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Attorneys for Defendant
Campbell Soup Company

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

MELINDA FERGUSON, on behalf of herself, all others similarly situated, and the general public,

Plaintiff,

v.

CAMPBELL SOUP COMPANY,

Defendant.

Case No. 5:16-cv-1077

[San Bernardino Superior Court Case No. CIVDS1606306]

NOTICE OF PETITION FOR REMOVAL OF ACTION TO FEDERAL COURT BY DEFENDANT CAMPBELL SOUP COMPANY

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Campbell Soup Company ("Campbell" or "Defendant"), through undersigned counsel, hereby removes the case identified in paragraph 1 below to this Court. This removal is made pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

I. PLEADINGS

1. On April 26, 2016, Plaintiff Melinda Ferguson filed the removed case, *Ferguson v. Campbell Soup Company*, No. CIVDS1606306, in the Superior Court of California, County of San Bernardino. Plaintiff served the Complaint on Campbell on April 28, 2016.

2. In accordance with 28 U.S.C. § 1446(a), true and correct copies of the Summons, a conformed copy of the California State Complaint, Civil Case Cover Sheet, Notice of Related Case, Proofs of Service on Campbell are attached hereto as Exhibits A through C to the Declaration of Dale J. Giali.

3. Campbell did not answer Plaintiff's Complaint in San Bernardino County Superior Court prior to removal and is not aware of any further proceedings or filings regarding that action in that court. Giali Decl. ¶ 4.

II. NATURE OF REMOVED ACTION

4. Plaintiff's Complaint is largely identical to a Complaint filed on April 25, 2016 by Harold Brower against Campbell Soup Company in the United States District Court for the Southern District of California. *See Brower v. Campbell Soup Company*, No. 3:16-cv-01005-BEN-JLB. *See* Exhibit D to Giali Decl.

5. Plaintiff alleges that she purchased Campbell's Healthy Request Gumbo on approximately 10-15 occasions. Compl. ¶ 58. She claims that labeling statements on this product are false and misleading because they allegedly convey a "healthy and wellness messag[e]" despite the fact that the products contain trans fat. Compl. ¶¶ 59-70. According to Plaintiff, the allegedly false and misleading statements are "Healthy Request," "Heart Healthy," "COOKED WITH CARE,"

"AHA CERTIFIED," "Meets Criteria for Heart Healthy Food," and "Made with Lean Chicken Meat." Compl. ¶ 59.

6. Plaintiff asserts three causes of action. Plaintiff brings causes of action under California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*., for unlawful, fraudulent, and unfair conduct (*see* Compl. ¶¶ 81-94); California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq*., for misleading and deceptive advertising and untrue advertising (*see* Compl. ¶¶ 95-102); and California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq*. (*see* Compl. ¶¶ 103-110).

7. Plaintiff seeks to represent the following putative class:

> A Class of all persons in California who, on or after April 25, 2012 (the "Class Period"), purchased, for personal or household use, and not for resale or distribution purposes, Campbell's Healthy Request Gumbo.

Compl. ¶ 72.

8. Plaintiff seeks an order declaring the action to be a proper class action, an order requiring Campbell to bear the cost of class notice, an order enjoining Campbell from using the challenged labeling statements, an order compelling Campbell to destroy all misleading and deceptive advertising materials and product labels, a corrective advertising campaign, attorney's fees and costs, and other further relief as is just and proper. Compl. Prayer for Relief.

III. VENUE

9. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division embracing the place where the state court case was pending.

IV. THE REMOVAL IS TIMELY

10. The removal is timely under 28 U.S.C. § 1446(b).

11. Plaintiff filed her Complaint on April 26, 2016. Plaintiff served the Complaint on Campbell on April 28, 2016. Exhibits A-B to Giali Decl.

12. Campbell filed this Notice of Removal within thirty (30) days of service, as required by law. *See, e.g., Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

V. NOTICE TO ADVERSE PARTY AND STATE COURT

13. Pursuant to 28 U.S.C. § 1446(d), Campbell is serving written notice of the removal of this case on Plaintiff's counsel:

Jack Fitzgerald
Trevor M. Flynn
Melanie Persinger
The Law Office of Jack Fitzgerald, PC
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, CA 92103

Paul K. Joseph
The Law Office of Paul K. Joseph, PC
4125 W. Point Loma Blvd. #206
San Diego, CA 92110

14. Pursuant to 28 U.S.C. § 1446(d), Campbell will promptly file a Notice of Removal Filing with the Clerk of the Superior Court of California, County of San Bernardino. Giali. Decl., ¶ 6.

VI. BASES FOR REMOVAL JURISDICTION

A. This Court Has Jurisdiction Under CAFA

15. Campbell asserts that this Court has jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified as amended at 28 U.S.C. §§ 1332(d), 1335, 1441, 1453, 1603, 1711-1715).

16. CAFA confers federal jurisdiction over class actions involving: (a) minimal diversity (*i.e.*, diversity between any defendant and any putative class member); (b) at least 100 putative class members; and (c) at least $5 million in controversy, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d). Although the burden rests on the removing party to demonstrate that CAFA's jurisdictional

requirements are met, the party opposing jurisdiction under CAFA bears the burden of demonstrating that any exception to CAFA jurisdiction applies. *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir. 2007). This case satisfies CAFA's requirements.

1. The Parties Are Minimally Diverse

17. Plaintiff is a citizen of California. Campbell is a citizen of New Jersey. This satisfies the minimal diversity requirement.

18. Plaintiff is a California resident. Compl. ¶ 8. She seeks to represent a class composed of other "persons in California." Compl. 72. *See Dist. of Columbia v. Murphy*, 314 U.S. 441, 455 (1941) (while residence is not the equivalent of citizenship, residence is properly taken as domicile "until facts are adduced to the contrary"); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (residence is prima facie evidence of domicile for purposes of determining citizenship).

19. A corporation is deemed to be a citizen of the state in which it has been incorporated and where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Similarly, for purposes of determining CAFA jurisdiction, a limited liability company is a citizen of the state of its organization and the state of its principal place of business. 28 U.S.C. § 1332(d)(10).

20. The phrase "principal place of business" "refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). This is the corporation's "nerve center." *Id*. at 81 (internal quotation marks omitted). This "should normally be the place where the corporation maintains its headquarters." *Id*. at 93.

21. At the time of the filing of the Complaint and this notice of removal, Campbell is a New Jersey Corporation with its principal place of business in New Jersey. Compl. ¶ 9. Accordingly, Campbell is not a citizen of California.

