healthy Request soups*.”²⁷

7 42. In order to participate in the AHA certification program, companies must pay a
8 fee. The key incentive for these paid “certifications,” according to the AHA, is that “[t]he
9 heart-check mark is a great way to boost sales,” because “[t]he heart-check mark drives
10 purchase decisions.”²⁸

11 43. Consistent with these AHA statements, studies have shown that the AHA “heart-
12 check mark” increases sales by suggesting to consumers that an “independent” group has
13 certified the healthfulness and heart healthfulness of the products bearing the mark.²⁹

14 ///

15 ///

16 ///

17 ///

18
19
20 ²⁶ Campbell Nutrition Center, *available at* <http://www.campbellnutrition.com/nutritionist-corner/articles/heart-healthy-eating>.

21
22 ²⁷ <http://www.campbellnutrition.com/nutritionist-corner/articles/eat-healthy> (emphasis added).

23
24 ²⁸ American Heart Association Food Certification Program, *Boosting product sales; Helping shoppers choose, Supporting your marketing strategy*, *available at* <http://www.watermelon.org/assets/Retailers/AHAStandardsforRetailerInfo.pdf>.

25
26 ²⁹ *See id.* (“Shoppers want clear, simple purchase guidance from a trusted source. The
27 American Heart Association heart-check mark increases product sales because seeing the
28 mark on a package assures shoppers they are making a smart choice.”).

1 44. According to Campbell, its effort to rebrand itself as a health food company by
2 promoting its “Healthy Request” soup line and paying for AHA certifications resulted in
3 “\$2.5 Billion sales of healthy products in 2014.”³⁰

4 **III. Campbell’s Manufacture, Marketing, and Sale of Healthy Request Gumbo**

5 45. For at least several years, Campbell has been selling Healthy Request Gumbo in
6 food, mass merchandise, and club stores in the U.S. under its popular “Chunky” and “Healthy
7 Request” lines of soup.

8 46. Campbell packages Healthy Request Gumbo in either 18.8-ounce cans or 15.2-
9 ounce microwaveable containers.

10 47. Artificial trans fat is not a natural component found in any of the ingredients
11 used in Healthy Request Gumbo. Rather, Campbell intentionally adds partially hydrogenated
12 soybean oil, containing artificial trans fat, to Healthy Request Gumbo.

13 48. During the class period, there have been available for sale at least two versions
14 of Healthy Request Gumbo in cans, and three versions in microwavable containers. Despite
15 slight, non-material alterations to the labeling, Campbell has consistently placed health and
16 wellness claims directly on the label of Healthy Request Gumbo in an attempt to convince
17 consumers that the product is healthy, despite that Campbell adds artificial trans fat to the
18 product.

19 49. In light of this, several health and wellness claims Campbell has used on the
20 label of Healthy Request Gumbo, and which it continues to use, are misleading, including at
21 a minimum, the following claims:

- 22 a. **“Healthy Request” Claim:** The Healthy Request Gumbo label
23 prominently claims that the product is a “Healthy Request,” which expressly conveys
24 that the product is healthy. This is misleading because the product contains artificial
25 trans fat, which causes increased risk of cardiovascular disease, stroke, diabetes, and
26

27 ³⁰ Campbell’s 2014 Corporate Social Responsibility Report, Opportunities: Nutrition
28 Awareness Overview, *available at*
<http://www.campbellcsr.com/Opportunities/nutritionawareness.html>.

1 other morbidity, and therefore is *not* healthy, or at a minimum, not as healthy as
2 Campbell suggests.

3 b. **“Heart Healthy” Claim:** The Healthy Request Gumbo label
4 prominently claims in multiple places that the product is “Heart Healthy.” This claim
5 is false, or at a minimum highly misleading, because the product, due to its artificial
6 trans fat content, is actually detrimental to heart health.

7 c. **Vignettes of Vegetables and Grains:** Campbell bolsters its health and
8 wellness claims for Healthy Request Gumbo through the use of vegetable and whole
9 grain vignettes designed to reinforce the perception among consumers and potential
10 purchasers that the product is healthy, despite that it contains artificial trans fat.

11 d. **“COOKED WITH CARE” Claim:** Campbell claims Healthy Request
12 Gumbo is “COOKED WITH CARE,” which misleadingly implies that the product is
13 healthy and made with wholesome, quality ingredients, when in reality it contains
14 artificial trans fat, which detracts human health.

