

1 MAYER BROWN LLP
 DALE J. GIALI (SBN 150382)
 2 *dgiali@mayerbrown.com*
 KERI E. BORDERS (SBN 194015)
 3 *kborders@mayerbrown.com*
 REBECCA B. JOHNS (SBN 293989)
 4 *rjohns@mayerbrown.com*
 350 South Grand Avenue, 25th Floor
 5 Los Angeles, CA 90071-1503
 Telephone: (213) 229-9500
 6 Facsimile: (213) 625-0248

7 Attorneys for Defendants
 CAMPBELL SOUP COMPANY
 8 AND PEPPERIDGE FARM, INC.

9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 DENISE CLEVELAND AND LANNA
 RAINWATER, on behalf of themselves and all
 13 others similarly situated,

14 Plaintiffs,

15 v.

16 CAMPBELL SOUP COMPANY AND
 PEPPERIDGE FARM, INC.,

17
 18 Defendants.

Case No. 4:21-cv-06002

**(Alameda Superior Court Case No. RG
 21101115)**

**NOTICE OF PETITION FOR REMOVAL
 BY DEFENDANTS CAMPBELL SOUP
 COMPANY AND PEPPERIDGE FARM,
 INCORPORATED PURSUANT TO
 28 U.S.C. §§ 1332, 1441 1446, AND 1453**

JURY TRIAL DEMANDED

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFFS AND THEIR COUNSEL OF**
3 **RECORD:**

4 **PLEASE TAKE NOTICE** that Defendants Campbell Soup Company and Pepperidge
5 Farm, Incorporated, through their undersigned counsel, hereby remove *Cleveland et al. v.*
6 *Campbell Soup Company, et al.*, Case No. RG 21101115, from the Superior Court of the State of
7 California in and for the County of Alameda, to the United States District Court for the Northern
8 District of California, pursuant to 28 U.S.C. § 1441 governing the removal of civil actions and §
9 1453 governing the removal of class actions. Removal to the Northern District of California is
10 based on federal diversity jurisdiction under the diversity jurisdiction requirements of the Class
11 Action Fairness Act, 28 U.S.C. § 1332(d)(2). As required by 28 U.S.C. § 1446(a), process,
12 pleadings, and orders served in the action to date are attached to the Declaration of Dale J. Giali
13 (“Giali Decl.”). Pursuant to 28 U.S.C. § 1446(a), Defendants provide the following short and
14 plain statement of the grounds for removal.

15 **I. INTRODUCTION**

16 1. On May 26, 2021, Plaintiffs Denise Cleveland and Lanna Rainwater filed a
17 putative class action complaint in the Alameda County Superior Court against Campbell Soup
18 Company and Pepperidge Farm, Incorporated, entitled *Cleveland et al. v. Campbell Soup*
19 *Company, et al.*, Case No. RG 21101115.

20 2. On June 16, 2021, Defendants received a Notice and Acknowledgement of
21 Receipt from plaintiffs dated June 15, 2021. Giali Decl. at ¶ 9. On July 6, 2021, Defendants
22 signed and returned the notice. *Id.* In accordance with 28 U.S.C. § 1446(a), true and correct
23 copies of “all process, pleadings, and orders” served on the removing defendants in this action
24 are attached hereto. Specifically:

- 25 • The Class Action Complaint, attached to the Giali Decl. at **Ex. 1**;
- 26 • The Civil Case Cover Sheet, attached to the Giali Decl. at **Ex. 2**;
- 27 • The Civil Case Cover Sheet Addendum, attached to the Giali Decl. at **Ex. 3**;

- 1 • The Attachment to the Civil Case Cover Sheet, attached to the Giali Decl. at **Ex. 4**;
- 2
- 3 • The Summons, attached to the Giali Decl. at **Ex. 5**; and
- 4 • All other documents on file in the Superior Court, including the Notice of
- 5 Assignment of Judge for All Purposes and Notice of Case Management
- 6 Conference, attached to the Giali Decl. at **Ex. 6**.

7 *Id.* at ¶¶ 3-8.