22. Therefore, the parties are minimally diverse.

2. The Proposed Class Exceeds 100

23. For purposes of removal, the Court looks to a plaintiff's allegations respecting class size. *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013).

24. Plaintiff purports to bring a claim on behalf of herself and "all persons in California who, on or after April 25, 2012 (the "Class Period"), purchased, for personal or household use, and not for resale or distribution purposes, Campbell's Healthy Request Gumbo." Compl. ¶ 72. Plaintiff concedes that the members in the proposed class are so numerous that individual joinder is impracticable. Compl. ¶ 73. Moreover, more than 100 people in California have purchased Healthy Request Gumbo since April 25, 2012. Thus, the proposed class well exceeds 100 members.

3. The Aggregate Amount in Controversy Exceeds $5 Million

25. Plaintiff does not plead a specific amount in controversy, so Campbell need only make a "plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

26. Under CAFA, "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(6). "[T]he statute tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the definition of [the] proposed class and determine whether the resulting sum exceeds $5 million." *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013).

27. To determine the amount in controversy, the Court must assume that the allegations in the operative pleading are true and that a jury will return a verdict for the Plaintiff on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*,

890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) ("The ultimate inquiry is what amount is put 'in controversy' by the plaintiff's complaint, not what a defendant will actually owe.") (emphasis and internal quotation marks omitted). The Court also may consider summary-judgment-type evidence relevant to the amount in controversy. *See Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002).

28. Here, it is clear that the amount in controversy exceeds $5 million.

29. Plaintiff seeks, amongst other things, an order enjoining Campbell from using health and wellness claims, destruction of Campbell's product labels, a corrective advertising campaign, attorney's fees, and any other and further relief that the Court deems necessary, just, or proper.

30. ***First***, injunctive relief is properly valued in the amount in controversy. *See Lyon v. W.W. Grainger Inc.*, 2010 WL 1753194, at *2 (N.D. Cal. 2010).

31. The value of injunction in this case is measured by the cost of revising labels, pulling challenged products with the challenged statements from California shelves, and destroying old packaging. *See Arens v. Popcorn, Indiana, LLC*, 2014 WL 2737412, at *2 (N.D. Cal. June 16, 2014). Moreover, Campbell would have to develop new labels and advertising for its products, or in the alternative, would have to change the product formulation and re-produce its soup products to comply.

32. To ensure that Campbell adequately complies with an injunction requiring it to cease using health and welfare claims in California, Campbell would have to change its product labeling nationwide. Otherwise, distributors or other third-parties could sell Campbell's allegedly misbranded products in California. Alternatively, Campbell would be forced to develop two labels – one for California products and one for other products – and expend resources policing which labels entered the state of California.

33. ***Second***, many courts have looked to costs imposed upon the defendants if certain relief were granted to determine amount in controversy. *See Gen. Dentistry For Kids, LLC v. Kool Smiles, P.C.*, 379 F. App'x 634, 635 (9th Cir. 2010) (looking at defendant's cost of compliance in injunctive relief context). The cost to Campbell of destroying all misleading and deceptive advertising materials and product labels is thus properly valued in amount in controversy.

34. To destroy all allegedly misleading and deceptive product labels, Campbell would have to buy back inventory in California, destroy its current and unsold inventory, and provide relabeled products to replace those it has bought back from retailers.

35. ***Third***, a corrective advertising campaign should be counted when establishing the amount in controversy. *See Tompkins v. Basic Research LL*, 2008 WL 1808316, at *5 (E.D. Cal. Apr. 22, 2008) (finding amount in controversy exceeded $5 million through valuation of injunction, buy back of products currently on shelves, and corrective advertising).

36. ***Finally***, attorney's fees are counted in evaluating the amount in controversy. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007). These fees "can exceed six figures in a class action and are properly aggregated and considered for purposes of determining the amount in controversy under CAFA." *Federico v. Home Depot*, 507 F.3d 188, 197 (3d Cir. 2007).

37. Plaintiff's Complaint raises complex factual and legal issues, including questions relating to whether Plaintiff's claims are plausible, USDA premarket inspection and approval of labeling and related express preemption, FDA labeling regulations and related express preemption, and whether the court should defer to USDA's or FDA's primary jurisdiction. If the case were to proceed to discovery, it is likely that disputes would arise as to the proper breadth and scope of discovery to be permitted. It is also likely that the parties would seek to adduce expert scientific evidence and/or consumer survey evidence on, among

other things, the truthfulness of Campbell's product labeling and marketing and to what extent the challenged statements actually impact consumer purchasing decisions. It is thus clear that litigating this case to a resolution on the merits would require substantial time and effort by Plaintiff's counsel.

38. Taken together, the amount in controversy in this action exceeds $5,000,000.

4. No Exception Applies to Defeat CAFA Jurisdiction

39. Neither CAFA's "local controversy" nor its "home state" exceptions apply to this case. The local controversy exception only applies if no factually similar class action has been filed against any of the defendants within the last three years. 28 U.S.C. § 1332(d)(4)(A)(ii); s*ee also Giannini v. Nw. Mut. Life Ins. Co.*, 2012 WL 1535196, at *5 (N.D. Cal. Apr. 30, 2012). The lawsuit pending in the Southern District of California and styled *Brower v. Campbell Soup Company*, is a factually-similar class action filed against Campbell within the last three years. Compare *Ferguson* Compl. ¶¶ 1, 2, 3, 4, 5, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 , 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95, 96, 97, 98, 99, 100, 103, 104, 105, 106, 107, 110 *with Brower v. Campbell*, No. 3:16-cv-01005-BEN-JLB (S.D. Cal. Apr. 25, 2016), Compl. ¶¶ 1, 2, 3, 4, 5, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, 95, 96, 98, 99, 100, 101, 102, 104.

40. Moreover, the local controversy exception does not apply when the principal injury alleged is one that occurred throughout the country, not just in the state where the case was filed, as is the case here. 28 U.S.C. §

1332(d)(A)(4)(i)(III); *see also Waller v. Hewlett-Packard Co.*, 2011 WL 8601207, at *4 (S.D. Cal. May 10, 2011).

41. For the home state exception to apply, all primary defendants must be citizens of the state in which the case is filed. 28 U.S.C. § 1332(d)(B); *see also Corsino v. Perkins*, 2010 WL 317418, at *5. As discussed *infra*, Campbell, the sole defendant, is not a citizen of California, and therefore this exception does not apply either.