15 e. **“Made with Lean Chicken Meat” Claim:** Campbell bolsters its
16 misleading health and wellness theme for Healthy Request Gumbo by claiming that
17 the product is “Made with Lean Chicken Meat.” Although perhaps literally true, this
18 claim, in the context presented, misleadingly suggests the product is healthy and made
19 with wholesome, quality ingredients, despite that it contains artificial trans fat, which
20 causes increased risk of cardiovascular disease, stroke, diabetes, and other morbidity.

21 f. **American Heart Association “CERTIFIED” Emblem and “Meets**
22 **Criteria for Heart-Healthy Food” Claim:** To further deceive consumers into
23 believing Healthy Request Gumbo is healthy, Campbell’s places on its label an emblem
24 claiming that the product is “CERTIFIED” by the American Heart Association (AHA)
25 and “Meets Criteria For Heart-Healthy Food.” Although it may be literally true that the
26 product is so certified, or meets the qualifications for the certification, the AHA
27 CERTIFIED emblem is nevertheless misleading because the product contains artificial
28 trans fat; the AHA itself has stated that “[e]ating trans fats increases your risk of

1 developing heart disease.”³¹ The use of the AHA emblem is also misleading because it
 2 leads consumers to believe that the AHA independently approved the product, when in
 3 reality, Campbell merely paid the AHA to use the emblem. Moreover, Campbell
 4 deceptively omits and otherwise fails to disclose this information, which is material to
 5 reasonable consumers.

6 50. In addition, while making these health and wellness claims, Campbell deceptive
 7 omitted material information from the Class regarding the presence and detrimental health
 8 effects of the artificial trans fat in Healthy Request Gumbo.

9 51. In sum, the statements, images, and emblems described above and which appear
 10 on the Healthy Request Gumbo label, taken individually and especially in context of the label
 11 as a whole, are false and misleading because they suggest the product is generally healthy,
 12 and specifically heart healthy, which in reality, the product contains unhealthy artificial trans
 13 fat, and is in fact *detrimental* to heart health. Further, Campbell’s failure to disclose that it
 14 paid for the AHA CERTIFIED emblem is a deceptive omission of material information,
 15 which Campbell had a duty to disclose to purchasers.

16 **IV. Campbell’s False and Misleading Labeling Claims and Material Omissions**
 17 **Regarding Healthy Request Gumbo Violate the Identical Provisions of California**
 18 **and Federal Law, and Render the Product Misbranded**

19 52. Campbell’s deceptive statements as described herein violate federal and
 20 California food labeling regulations which deem a food misbranded if its label is “false or
 21 misleading in any particular.” *See* 21 U.S.C. § 601(n)(1), 21 U.S.C. § 453(h)(1), 21 U.S.C. §
 22 343(a), Cal. Health & Safety Code § 110390, 110660.

23 53. Healthy Request Gumbo is further misbranded because its label “fails to reveal
 24 facts that are material in light of other representations.” 21 C.F.R § 1.21. *See also* 21 U.S.C.
 25 § 601(n)(1), 21 U.S.C. § 453(h)(1), 21 U.S.C. § 343(a), Cal. Health & Safety Code § 110390,
 26

27 _____
 28 ³¹ American Heart Association, *Trans Fat Overview*, available at
<http://www.americanheart.org/presenter.jhtml?identifier=3045792>.

1 110660. Specifically, Campbell fails to reveal that the AHA CERTIFIED emblem is a paid
2 endorsement.

3 54. According to the FDA:

4 [E]ndorsements made for compensation by private organizations or
5 individuals may be misleading to consumers. The agency is advising that
6 when such endorsements are made, a statement should be included in close
7 proximity to the claim, informing consumers that the organization or
8 individual was compensated for the endorsement. Failure to divulge this
9 information on a label that bears a paid endorsement would cause the product
10 to be misbranded under sections 403(a) [codified at 21 U.S.C. § 343(a)] and
201(n) of the act for failure to reveal a fact that is material. 58 Fed. Reg. 2478,
2485 (Jan. 6, 1993).

11 55. In violation of food labeling laws, Campbell paid to receive the AHA
12 CERTIFIED endorsement and placed it on the Healthy Request Gumbo label without
13 disclosing that it was in fact a paid endorsement.