8 3. Plaintiffs are consumers who allegedly purchased various Goldfish brand snack
9 crackers manufactured, distributed, labeled, and advertised by Pepperidge Farm. Compl. at ¶¶
10 12-13. Plaintiffs contend that the Goldfish are deceptively labeled as containing “0g Sugars”
11 when in fact they are not a low or significantly reduced calorie food, or are not for weight
12 control, and do not display a warning to that effect. *Id.* at ¶¶ 1-3. Plaintiffs contend that they
13 relied on the “0g Sugars” statement when purchasing Goldfish, and that the statement caused
14 them to believe Goldfish is lower in calories in comparison to other products. *Id.* at ¶¶ 12-13.

15 4. Plaintiffs seek to represent the following putative nationwide class:

16 All persons who purchased Goldfish labeled as having 0g Sugar outside the
17 Nutrition Fact Panel in the United States within the applicable statute of
limitations.

18 *Id.* at ¶ 59.

19 5. Plaintiffs also seek to represent putative classes of California and New York
20 consumers who purchased Goldfish labeled as having 0g Sugar. *Id.*

21 6. Plaintiffs assert seven causes of action: (a) violation of California’s Consumer
22 Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; (b) violation of California’s
23 False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; (c) violation of
24 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (d)
25 violation of New York’s General Business Law § 349; (e) violation of New York’s General
26 Business Law § 350; (f) restitution based on quasi contract/unjust enrichment; and (g) breach of
27 express warranty. Compl. at ¶¶ 73-169.

28

1 7. As set forth herein, based on the allegations of the Complaint and other evidence
2 collected by Defendants, this Court has subject matter jurisdiction under the Class Action
3 Fairness Act, 28 U.S.C § 1332(d). Therefore, this action may be removed to this Court, pursuant
4 to 28 U.S.C. § 1441.

5 8. Defendants have not answered the Complaint in Alameda County Superior Court
6 prior to removal, and Defendants are not aware of any further proceedings or filings regarding
7 this action in that court. Giali Decl. at ¶ 10.

8 **II. REMOVAL IS PROPER UNDER CAFA**

9 9. “[A]ny civil action brought in a State court of which the district courts of the
10 United States have original jurisdiction, may be removed by the ... defendants, to the district
11 court of the United States for the district and division embracing the place where such action is
12 pending.” 28 U.S.C. § 1441(a); *see also id.* § 1453(b).

13 10. CAFA confers district courts with original jurisdiction over a putative class action
14 if the number of members of all proposed plaintiff classes aggregates to 100 or more, the
15 aggregate amount in controversy exceeds \$5 million exclusive of interest and costs, and “any
16 member of [the] class of plaintiffs is a citizen of a State different from any defendant.” *Id.* §
17 1332(d)(2); *see also id.* § 1332(d)(5)(B). Although the burden rests on the removing party to
18 demonstrate that CAFA’s jurisdictional requirements are met, the party opposing jurisdiction
19 under CAFA bears the burden of demonstrating that any exception to CAFA jurisdiction applies.
20 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir. 2007). This action satisfies each
21 of CAFA’s requirements.

22 **A. This Is A Covered Class Action**

23 11. CAFA defines a “class action” as “any civil action” filed under a “State statute or
24 rule of judicial procedure” that, “similar” to Federal Rule of Civil Procedure 23, authorizes “an
25 action to be brought by 1 or more representative persons as a class action.” *Id.* § 1332(d)(1)(B).

26 12. This action meets CAFA’s definition of a class action. Plaintiffs purport to bring
27 this action on behalf of “all others similarly situated,” and identify putative classes of
28 nationwide, California, and New York consumers who purchased Goldfish. Compl. at ¶ 59.

1 Plaintiffs bring these claims pursuant to California’s class action statute, Cal. Civ. Proc. Code §
2 382, and allege that each of the class-action requirements is met. Compl. at ¶¶ 59, 62-72

3 **B. The Proposed Class Exceeds 100 Members**

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

6 14. Plaintiffs purport to bring a claim on behalf of “[a]ll persons who purchased
7 Goldfish labeled as having 0g Sugar outside the Nutrition Fact Panel in the United States . . .”
8 Compl. at ¶ 59. Plaintiffs allege that “the proposed Classes contain thousands of purchasers of
9 Goldfish . . .” *Id.* at ¶ 62; *see Roppo v. Travelers Com. Ins. Co.*, 869 F.3d 568, 581 (7th Cir.
10 2017) (“[The defendant] may rely on the estimate of the class number set forth in the
11 complaint.”). Accordingly, the number of members of all proposed plaintiff classes in the
12 aggregate exceeds the 100-member requirement. *See* 28 U.S.C. § 1332(d)(5)(B).