VII. RESERVATION OF RIGHTS AND REQUEST FOR ADDITIONAL BRIEFING

42. By removing this matter, Campbell does not waive and, to the contrary, reserves any rights it may have, including, without limitation, all available arguments and affirmative defenses. Campbell does not concede that class certification is appropriate or that Plaintiff is entitled to any recovery whatsoever. The question, however, is not whether class certification is appropriate or whether Plaintiff will recover any amount for any particular time period. "The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

43. Campbell believes that the Complaint in *Ferguson v. Campbell Soup Company*, No. CIVDS1606306, was filed without legal or factual basis. Accordingly, by filing this Petition, Campbell reserves and does not intend to waive any and all rights to seek appropriate sanctions or other remedies.

VIII. CONCLUSION

Defendant Campbell Soup Company hereby removes the above-captioned action from the Superior Court of California, County of San Bernardino, to the United States District Court for the Central District of California.

Dated: May 24, 2016

MAYER BROWN LLP
DALE J. GIALI
ANDREA M. WEISS
REBECCA B. JOHNS

By: *s/Dale J. Giali*
Dale J. Giali
Attorneys for Defendant
Campbell Soup Company

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Attorneys for Defendant
Campbell Soup Company

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

MELINDA FERGUSON, on behalf of herself, all others similarly situated, and the general public,

Plaintiff,

v.

CAMPBELL SOUP COMPANY,

Defendant.

Case No. 5:16-cv-1077

[San Bernardino Superior Court Case No. CIVDS1606306]

DECLARATION OF DALE J. GIALI IN SUPPORT OF DEFENDANT CAMPBELL SOUP COMPANY'S PETITION FOR REMOVAL OF ACTION TO FEDERAL COURT

I, Dale J. Giali, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am one of the attorneys of record for defendant Campbell Soup Company ("Campbell") in this action. This declaration is based on my involvement with this action and my personal knowledge of the facts recited below. I submit this declaration based upon my personal knowledge in support of the Notice of Petition of Removal filed by Campbell in this action.

2. Public records indicate that on April 26, 2016, Plaintiff Melinda Ferguson filed a Complaint in the Superior Court of the State of California for the County of San Bernardino ("San Bernardino Superior Court") captioned *Melinda Ferguson, on behalf of herself, all others similarly situated, and the general public v. Campbell Soup Company*, Case No. CIVDS1606306. On April 28, 2016, Plaintiff served Campbell.

3. Attached hereto as Exhibits A through C are true and correct copies of all documents filed in the state action as revealed on the public docket: the Summons, the Complaint, Civil Cover Sheet, Notice of Related Case, Court Notices, and Proofs of Service.

4. Campbell did not answer or otherwise respond to Plaintiff's Complaint in San Bernardino Superior Court prior to removal and is not aware of any further proceedings or filings regarding this action in San Bernardino Superior Court.

5. Attached hereto as Exhibit D is a true and correct copy of the Complaint filed on April 25, 2016 in the action styled *Brower v. Campbell Soup Company*, No. 3:16-cv-01005-BEN-JLB (S.D. Cal).

6. Notice of this removal will promptly be given both to the adverse party and to San Bernardino County Superior Court pursuant to 28 U.S.C. § 1446(d).

7. I declare under penalty of perjury under the laws of the United States

that the foregoing facts are true and correct. Executed this 24th day of May in Los Angeles, California.

By: *s/Dale J. Giali*
Dale J. Giali

EXHIBIT A

CIV-160426-CIV-DS1606306-SIF-094804

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: SIF
Action Date: 04/26/16
Action Time: 9:48
Action Seq: 0004
Printed by: GLGRE

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Summons Issued and filed

NEW FILE

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
CAMPBELL SOUP COMPANY

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MELINDA FERGUSON, on behalf of herself, all others similarly situated, and the general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 26 2016

BY Gloria M. Greco
GLORIA M. GRECO, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ***¡AVISO!*** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es): San Bernardino Superior Court
Civil Division of the San Bernardino District; 247 West 3rd St., San Bernardino, CA 92415-0210

CASE NUMBER:
(Número del Caso): CIVDS1606306

BY FAX

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jack Fitzgerald, 3636 Fourth Ave., Suite 202, San Diego, CA 92103 ; 619-692-3840

DATE: *(Fecha)* APR 26 2016

Clerk, by *(Secretario)* Gloria M. Greco, Deputy *(Adjunto)*

Gloria M. Greco

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

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

SUMMONS

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

CIV-160511-CIV-DS1606306-PSSC-080902

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: PSSC
Action Date: 05/11/16
Action Time: 8:09
Action Seq: 0002
Printed by: EMUEL

THIS COVERSHEET IS FOR COURT PURPOSES ONLY, AND THIS IS NOT A PART OF THE OFFICIAL RECORD. YOU WILL NOT BE CHARGED FOR THIS PAGE

Proof of Service of Summons and Comp/Pet on CAMPBELL SOUP COMPANY; Defendant/Respondent served on 04/28/16 with costs of $145.00 filed.

NEW FILE

POS-010

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

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
MAY 11 2016
BY ERIN MUELLER, DEPUTY

Superior Court of California, County of San Bernardino
STREET ADDRESS: 247 West Third Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Bernadino, CA 92415
BRANCH NAME: San Bernardino Justice Center

PLAINTIFF/PETITIONER: MELINDA FERGUSON, ET AL.
DEFENDANT/RESPONDENT: CAMPBELL SOUP COMPANY

CASE NUMBER: CIVDS1606306

PROOF OF SERVICE OF SUMMONS

Ref. No. or File No.: Campbell

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:

BY FAX

   a. ☑ summons
   b. ☑ complaint
   c. ☑ Alternative Dispute Resolution (ADR) package
   d. ☑ Civil Case Cover Sheet (served in complex cases only)
   e. ☐ cross-complaint
   f. ☑ other (specify documents):

NOTICE OF TRIAL SETTING CONFERENCE AND NOTICE OF CASE ASSIGNMENT; NOTICE OF RELATED CASE

3. a . Party served (specify name of party as shown on documents served):
Campbell Soup Company

   b. ☑ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specity name and relationship to the party named in item 3a):
James Guyon (Senior Paralegal) - Person Authorized to Accept

4. Address where the party was served: **1 Campbell's Place**
Camden, NJ 08103

5. I served the party (check proper box)
   a. ☑ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **4/28/2016** (2) at (time): **1:50 PM**
   b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):

      (1) ☑ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.