14 56. Campbell's deceptive statements also violate 21 C.F.R. § 101.14(d), which
15 requires that all health claims be "complete, truthful, and not misleading." *See also* Cal.
16 Health & Safety Code § 110670 (requiring compliance with federal health claim
17 requirements). As described above, Campbell's "Heart Healthy" claims are misleading
18 because the product contains artificial trans fat in quantities that detrimentally affect heart
19 health. Further, the statements are not "complete" because they fail to disclose that Campbell
20 adds artificial trans fat to Healthy Request Gumbo, a material fact the knowledge of which is
21 necessary for consumers to evaluate the truth of the product's health claims, and to make an
22 informed purchasing decision.

23 57. Finally, Healthy Request Gumbo is adulterated because it contains partially
24 hydrogenated oil, which is a "poisonous or deleterious substance which may render it
25 injurious to health." *See* 21 U.S.C. §§ 342(a)(1), 453(g)(1), 601(m)(1); Cal. Health & Safety
26 Code § 110545.

1 62. Plaintiff was further injured by Campbell's omission of information that would
2 have been important to and affected his purchasing decision had the information been made
3 known to him.

4 63. Specifically, plaintiff was injured by Campbell's omission and failure to disclose
5 that it paid for the AHA's certification, and that it was not an independent certification. The
6 mark was intended to, and did convey to plaintiff that an unbiased third party had
7 independently certified the healthfulness and heart-healthfulness of Healthy Request Gumbo.
8 Plaintiff was unaware this mark was obtained only after Campbell paid for its placement.
9 Plaintiff relied on this mark, which was a substantial factor in his purchasing decision. Had
10 Campbell disclosed that "AHA CERTIFIED" emblem was a paid endorsement, plaintiff
11 would not have perceived the certification as independent, and as a result, would not have so
12 strongly believed the product was healthy, and healthier than other alternatives. Campbell's
13 concealing that it paid for this the endorsement therefore misled plaintiff, who acted
14 reasonably.

15 64. Campbell's omission was material, plaintiff's reliance was reasonable, and other
16 reasonable consumers would have been misled by Campbell's omission. According to the
17 AHA, studies have shown that the AHA certification increases product sales by influencing
18 consumers' perception that an "independent" group has certified the healthiness of products
19 bearing the mark. The AHA explains that "Shoppers want clear, simple purchase guidance
20 from a trusted source. The American Heart Association heart-check mark increases product
21 sales because seeing the mark on a package assures shoppers they are making a smart
22 choice."³²

23 65. Plaintiff was further injured by Campbell's deceptive omission of the presence
24 and detrimental health effects of the artificial trans fat in Healthy Request Gumbo. Had
25 Campbell made that information known to plaintiff, he would have acted differently.

26
27 ³² American Heart Association Food Certification Program, *Boosting product sales; Helping*
28 *shoppers choose, Supporting your marketing strategy*, available at
<http://www.watermelon.org/assets/Retailers/AHAStandardsforRetailerInfo.pdf>

1 66. Healthy Request Gumbo cost more than similar products without misleading
2 labeling, and would have cost less, for example demanded less in the marketplace, absent
3 Campbell's false and misleading statements and material omissions. Thus, the product was
4 worth less than what plaintiff paid for it.

5 67. By labeling Healthy Request Gumbo with false and misleading health and
6 wellness claims, Campbell artificially increased the demand and market for the product
7 among consumers, and thereby Healthy Request Gumbo's market share. Plaintiff and the
8 Class would not have purchased as much Healthy Request Gumbo absent Campbell's false
9 and misleading statements.

10 68. Plaintiff purchased the product instead of competing products based on the false
11 statements, misrepresentations, and omissions described herein.

12 69. Plaintiff, on one or more occasions, would not have purchased the product absent
13 Campbell's misrepresentations and omissions.

14 70. Plaintiff lost money as a result of Campbell's unlawful behavior.

15 **CLASS ACTION ALLEGATIONS**

16 71. While reserving the right to amend, modify, or otherwise revise the Class
17 definition during class certification, pursuant to Federal Rule of Civil Procedure 23, plaintiff
18 seeks to represent a Class of all persons in the California who, on or after April 25, 2012,
19 purchased Healthy Request Gumbo for personal, family, or household use, and not for resale.