13 **C. The Parties Are Minimally Diverse**

14 15. CAFA’s minimal diversity requirement is met if “any member of [the] class of
15 plaintiffs” is “a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). A
16 class member is any person “who falls[] within the definition” of the proposed class. *Id.* § 1332
17 (d)(1)(D).

18 16. Plaintiffs are citizens of California and New York. Compl. at ¶¶ 12-13. And the
19 putative classes are defined to include consumers nationwide, as well as subclasses for California
20 and New York consumers. *Id.* at ¶ 59. At a minimum, the putative class likely includes at least
21 one California citizen, and at least one New York citizen. *See Rosas v. Carnegie Mortg., LLC*,
22 2012 WL 1865480 at *5 (C.D. Cal. May 21, 2012) (“Because the complaint alleges a nationwide
23 class, minimal diversity necessarily exists.”).

24 17. Under CAFA, both corporations and unincorporated associations are deemed to
25 be citizens of the states where they are incorporated or organized, and where they have their
26 principal places of business. 28 U.S.C. § 1332(c)(1), (d)(10). The phrase “principal place of
27 business” “refers to the place where the corporation’s high level officers direct, control, and
28 coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). This is

1 the corporation’s “nerve center.” *Id.* at 81. This “should normally be the place where the
2 corporation maintains its headquarters.” *Id.* at 93. Pepperidge Farm, Incorporated is a
3 Connecticut corporation with its principal place of business in Norwalk, Connecticut. Compl. at
4 ¶ 14. Campbell Soup Company is a New Jersey corporation with its principal place of business
5 in Camden, New Jersey. *Id.* at ¶ 15.

6 18. Because plaintiffs are citizens of California and New York, and because
7 Defendants are citizens of Connecticut and New Jersey, the parties are at least minimally diverse.

8 **D. The Aggregate Amount In Controversy Exceeds \$5 Million**

9 19. Under CAFA, the claims of the individual class members are aggregated to
10 determine if the amount in controversy exceeds the required “sum or value of \$5,000,000,
11 exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6). When a defendant removes an
12 action pursuant to CAFA, the “defendant’s notice of removal need include only a *plausible*
13 allegation that the amount in controversy exceeds the jurisdictional threshold” of \$5 million.
14 *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (emphasis added).¹

15 20. To determine the amount in controversy, the Court must assume that the
16 allegations in the operative pleading are true and that a jury will return a verdict for the plaintiff
17 on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249
18 (C.D. Cal. 2012) (“The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s
19 complaint, not what a defendant will actually owe.”) (emphasis omitted). A “removing defendant
20 is not obligated to ‘research, state, and prove plaintiff’s claims for damages.’” *Korn v. Polo*
21 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal. 2008) (emphasis omitted).
22 Defendants may rely on “reasonable assumptions” in calculating the amount in controversy for
23 removal purposes. *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019).

24 21. Although Defendants deny all allegations of wrongdoing and state that plaintiffs’
25 claims are meritless, plaintiffs seek, amongst other things, restitution or restitutionary
26

27 _____
28 ¹ “Evidence establishing the amount is required by [28 U.S.C.] § 1446(c)(2)(B) only when the
plaintiff contests, or the court questions, the defendant’s allegation.” *Dart*, 574 U.S. at 89.

1 disgorgement, compensatory damages, statutory damages, statutory penalties, punitive damages,
2 and attorneys' fees, which well exceed the \$5 million jurisdictional threshold.

3 22. First, compensatory damages and restitution or restitutionary disgorgement are in
4 excess of \$5 million. Plaintiffs request "[r]estitution in such amount that Plaintiffs and all
5 members of the Classes paid to purchase Defendants' Goldfish or paid as a premium over
6 alternatives, or restitutionary disgorgement of the profits Defendants obtained from those
7 transactions, for Causes of Action for which they are available," and "[c]ompensatory damages
8 for Causes of Action for which they are available." Compl. at Prayer for Relief, (B), (C).
9 Plaintiffs challenge at least sixteen varieties of Goldfish crackers. *See* Compl. at ¶ 1, n.1.
10 Moreover, plaintiffs claim that they would not have purchased Goldfish at all had they known
11 that they are not low or reduced calorie products. *Id.* at ¶¶ 12-13. Plaintiffs further claim that
12 other consumers would not have purchased Goldfish for the same reason. *Id.* at ¶ 88. Thus,
13 pursuant to plaintiffs' allegations, the amount in controversy can be determined by aggregating
14 the total revenue derived from the sale of the sixteen Goldfish products nationwide during the
15 class period. During the class period, gross revenue from the sale of those products has been well
16 in excess of \$5 million.