      (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.

      (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.

      (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): **or** ☐ a declaration of mailing is attached.

      (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: MELINDA FERGUSON, ET AL.	CASE NUMBER: CIVDS1606306
DEFENDANT/RESPONDENT: CAMPBELL SOUP COMPANY	

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
   (1) on (date): (2) from (city):
   (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., §415.30.)
   (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., §415.40.)
   d. ☐ **by other means** (specify means of service and authorizing code section):

   ☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:
   a. ☐ as an individual defendant.
   b. ☐ as the person sued under the fictitious name of (specify):
   c. ☐ as occupant.
   d. ☑ On behalf of (specify):
   Campbell Soup Company
   under the following Code of Civil Procedure section:
   - ☑ 416.10 (corporation)
   - ☐ 416.20 (defunct corporation)
   - ☐ 416.30 (joint stock company/association)
   - ☐ 416.40 (association or partnership)
   - ☐ 416.50 (public entity)
   - ☐ 415.95 (business organization, form unknown)
   - ☐ 416.60 (minor)
   - ☐ 416.70 (ward or conservatee)
   - ☐ 416.90 (authorized person)
   - ☐ 415.46 (occupant)
   - ☐ other:

7. **Person who served papers**
   a. Name: **Wilbert Smith**
   American Messenger Service, Inc.
   b. Address: **420 Spruce Street, Suite B San Diego, CA 92103**
   c. Telephone Number: **(619) 278-0891**
   d. **The fee** for service was: $ $145.00
   e. I am:
   (1) ☑ not a registered California process server.
   (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
   (3) ☐ a registered California process server.
   (i) ☐ Owner ☐ Employee ☑ Independent Contractor
   (ii) Registration No.:
   (iii) County:

8. ☑ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
   or
9. ☐ **I am a California sheriff or marshal and** I certify that the foregoing is true and correct.

Date: **Tuesday, May 10, 2016**

Wilbert Smith
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

W. Smith
(SIGNATURE)

EXHIBIT B

CIV-160426-CIV-DS1606306-CASEEN-094802

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: CASEEN
Action Date: 04/26/16
Action Time: 9:48
Action Seq: 0002
Printed by: GLGRE

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Complaint and Party information entered

NEW FILE

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Counsel for Plaintiff and the Proposed Class

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
APR 26 2016
BY Gloria M. Greco
GLORIA M. GRECO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MELINDA FERGUSON, on behalf of herself, all others similarly situated, and the general public

Plaintiff,

v.

CAMPBELL SOUP COMPANY,

Defendant.

Case No: CIVDS1606306

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.*

DEMAND FOR JURY TRIAL

BY FAX

Plaintiff Melinda Ferguson, on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby sues defendant Campbell Soup Company ("Campbell") and, upon information and belief, including through the investigation of her counsel, alleges as follows.

INTRODUCTION

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

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

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

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

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

6. Plaintiff brings this action challenging Campbell's claims relating to Healthy Request Gumbo on behalf of herself, all other similarly-situated consumers in California, and the general public, alleging violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), Unfair Competition Law, Cal. Bus. & Prof. Code §§

17200 *et seq.* ("UCL"), and False Advertising Law, *id.* §§ 17500 *et seq.* ("FAL"). Plaintiff further alleges that Campbell breached express and implied warranties under state law.

7. Plaintiff seeks an Order compelling Campbell to (a) cease marketing the coconut products using the misleading tactics complained of herein, (b) conduct a corrective advertising campaign, and (c) destroy all misleading and deceptive materials. Aside from her reasonable attorneys' fees and costs, plaintiff does not currently seek monetary damages or compensation.

PARTIES

8. Plaintiff Melinda Ferguson is a resident of San Bernardino, California.

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

JURISDICTION & VENUE

10. The California Superior Court has jurisdiction over this matter as a result of defendant's violations of the California Business and Professions Code, California Civil Code, and California common law principles. The California Superior Court also has jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law.

11. The Court has personal jurisdiction over Campbell because it has purposely availed itself of the benefits and privileges of conducting business activities within California.

12. Venue is proper in San Diego County because a substantial part of the events or omissions giving rise to the claims occurred in San Bernardino, California, in San Bernadino County.

FACTS

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

13. A large, broad, and consistent body of scientific evidence shows that consuming artificial trans fat increases the risk of cardiovascular disease. This includes studies performed under a broad range of test conditions, spanning different geographical regions and

populations, under both controlled trial conditions and in free-living populations following their usual diets.

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

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

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

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

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

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[1] Am. Heart Ass'n., *Trans Fat Overview*, *available at* http://www.americanheart.org/presenter.jhtml?identifier=3045792.

[2] Dep't of Health & Human Serv. & U.S. Dep't of Agric., *2005 Dietary Guidelines Advisory Committee Report*, Section 10.

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

(LDL cholesterol)" and "lower[ing] a protective form of serum cholesterol (HDL cholesterol)."[4]

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

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

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

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

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

[6] *See, e.g.*, A. Aro et al., *Stearic acid, trans fatty acids, and dairy fat: effects on serum and lipoprotein lipids, apolipoproteins, lipoprotein(a), and lipid transfer proteins in healthy subjects*, 65 AM. J. CLIN. NUTR. 1419 (1997); Nicole M. De Roos et al., *Replacement of Dietary Saturated Fatty Acids by Trans Fatty Acids Lowers Serum HDL Cholesterol and Impairs Endothelial Function in Healthy Men and Women*, 21 AM. HEART ASSOC. 1233 (2001) (healthy men and women who maintained a high-trans fat diet had 21 percent lower protective HDL levels than those on a high-saturated fat diet); M. Abbey & P. Nestel, *Plasma 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").

[7] Ascherio, A. et al, *Dietary fat and risk of coronary heart disease in men: cohort follow up 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).

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

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

24. Further, while the evidence of the harmful effects of trans fatty acids is undeniable, they also "provide no known benefit to human health."[9]

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

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

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

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

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

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

[11] 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).

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

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

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

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

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

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[12] 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).