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

23 73. Questions of law and fact common to plaintiff and the class include:

- 24 a. Whether Campbell communicated a health and wellness message through
25 Healthy Request Gumbo's packaging;
- 26 b. Whether that message was material, or likely to be material, to a
27 reasonable consumer;
- 28 c. Whether Healthy Request Gumbo's label is false or misleading in any

1 particular;

- 2 d. Whether Campbell had a duty to disclose information to the Class
3 concerning the presence of trans fat in Healthy Request Gumbo and its
4 effect on consumers' health;
- 5 e. Whether Campbell fraudulently omitted material information that it had a
6 duty to disclose in advertising Healthy Request Gumbo as healthy;
- 7 f. Whether Healthy Request Gumbo is misbranded within the meaning of
8 the FDCA or Sherman Law;
- 9 g. Whether Healthy Request Gumbo's label and advertising claims created
10 express warranties;
- 11 h. Whether Campbell made any implied warranties as to Healthy Request
12 Gumbo;
- 13 i. Whether Campbell breached any express or implied warranties;
- 14 j. The proper amount of restitution;
- 15 k. The proper amount of damages and punitive damages; and
- 16 l. The proper amount of reasonable attorneys' fees.

17 74. Plaintiff's claims are typical of Class Members' claims in that they are based on
18 the same underlying facts, events, and circumstances relating to Campbell's conduct.

19 75. Plaintiff will fairly and adequately represent and protect the interests of the
20 Class, has no interests incompatible with the interests of the Class, and has retained counsel
21 competent and experienced in class action litigation, and particularly in class action litigation
22 involving the false advertisement of foods.

23 76. Questions of law and fact predominate over questions that affect only individual
24 Class Members.

25 77. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
26 23(a) and 23(b)(3). In addition, class treatment of individual issues may be appropriate under
27 Fed. R. Civ. P. 23(b)(4).
28

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violations of the Unfair Competition Law (UCL),**

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

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

7 79. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.”
8 Cal. Bus. & Prof. Code § 17200.

9 80. The acts, omissions, misrepresentations, practices, and non-disclosures of
10 Campbell as alleged herein constitute business acts and practices.

11 **Fraudulent**

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

14 82. As set forth herein, Campbell’s health and wellness claims relating to its Healthy
15 Request Gumbo are likely to deceive reasonable consumers and the public in light of the
16 product’s artificial trans fat content.

17 83. In addition, Campbell’s deceptive omission of material information it was
18 obligated to disclose, concerning both the presence and detrimental health effects of the
19 artificial trans fat in Healthy Request Gumbo, and its payment for the AHA certification, are
20 likely to deceive reasonable consumers, who would have acted differently if Campbell’s had
21 revealed such information.

22 **Unlawful**

23 84. The acts alleged herein are “unlawful” under the UCL in that they violate at least
24 the following laws:

- 25 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 26 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 27 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- 28

- 1 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety
2 Code §§ 110100 *et seq.*

3 **Unfair**

4 85. Campbell's conduct with respect to the labeling, advertising, and sale of its
5 Healthy Request Gumbo was and is unfair because Campbell's conduct was and is immoral,
6 unethical, unscrupulous, or substantially injurious to consumers, and the utility of its conduct,
7 if any, does not outweigh the gravity of the harm to its victims.

8 86. Campbell's conduct with respect to the labeling, advertising, and sale of Healthy
9 Request Gumbo was and is also unfair because it violates public policy as declared by specific
10 constitutional, statutory or regulatory provisions, including but not limited to the False
11 Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the
12 California Sherman Food, Drug, and Cosmetic Law.

13 87. Campbell's conduct with respect to the labeling, advertising, and sale of Healthy
14 Request Gumbo was and is also unfair because the consumer injury was substantial, not
15 outweighed by benefits to consumers or competition, and not one consumers themselves
16 could reasonably have avoided.

17 88. Campbell profited from its sales of the falsely, deceptively, and unlawfully
18 advertised product to unwary consumers.

19 89. Campbell's conduct caused and continues to cause substantial injury to plaintiff
20 and the other Class Members, who have suffered injury in fact as a result of Campbell's
21 unlawful conduct.

22 90. Plaintiff, on behalf of himself and the Class seeks an Order for disgorgement
23 and restitution of all monies from the sale of Healthy Request Gumbo that were unjustly
24 acquired through acts of unlawful competition.
25
26
27
28

1 **SECOND CAUSE OF ACTION**

2 **Violations of the False Advertising Law (FAL),**

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

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

6 92. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
7 association, or any employee thereof with intent directly or indirectly to dispose of real or
8 personal property or to perform services” to disseminate any statement “which is untrue or
9 misleading, and which is known, or which by the exercise of reasonable care should be
10 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

11 93. As alleged herein, the advertisements, labeling, policies, acts, practices, and
12 omissions of Campbell relating to its Healthy Request Gumbo misled consumers acting
13 reasonably as to the healthfulness of the product.