17 23. Second, attorneys' fees are counted in evaluating the amount in controversy. *See*
18 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007). These fees "can exceed
19 six figures in a class action and are properly aggregated and considered for purposes of
20 determining the amount in controversy under CAFA." *Federico v. Home Depot*, 507 F.3d 188,
21 197 (3d Cir. 2007).

22 24. Plaintiffs' Complaint raises complex factual and legal issues. If the case were to
23 proceed to discovery, it is likely that disputes would arise as to the proper breadth and scope of
24 discovery to be permitted. It is thus clear that litigating this case to a resolution on the merits
25 would require substantial time and effort by plaintiffs' counsel.

26 25. Finally, punitive damages are counted in evaluating the amount in controversy.
27 *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) ("The calculation of the
28 amount in controversy takes into account claims for 'general' damages, 'special' damages,

1 punitive damages if recoverable as a matter of law, and attorneys' fees recoverable by statute or
2 contract."'). Plaintiffs seek punitive damages. Compl. at Prayer for Relief (F).

3 26. Taken together, the amount in controversy in this action exceeds \$5 million.

4 **E. No Exception To Defeat CAFA Applies**

5 27. Neither CAFA's "local controversy" nor its "home state" exceptions apply to this
6 case. For the home state exception to apply, all primary defendants must be citizens of the state
7 in which the case is filed. 28 U.S.C. § 1332(d)(4)(B); *see also Corsino v. Perkins*, 2010 WL
8 317418, at *5 (C.D. Cal. Jan. 19, 2010). Similarly, for the local controversy exception to apply,
9 at least one defendant must be a citizen of California, and that defendant's conduct must form a
10 significant basis for the claims asserted by the proposed plaintiff class. 28 U.S.C. §
11 1332(d)(4)(i)(II). Neither defendant is a citizen of California, so neither exception applies.

12 28. Moreover, the local controversy exception does not apply when the principal
13 injury alleged is one that occurred throughout the country, not just in the state where the case
14 was filed, as is the case here. 28 U.S.C. § 1332(d)(4)(A)(i)(III); *see also Waller v. Hewlett-*
15 *Packard Co.*, 2011 WL 8601207, at *4 (S.D. Cal. May 10, 2011). Goldfish are sold nationwide
16 and the labels and ingredient formulation for the products is the same throughout the United
17 States. Indeed, plaintiffs allege a nationwide class. This demonstrates that this controversy is not
18 truly local in nature, and that the principal injury is nationwide.

19 **III. COMPLIANCE WITH OTHER REMOVAL REQUIREMENTS**

20 **A. Removal Is Timely**

21 29. This Notice of Removal is timely because Defendants filed it within 30 days of
22 being served with the Complaint. *See* 28 U.S.C. § 1446(b)(1) (requiring, as relevant here, that a
23 notice of removal of a civil action be filed within 30 days after the defendant receives, "through
24 service or otherwise," a copy of the summons and complaint); *see also Murphy Bros., Inc. v.*
25 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999) (clock for removal not triggered by
26 "mere receipt of the complaint unattended by any formal service"); Giali Decl. at ¶ 9.

1 **B. Venue Is Proper**

2 30. Under 28 U.S.C. § 1441(a), venue is proper in the United States District Court for
3 the Northern District of California because this Court embraces the Alameda County Superior
4 Court, where this action was pending.