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

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

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

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

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

growth of fetuses and breastfeeding infants. In sum, trans fat is unsafe "under any condition of use in food."[18]

33. After considering comments, including from the food and beverage industry, on June 17, 2015, the FDA, "[b]ased on the available scientific evidence and the findings of expert scientific panels . . . made a final determination that there is no longer a consensus among qualified experts that partially hydrogenated oils (PHOs), which are the primary dietary source of industrially-produced *trans* fatty acids (IP-TFA) are generally recognized as safe (GRAS) for any use in human food." The FDA gave the food industry three years to remove all artificial trans fat from processed foods, with its ban effective June 18, 2018.[19]

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

34. Health and wellness claims are a crucial component of Campbell's strategic marketing campaign, which was and is designed to increase sales by leveraging the "wellness profile of our soups in a competitively advantaged way."[20]

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

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[18] *Id.* at 67172.

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

[20] Campbell News Release (Feb. 21, 2007).

[21] Campbell News Release (Feb. 22, 2006).

36. Because of these "wellness trends," Campbell has intentionally attempted to "rebrand" itself as "one of the world's leading providers of healthy and nutritious foods."[22]

37. Campbell's "Healthy Request" line of soups has been central to Campbell's attempt to reimage or rebrand itself as a health food company.

38. In 2006, Campbell launched a major initiative to expand its "Healthy Request" line of soups. This expansion increased the number of "Healthy Request" soups, including introducing four varieties of "Chunky Healthy Request Soup."[23]

39. The "Healthy Request" brand has been an effective driver of sales for Campbell, which stated in 2011 that "Healthy Request soups are some of the top performing varieties in Campbell's soup portfolio, with compound annual sales growth of 21 percent over the past five years."[24]

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

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[22] Campbell's 2014 Corporate Social Responsibility Report, *Opportunities: Nutrition Awareness Overview*, *available at* http://www.campbellcsr.com/Opportunities/nutritionawareness.html.

[23] Campbell News Release (Feb. 21, 2007).

[24] Campbell News Release (Oct. 20, 2011).

[25] Campbell News Release (Feb 22, 2006).

Campbell claims to "evaluate our products for nutrients that the government recommends to limit in the diet."[26]

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

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

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

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[26] Campbell Nutrition Center, *available at* http://www.campbellnutrition.com/nutritionist-corner/articles/heart-healthy-eating.

[27] http://www.campbellnutrition.com/nutritionist-corner/articles/eat-healthy (emphasis added).

[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.

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

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

III. Campbell's Manufacture, Marketing, and Sale of Healthy Request Gumbo

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

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

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

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

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

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

[30] Campbell's 2014 Corporate Social Responsibility Report, Opportunities: Nutrition Awareness Overview, *available at* http://www.campbellcsr.com/Opportunities/nutritionawareness.html.

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

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

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

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

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

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

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

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

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

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

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

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

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[31] American Heart Association, *Trans Fat Overview*, *available at* http://www.americanheart.org/presenter.jhtml?identifier=3045792.

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

54. According to the FDA:

> [E]ndorsements made for compensation by private organizations or individuals may be misleading to consumers. The agency is advising that when such endorsements are made, a statement should be included in close proximity to the claim, informing consumers that the organization or individual was compensated for the endorsement. Failure to divulge this information on a label that bears a paid endorsement would cause the product 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).

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

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

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

PLAINTIFFS' PURCHASES, RELIANCE, AND INJURY

58. Plaintiff purchased Healthy Request Gumbo approximately 10 to 15 times between approximately June 2014 and February 2015 from the Wal-Mart located at 4001 Hallmark Pkwy, San Bernardino, CA 92407, or the Stater Bros. located at 977 Kendall Dr., San Bernardino, CA 92407.

59. In purchasing Healthy Request Gumbo, plaintiff relied on Campbell's claims that the product was a "Healthy Request," was "Heart Healthy," was "COOKED WITH CARE," was "AHA CERTIFIED" and therefore "Meets Criteria for Heart-Healthy Food," and was "Made with Lean Chicken Meat." Planitiff relied on these claims both individually, and especially in the context presented on the label as a whole, including with vignettes of vegetables and whole grains, which reinforced Campbell's health and wellness messaging for Healthy Request Gumbo. These statements, and the overall message conveyed to plaintiff—that Healthy Request Gumbo is a healthy, and a heart-healthy product—were important factors in plaintiff's decision to purchase Healthy Request Gumbo.

60. When purchasing Healthy Request Gumbo, plaintiff was seeking for herself and her family a healthy, and heart-healthy product that did not negatively affect blood cholesterol levels or the health of their cardiovascular systems, and a product made with healthy ingredients. However, plaintiff consumed Healthy Request Gumbo after purchasing it, and thus her risk of CHD and other morbidity has increased as a result of consuming Healthy Request Gumbo.

61. Because plaintiff expected Campbell's health and wellness claims to be true and honest when they are in fact false and misleading, she did not receive the benefit of her purchases. Instead of receiving a product that was healthy, and in particular heart-healthy, plaintiff received a product that increased her risk of coronary heart disease and other ailments.

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

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

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

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

66. Healthy Request Gumbo cost more than similar products without misleading labeling, and would have cost less, for example demanded less in the marketplace, absent

---

[32] 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

Campbell's false and misleading statements and material omissions. Thus, the product was worth less than what plaintiff paid for it.

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

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

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

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

CLASS ACTION ALLEGATIONS

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

72. While reserving the right to redefine or amend the class definition prior to seeking class certification, plaintiff brings this suit as a class action pursuant to Cal. Code Civ. P. § 382 on behalf of themselves and a Class of all persons in California who, on or after April 25, 2012 (the "Class Period"), purchased, for personal or household use, and not for resale or distribution purposes, Campbell's Healthy Request Gumbo (the "Class").

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

74. Questions of law and fact common to plaintiff and the Class include:

a. Whether Campbell communicated a health and wellness message through the Healthy Request Gumbo package or labeling;

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

c. Whether the Healthy Request Gumbo label is false or misleading in any particular;

d. Whether Campbell omitted material information regarding the Healthy Request Gumbo's AHA CERTIFIED emblem;

e. Whether Healthy Request Gumbo is misbranded within the meaning of the FDCA or Sherman Law;

f. Whether the Healthy Request Gumbo label and advertising claims created express warranties;

g. Whether Campbell made any implied warranties as to Healthy Request Gumbo;

h. Whether Campbell breached any express or implied warranties;

i. The propriety and appropriate scope of prospective injunctive relief; and

j. The proper amount of reasonable attorneys' fees.

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

76. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Campbell's conduct. Specifically, all Class Members, including plaintiff, were subjected to the same misleading and deceptive conduct when they purchased Healthy Request Gumbo, and suffered economic injury because the product was and is misrepresented. Absent Campbell's business practice of deceptively and unlawfully labeling Healthy Request Gumbo, plaintiff and other Class Members would not have purchased the Healthy Request Gumbo, or would not have been willing to pay as much for the product.

77. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel

competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising of foods, including foods containing artificial trans fat.

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

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law (UCL),

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

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

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

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

Fraudulent

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

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

86. In addition, Campbell's deceptive omission of material information it was obligated to disclose, concerning both the presence and detrimental health effects of the artificial trans fat in Healthy Request Gumbo, and its payment for the AHA certification, are

likely to deceive reasonable consumers, who would have acted differently if Campbell's had revealed such information.

Unlawful

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

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

Unfair

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

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

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

* * *

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

92. Campbell's conduct caused and continues to cause substantial injury to plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a result of Campbell's unlawful conduct.

93. Plaintiff and other Class Members are likely to continue to be damaged by Campbell's deceptive trade practices because Campbell continues to disseminate misleading information, to which plaintiffs, other Class Members, and the general public continue to be exposed. Thus, injunctive relief enjoining Campbell's deceptive practices is proper.

94. In accordance with Cal. Bus. & Prof. Code § 17203, plaintiffs seek an order enjoining Campbell from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and requiring Campbell to commence a corrective advertising campaign.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law (FAL),

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

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

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

97. As alleged herein, the advertisements, labeling, policies, acts, and practices of Campbell relating to Healthy Request Gumbo misled consumers acting reasonably as to the healthfulness of the product.

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

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

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

101. As a result, plaintiffs, the Class, and the general public are entitled to injunctive relief.

102. Pursuant to Cal. Bus. & Prof. Code § 17535, plaintiffs, on behalf of themselves, the Class, and the general public, seek an Order enjoining Campbell from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

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

104. 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.

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

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

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

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

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

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

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

108. Accordingly, plaintiff seeks, on behalf of herself, the Class, and the general public, appropriate injunctive relief, as well as reasonable attorneys' fees and costs.

109. Pursuant to California Civil Code § 1782, on October 14, 2015, plaintiff sent written notice to Campbell of her claims and the underlying CLRA violations, but Campbell failed to remedy the violations within 30 days thereafter.

110. In compliance with Cal. Civ. Code § 1780(d), plaintiff's affidavit of venue is filed concurrently herewith, attached to the Complaint.

PRAYER FOR RELIEF

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

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

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

C. An Order enjoining Campbell from using health and wellness claims—at a minimum those claims challenged in this lawsuit—to label or otherwise market or advertise its Healthy Request Gumbo, so long as the product contains artificial trans fat;

D. An Order compelling Campbell to destroy all misleading and deceptive advertising materials and product labels;

E. An Order compelling Campbell to conduct a corrective advertising campaign;

F. An award of attorneys' fees and costs; and

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

JURY DEMAND

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

Dated: April 25, 2016

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Attorneys for Plaintiffs and the Proposed Class

CIV-160426-CIV-DS1606306-CCCS-094806

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: CCCS
Action Date: 04/26/16
Action Time: 9:48
Action Seq: 0006
Printed by: GLGRE

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Civil Case Cover Sheet filed.

NEW FILE

CM-010

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

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 26 2016

BY Gloria M. Greco
GLORIA M. GRECO, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino
STREET ADDRESS: 247 West 3rd St.
MAILING ADDRESS: 247 West 3rd St.
CITY AND ZIP CODE: San Bernardino 92415-0210
BRANCH NAME: Civil Division of the San Bernardino District

CASE NAME:
Melinda Ferguson v. Campbell Soup Company

CIVIL CASE COVER SHEET

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

Complex Case Designation

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

CASE NUMBER: CIVDS1606306

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)

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

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

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

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

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

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

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

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

Enforcement of Judgment
☐ Enforcement of judgment (20)

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

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

BY FAX

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☑ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: 3
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: April 25, 2016
Jack Fitzgerald
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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

CIVIL CASE COVER SHEET

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

EXHIBIT C

Actions

Case Type:

Case Number: Search

Case CIVDS1606306 - FERGUSON-V-CAMPBELL SOUP

Move To This Date

Viewed	Date	Action Text	Disposition	Image
	10/28/2016 8:30 AM DEPT. S24	TRIAL SETTING CONFERENCE - Minutes		
N	05/11/2016	PROOF OF SERVICE OF SUMMONS AND COMP/PET ON CAMPBELL SOUP COMPANY; DEFENDANT/RESPONDENT SERVED ON 04/28/16 WITH COSTS OF $145.00 FILED.	Not Applicable	
N	05/09/2016	NOTICE OF RETURN OF DOCUMENT(S)	Not Applicable	
	05/09/2016	PROOF OF SERVICE OF SUMMONS IS RETURNED BY COURT FOR THE FOLLOWING REASON(S): MUST SERVE EXACTLY AS SUED. SEE ATTACHED.	Not Applicable	
N	04/26/2016	NOTICE OF RELATED CASE FILED BY MELINDA FERGUSON.	Not Applicable	
	04/26/2016	FILING FEE PAID BY MELINDA FERGUSON FOR FIRST APPEARANCE FILING FEE	Not Applicable	
N	04/26/2016	NOTICE IMAGED	Not Applicable	
	04/26/2016	CASE ASSIGNED FOR ALL PURPOSES TO DEPARTMENT S24		
N	04/26/2016	CIVIL CASE COVER SHEET FILED.	Not Applicable	
N	04/26/2016	SUMMONS ISSUED AND FILED	Not Applicable	
N	04/26/2016	COMPLAINT AND PARTY INFORMATION ENTERED	Not Applicable	

CIV-160426-CIV-DS1606306-N-095102

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: N
Action Date: 04/26/16
Action Time: 9:51
Action Seq: 0002
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Notice OF RELATED CASE filed by MELINDA FERGUSON.