14 94. Plaintiff suffered injury in fact as a result of Campbell’s actions as set forth
15 herein because plaintiff purchased Healthy Request Gumbo in reliance on Campbell’s false
16 and misleading health and wellness marketing claims.

17 95. Campbell’s business practices as alleged herein constitute unfair, deceptive,
18 untrue, and misleading advertising pursuant to the FAL because Campbell has advertised the
19 product in a manner that is untrue and misleading, which Campbell knew or reasonably
20 should have known, and omitted material information from its advertising.

21 96. Campbell profited from its sales of the falsely and deceptively advertised
22 Healthy Request Gumbo to unwary consumers.

23 97. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff on behalf of
24 himself and the Class seeks an Order for disgorgement and restitution of all monies from the
25 sale of Healthy Request Gumbo that were unjustly acquired through acts of false advertising.
26
27
28

1 **THIRD CAUSE OF ACTION**

2 **Violations of the Consumer Legal Remedies Act,**

3 **Cal. Civ. Code §§ 1750 *et seq.***

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

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

9 100. Campbell's false and misleading labeling and other policies, acts, and practices
10 were designed to, and did, induce the purchase and use of its product for personal, family, or
11 household purposes by plaintiff and other Class Members, and thereby violated and continue
12 to violate at least the following sections of the CLRA:

- 13 a. § 1770(a)(5): representing that goods have characteristics, uses, or
14 benefits which they do not have;
- 15 b. § 1770(a)(7): representing that goods are of a particular standard, quality,
16 or grade if they are of another;
- 17 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised;
18 and
- 19 d. § 1770(a)(16): representing the subject of a transaction has been supplied
20 in accordance with a previous representation when it has not.

21 101. Campbell profited from its sale of the falsely, deceptively and unlawfully
22 advertised Healthy Request Gumbo product to unwary consumers. As a result, plaintiff and
23 the Class have suffered harm.

24 102. Campbell's wrongful business practices constituted, and constitute, a continuing
25 course of conduct in violation of the CLRA.

26 103. Pursuant to California Civil Code § 1782, on October 14, 2015, plaintiff sent
27 written notice to Campbell of his claims, but Campbell has failed, after 30 days, to satisfy
28 plaintiff's demand or to rectify the behavior. Accordingly, plaintiff, on behalf of himself and

1 the Class, seeks compensatory damages, punitive damages, and reasonable attorneys' fees
2 and costs.

3 104. In compliance with Cal. Civ. Code § 1780(d), plaintiff's affidavit of venue is
4 filed concurrently herewith.

5 **FOURTH CAUSE OF ACTION**

6 **Breach of Express Warranties,**

7 **Cal. Com. Code § 2313(1)**

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

10 106. Through the Healthy Request Gumbo product labels, Campbell made
11 affirmations of fact or promises, and made descriptions of goods, that formed part of the basis
12 of the bargain, in that plaintiff and the Class purchased the product in reasonable reliance on
13 those statements. Cal. Com. Code § 2313(1).

14 107. These affirmations include "Healthy Request," "Heart Healthy," "COOKED
15 WITH CARE," "AHA CERTIFIED," "Meets Criteria for Heart-Healthy Food," and "Made
16 with Lean Chicken Meat."

17 108. Campbell breached its express warranties by selling a product that is not healthy,
18 and not heart healthy, but which in fact detrimentally affects cholesterol levels increasing risk
19 of CHD, stroke, and other morbidity.

20 109. That breach actually and proximately caused injury in the form of the lost
21 purchase price that plaintiff and Class members paid for Healthy Request Gumbo product.

22 110. As a result, plaintiff seeks, on behalf of himself and other Class Members, actual
23 damages arising as a result of Campbell's breaches of express warranty.

24 **FIFTH CAUSE OF ACTION**

25 **Breach of Implied Warranty of Merchantability,**

26 **Cal. Com. Code § 2314**

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

1 112. Campbell, through its acts and omissions set forth herein, in the sale, marketing
2 and promotion of Healthy Request Gumbo, made representations to plaintiff and the Class
3 that, among other things, the product is healthy. Plaintiff and the Class bought Healthy
4 Request Gumbo manufactured, advertised, and sold by Campbell as described herein.

5 113. Campbell is a merchant with respect to the goods of this kind which were sold
6 to plaintiff and the Class, and there was, in the sale to plaintiff and other consumers, an
7 implied warranty that those goods were merchantable.

8 114. However, Campbell breached that implied warranty in that Healthy Request
9 Gumbo product is not healthy, as set forth in detail herein.