NEW FILE

CM-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Jack Fitzgerald (SBN 257370) The Law Office of Jack Fitzgerald, PC 3636 Fourth Ave., Suite 202 San Diego, CA 92103 TELEPHONE NO.: 619-692-3840 FAX NO. (Optional): E-MAIL ADDRESS (Optional): jack@jackfitzgeraldlaw.com ATTORNEY FOR (Name): Plaintiff Melinda Ferguson	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT APR 26 2016 BY Gloria M. Greco GLORIA M. GRECO, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 247 West 3rd St. MAILING ADDRESS: 247 West 3rd St. CITY AND ZIP CODE: San Bernardino 92415-0210 BRANCH NAME: Civil Division of the San Bernardino District	
PLAINTIFF/PETITIONER: Melinda Ferguson DEFENDANT/RESPONDENT: Campbell Soup Company	CASE NUMBER: CIVDS1606306 JUDICIAL OFFICER:
NOTICE OF RELATED CASE	DEPT.:

Identify, in chronological order according to date of filing, all cases related to the case referenced above. BY FAX

1. a. Title: Hardold Brower v. Campbell Soup Company
   b. Case number: 16-cv-1005-BEN-JLB
   c. Court: ☐ same as above
      ☑ other state or federal court *(name and address)*: US District Court, Southern District of California
   d. Department: Courtroom 5A ; Suite 5135
   e. Case type: ☐ limited civil ☑ unlimited civil ☐ probate ☐ family law ☐ other *(specify)*:
   f. Filing date: April 25, 2016
   g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No
   h. Relationship of this case to the case referenced above *(check all that apply)*:
      ☐ involves the same parties and is based on the same or similar claims.
      ☑ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
      ☐ involves claims against, title to, possession of, or damages to the same property.
      ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
      ☐ Additional explanation is attached in attachment 1h
   i. Status of case:
      ☑ pending
      ☐ dismissed ☐ with ☐ without prejudice
      ☐ disposed of by judgment

2. a. Title:
   b. Case number:
   c. Court: ☐ same as above
      ☐ other state or federal court *(name and address)*:
   d. Department:

CM-015

PLAINTIFF/PETITIONER: Melinda Ferguson DEFENDANT/RESPONDENT: Campbell Soup Company	CASE NUMBER:

2. *(continued)*

e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other *(specify):*

f. Filing date:

g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above *(check all that apply):*

☐ involves the same parties and is based on the same or similar claims.

☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

☐ involves claims against, title to, possession of, or damages to the same property.

☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

☐ Additional explanation is attached in attachment 2h

i. Status of case:

☐ pending

☐ dismissed ☐ with ☐ without prejudice

☐ disposed of by judgment

3. a. Title:

b. Case number:

c. Court: ☐ same as above

☐ other state or federal court *(name and address):*

d. Department:

e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other *(specify):*

f. Filing date:

g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above *(check all that apply):*

☐ involves the same parties and is based on the same or similar claims.

☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

☐ involves claims against, title to, possession of, or damages to the same property.

☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

☐ Additional explanation is attached in attachment 3h

i. Status of case:

☐ pending

☐ dismissed ☐ with ☐ without prejudice

☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: April 25, 2016

Jack Fitzgerald
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

CIV-160426-CIV-DS1606306-NI-094902

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: NI
Action Date: 04/26/16
Action Time: 9:49
Action Seq: 0002
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Notice Imaged

NEW FILE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino, CA. 924150210

CASE NO: CIVDS1606306

NOTICE OF TRIAL SETTING CONFERENCE
and NOTICE OF CASE ASSIGNMENT

IN RE: FERGUSON-V-CAMPBELL SOUP

THIS CASE HAS BEEN ASSIGNED TO: DONNA GUNNELL GARZA IN DEPARTMENT S24 FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for Trial Setting Conference at the court located at 247 WEST THIRD STREET SAN BERNARDINO, CA 92415-0210.

HEARING DATE: 10/28/16 at 8:30 in Dept. S24

DATE: 04/26/16 Nancy Eberhardt, Interim Court Executive Officer
By: GLORIA GRECO

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:
( ) Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.
( ) Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.
(X) A copy of this notice was given to the filing party at the counter
( ) A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 04/26/16
I declare under penalty of perjury that the foregoing is true and correct. Executed on 04/26/16 at San Bernardino, CA

BY: GLORIA GRECO

civ-ntsc-20130417

Notice 'NTSC' has been printed for the following Attorneys/Firms
or Parties for Case Number CIVDS1606306 on 4/26/16:

LAW OFFICE OF PAUL K JOSEPH PC
4125 W PT LOMA BLVD
NO 206
SAN DIEGO, CA 92110

SCANNED

CIV-160509-CIV-DS1606306-REJ2-142104

Scanned Document Coversheet

System Code: CIV
Case Number: DS1606306
Case Type: CIV
Action Code: REJ2
Action Date: 05/09/16
Action Time: 2:21
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CASE NAME: FERGUSON-V-CAMPBELL SOUP

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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

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

INTRODUCTION

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

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

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

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

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

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

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

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

PARTIES

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

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

JURISDICTION & VENUE

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

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

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

FACTS

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

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

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

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

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

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

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

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

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[1] Am. Heart Ass'n., *Trans Fat Overview*, *available at* http://www.americanheart.org/presenter.jhtml?identifier=3045792.

[2] Dep't of Health & Human Serv. & U.S. Dep't of Agric., *2005 Dietary Guidelines Advisory Committee Report*, Section 10.

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

(LDL cholesterol)" and "lower[ing] a protective form of serum cholesterol (HDL cholesterol)."[4]

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

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

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

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

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

[6] *See, e.g.*, A. Aro et al., *Stearic acid, trans fatty acids, and dairy fat: effects on serum and lipoprotein lipids, apolipoproteins, lipoprotein(a), and lipid transfer proteins in healthy subjects*, 65 AM. J. CLIN. NUTR. 1419 (1997); Nicole M. De Roos et al., *Replacement of Dietary Saturated Fatty Acids by Trans Fatty Acids Lowers Serum HDL Cholesterol and Impairs Endothelial Function in Healthy Men and Women*, 21 AM. HEART ASSOC. 1233 (2001) (healthy men and women who maintained a high-trans fat diet had 21 percent lower protective HDL levels than those on a high-saturated fat diet); M. Abbey & P. Nestel, *Plasma 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").

[7] Ascherio, A. et al, *Dietary fat and risk of coronary heart disease in men: cohort follow up 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).

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

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

24. Further, while the evidence of the harmful effects of trans fatty acids is undeniable, they also "provide no known benefit to human health."[9]

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

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

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

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

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

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

[11] 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).

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

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

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

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

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

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[12] 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).

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

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

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

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

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

growth of fetuses and breastfeeding infants. In sum, trans fat is unsafe "under any condition of use in food."[18]

33. After considering comments, including from the food and beverage industry, on June 17, 2015, the FDA, "[b]ased on the available scientific evidence and the findings of expert scientific panels . . . made a final determination that there is no longer a consensus among qualified experts that partially hydrogenated oils (PHOs), which are the primary dietary source of industrially-produced *trans* fatty acids (IP-TFA) are generally recognized as safe (GRAS) for any use in human food." The FDA gave the food industry three years to remove all artificial trans fat from processed foods, with its ban effective June 18, 2018.[19]

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

34. Health and wellness claims are a crucial component of Campbell's strategic marketing campaign, which was and is designed to increase sales by leveraging the "wellness profile of our soups in a competitively advantaged way."[20]

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

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[18] *Id.* at 67172.

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

[20] Campbell News Release (Feb. 21, 2007).

[21] Campbell News Release (Feb. 22, 2006).

36. Because of these "wellness trends," Campbell has intentionally attempted to "rebrand" itself as "one of the world's leading providers of healthy and nutritious foods."[22]

37. Campbell's "Healthy Request" line of soups has been central to Campbell's attempt to reimage or rebrand itself as a health food company.

38. In 2006, Campbell launched a major initiative to expand its "Healthy Request" line of soups. This expansion increased the number of "Healthy Request" soups, including introducing four varieties of "Chunky Healthy Request Soup."[23]

39. The "Healthy Request" brand has been an effective driver of sales for Campbell, which stated in 2011 that "Healthy Request soups are some of the top performing varieties in Campbell's soup portfolio, with compound annual sales growth of 21 percent over the past five years."[24]

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

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[22] Campbell's 2014 Corporate Social Responsibility Report, *Opportunities: Nutrition Awareness Overview*, *available at* http://www.campbellcsr.com/Opportunities/nutritionawareness.html.

[23] Campbell News Release (Feb. 21, 2007).

[24] Campbell News Release (Oct. 20, 2011).

[25] Campbell News Release (Feb 22, 2006).

Campbell claims to "evaluate our products for nutrients that the government recommends to limit in the diet."[26]

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

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

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

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[26] Campbell Nutrition Center, *available at* http://www.campbellnutrition.com/nutritionist-corner/articles/heart-healthy-eating.

[27] http://www.campbellnutrition.com/nutritionist-corner/articles/eat-healthy (emphasis added).

[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.

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

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

III. Campbell's Manufacture, Marketing, and Sale of Healthy Request Gumbo

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

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

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

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

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

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

[30] Campbell's 2014 Corporate Social Responsibility Report, Opportunities: Nutrition Awareness Overview, *available at* http://www.campbellcsr.com/Opportunities/nutritionawareness.html.

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

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

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

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

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

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

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

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

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

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

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

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

[31] American Heart Association, *Trans Fat Overview*, *available at* http://www.americanheart.org/presenter.jhtml?identifier=3045792.

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

54. According to the FDA:

> [E]ndorsements made for compensation by private organizations or individuals may be misleading to consumers. The agency is advising that when such endorsements are made, a statement should be included in close proximity to the claim, informing consumers that the organization or individual was compensated for the endorsement. Failure to divulge this information on a label that bears a paid endorsement would cause the product 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).

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

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

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

PLAINTIFF'S PURCHASES, RELIANCE, AND INJURY

58. Plaintiff purchased Healthy Request Gumbo approximately three times per month between approximately January and May of 2015, from either (a) the Ralph's grocery store located at 10525 Commons Drive, San Diego, California 92127, (b) the Vons stores located at 11986 Bernardo Plaza Drive, San Diego, California 92128 and 351 West Felicita Avenue, Escondido, California 92025; or (c) the Albertsons located at 1570 West Valley Parkway, Escondido, California 92029.

59. In purchasing Healthy Request Gumbo, plaintiff relied on Campbell's claims that the product was a "Healthy Request," was "Heart Healthy," was "COOKED WITH CARE," was "AHA CERTIFIED" and therefore "Meets Criteria for Heart-Healthy Food," and was "Made with Lean Chicken Meat." Plaintiff relied on these claims both individually, and especially in the context presented on the label as a whole, including with vignettes of vegetables and whole grains, which reinforced Campbell's health and wellness messaging for Healthy Request Gumbo. These statements, and the overall message conveyed to plaintiff—that Healthy Request Gumbo is a healthy, and a heart-healthy product—were important factors in plaintiff's decision to purchase Healthy Request Gumbo.

60. When purchasing Healthy Request Gumbo, plaintiff was seeking for himself and his family a healthy, and heart-healthy product that did not negatively affect blood cholesterol levels or the health of their cardiovascular systems, and a product made with healthy ingredients. However, Plaintiff consumed Healthy Request Gumbo after purchasing it, and thus his risk of CHD and other morbidity has increased as a result of consuming Healthy Request Gumbo.

61. Because plaintiff expected Campbell's health and wellness claims to be true and honest when they are in fact false and misleading, he did not receive the benefit of his purchases. Instead of receiving a product that was healthy, and in particular heart-healthy, plaintiff received a product that increased his risk of coronary heart disease and other ailments.

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

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

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

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

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[32] 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

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

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

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

a. Whether Campbell communicated a health and wellness message through Healthy Request Gumbo's packaging;

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

c. Whether Healthy Request Gumbo's label is false or misleading in any

particular;

d. Whether Campbell had a duty to disclose information to the Class concerning the presence of trans fat in Healthy Request Gumbo and its effect on consumers' health;

e. Whether Campbell fraudulently omitted material information that it had a duty to disclose in advertising Healthy Request Gumbo as healthy;

f. Whether Healthy Request Gumbo is misbranded within the meaning of the FDCA or Sherman Law;

g. Whether Healthy Request Gumbo's label and advertising claims created express warranties;

h. Whether Campbell made any implied warranties as to Healthy Request Gumbo;

i. Whether Campbell breached any express or implied warranties;

j. The proper amount of restitution;

k. The proper amount of damages and punitive damages; and

l. The proper amount of reasonable attorneys' fees.

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

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

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law (UCL),

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

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

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

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

Fraudulent

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

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

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

Unlawful

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

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

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

Unfair

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

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

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

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

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

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

SECOND CAUSE OF ACTION

Violations of the False Advertising Law (FAL),

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

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

99. 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.

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

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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

Breach of Express Warranties,

Cal. Com. Code § 2313(1)

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability,

Cal. Com. Code § 2314

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

F. An Order awarding costs, expenses, and reasonable attorneys' fees;

G. Pre-and post-judgment interest; and

H. An Order for any other and further relief the Court deems necessary, just, or proper.

JURY DEMAND

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

Dated: April 25, 2016

/s/ Jack Fitzgerald

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