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

13 116. Plaintiff and Class have sustained damages as a proximate result of the foregoing
14 breach of implied warranty in the amount of the product's purchase price.

15 **PRAYER FOR RELIEF**

16 117. Wherefore, plaintiff, on behalf of himself, all others similarly situated, and the
17 general public, prays for judgment against Campbell as to each and every cause of action,
18 and the following remedies:

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

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

22 C. An Order requiring Campbell to disgorge or return all monies, revenues,
23 and profits obtained by any means of wrongful act or practice;

24 D. An Order requiring Campbell to pay all actual and statutory damages
25 permitted under the causes of action alleged herein, including punitive damages;

26 E. An Order requiring Campbell to pay restitution to restore all funds
27 acquired by means of any act or practice declared by this Court to be an unlawful,
28 unfair, or fraudulent business act or practice, untrue or misleading advertising;

- 1 F. An Order awarding costs, expenses, and reasonable attorneys' fees;
2 G. Pre-and post-judgment interest; and
3 H. An Order for any other and further relief the Court deems necessary, just,
4 or proper.

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury on all issues so triable.

7
8 Dated: April 25, 2016

/s/ Jack Fitzgerald

9 **THE LAW OFFICE OF JACK FITZGERALD, PC**

10 JACK FITZGERALD

11 *jack@jackfitzgeraldlaw.com*

12 TREVOR M. FLYNN

13 *trevor@jackfitzgeraldlaw.com*

14 MELANIE PERSINGER

15 *melanie@jackfitzgeraldlaw.com*

16 Hillcrest Professional Building

17 3636 Fourth Avenue, Suite 202

18 San Diego, California 92103

19 Phone: (619) 692-3840

20 Fax: (619) 362-9555

21 **THE LAW OFFICE OF PAUL K. JOSEPH, PC**

22 PAUL K. JOSEPH

23 *paul@pauljosephlaw.com*

24 4125 W. Point Loma Blvd. #206

25 San Diego, CA 92110

26 Phone: (619) 767-0356

27 Fax: (619) 331-2943

28 *Attorneys for Plaintiff and the Proposed Class*

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

HAROLD BROWER, on behalf of himself, all others similarly situated, and the general public

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

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

Jack Fitzgerald
The Law Office of Jack Fitzgerald, PC
3636 4th Ave., Ste. 202, San Diego, CA 92103 / (619) 692-3840

DEFENDANTS

CAMPBELL SOUP COMPANY

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

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

Attorneys (If Known)

'16CV1005 BEN JLB

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

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. s. 1332(d)(2) (the Class Action Fairness Act)
Brief description of cause:
False Advertising (Violation of California UCL, FAL, CLRA & Breach of Warranty)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/25/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Jack Fitzgerald

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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.

1 **THE LAW OFFICE OF**
2 **PAUL K. JOSEPH, PC**
3 PAUL K. JOSEPH (SBN 287057)
4 *paul@pauljosephlaw.com*
5 4125 W. Pt. Loma Blvd. No. 206
6 San Diego, CA 92110
7 Phone: (619) 767-0356
8 Fax: (619) 331-2943

9 **THE LAW OFFICE OF**
10 **JACK FITZGERALD, PC**
11 JACK FITZGERALD (SBN 257370)
12 *jack@jackfitzgeraldlaw.com*
13 TREVOR M. FLYNN (SBN 253362)
14 *trevor@jackfitzgeraldlaw.com*
15 MELANIE PERSINGER (SBN 275423)
16 *melanie@jackfitzgeraldlaw.com*
17 Hillcrest Professional Building
18 3636 Fourth Avenue, Suite 202
19 San Diego, California 92103
20 Phone: (619) 692-3840
21 Fax: (619) 362-9555

22 *Counsel for Plaintiffs and the Proposed Class*

23 **UNITED STATES DISTRICT COURT**
24 **SOUTHERN DISTRICT OF CALIFORNIA**

25 HAROLD BROWER, on behalf of himself,
26 all others similarly situated, and the general
27 public,

28 Plaintiffs,

v.

CAMPBELL SOUP COMPANY,

Defendant.

'16CV1005 BEN JLB

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

1 I, Harold Brower, declare as follows:

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

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

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

8
9 I declare under penalty of perjury under the laws of the United States that the foregoing
10 is true and correct.

11 Executed this 10 day of January, 2016, at San Diego, California.

12
13 Harold Brower

14 Harold Brower