5 **C. Notice To Plaintiffs And State Court**

6 31. Pursuant to 28 U.S.C. § 1446(d), Defendants are serving written notice of the
7 removal of this case on plaintiffs' counsel:

8 Wyatt A. Lison
9 wlison@fdpklaw.com
10 Joseph N. Kravec, Jr.
11 jkravec@fdpklaw.com
12 Feinstein Doyle Payne & Kravec, LLC
13 429 Fourth Avenue, Suite 1300
14 Pittsburgh, PA 15219
15 Tel : (412) 281-8400
16 Fax : (412) 281-1007

17 Daniel L. Warshaw
18 dwarshaw@pswlaw.com
19 Pearson, Simon & Warshaw, LLP
20 15165 Ventura Blvd., Suite 400
21 Sherman Oaks, CA 91403
22 Tel: (818) 788-8300
23 Fax: (818) 788-8104

24 Melissa S. Weiner
25 mweiner@pswlaw.com
26 Pearson, Simon & Warshaw, LLP
27 800 LaSalle Avenue, Suite 2150
28 Minneapolis, MN 55402
 Tel : (612) 389-0600
 Fax : (612) 389-1610

 32. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a Notice of
Removal Filing with the Clerk of the Superior Court of California, County of Alameda.

D. All Defendants Consent To Removal

 33. Both named defendants in this action consent to removal and sign this Notice of
Removal. Even if both defendants did not consent, CAFA permits any defendant without consent
of any other defendant to remove this case to federal court. *See* 28 U.S.C. § 1453(b).

1 **IV. RESERVATION OF RIGHTS**

2 34. By removing this matter, Defendants do not waive and, to the contrary, reserve
3 any rights they may have, including, without limitation, all available arguments and affirmative
4 defenses. Defendants do not concede that class certification is appropriate or that plaintiffs are
5 entitled to any recovery whatsoever. However, the question is not whether class certification is
6 appropriate or whether plaintiffs will recover any amount for any particular time period. “The
7 amount in controversy is simply an estimate of the total amount in dispute, not a prospective
8 assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th
9 Cir. 2010).

10 35. In the event that plaintiffs file a request to remand, or the Court considers remand
11 *sua sponte*, Defendants respectfully request the opportunity to submit additional argument and/or
12 evidence in support of removal.

13 **V. CONCLUSION**

14 36. WHEREFORE, Defendants respectfully request that their Notice of Removal be
15 deemed good and sufficient and for this Court to exercise subject matter jurisdiction over this
16 removed action.

17
18 Dated: August 3, 2021

MAYER BROWN LLP
Dale J. Giali
Keri E. Borders
Rebecca B. Johns

19
20
21 by: /s/ Dale J. Giali
22 Dale J. Giali
23 Attorneys for Defendants
24 CAMPBELL SOUP COMPANY AND
25 PEPPERIDGE FARM, INC.
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1 MAYER BROWN LLP
DALE J. GIALI (SBN 150382)
2 *dgiali@mayerbrown.com*
KERI E. BORDERS (SBN 194015)
3 *kborders@mayerbrown.com*
REBECCA B. JOHNS (SBN 293989)
4 *rjohns@mayerbrown.com*
350 South Grand Avenue, 25th Floor
5 Los Angeles, CA 90071-1503
Telephone: (213) 229-9500
6 Facsimile: (213) 625-0248

7 Attorneys for Defendants
CAMPBELL SOUP COMPANY
8 AND PEPPERIDGE FARM, INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 DENISE CLEVELAND AND LANNA
RAINWATER, on behalf of themselves and all
13 others similarly situated,

Case No. 4:21-cv-06002

**DECLARATION OF DALE J. GIALI IN
SUPPORT OF NOTICE OF REMOVAL**

14 Plaintiffs,

15 v.

16 CAMPBELL SOUP COMPANY AND
PEPPERIDGE FARM, INC.,

17
18 Defendants.
19

1 I, Dale J. Giali, declare:

2 1. I am an attorney, admitted to practice before this Court, and am a partner at
3 Mayer Brown LLP, counsel of record for defendants Campbell Soup Company and Pepperidge
4 Farm, Incorporated (“Defendants”). This declaration is based on my personal knowledge and I, if
5 called as a witness, could competently testify thereto.

6 2. Public records indicate that on May 26, 2021, plaintiffs Denise Cleveland and
7 Lanna Rainwater (“Plaintiffs”) initiated the removed case, *Cleveland et al. v. Campbell Soup*
8 *Company, et al.*, Case No. RG 21101115, in the Superior Court of the State of California in and
9 for the County of Alameda, by filing a Class Action Complaint (the “Complaint”).

10 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint that I
11 received from plaintiffs’ counsel on June 16, 2021.

12 4. Attached hereto as **Exhibit 2** is a true and correct copy of the Civil Case Cover
13 Sheet that I received from plaintiffs’ counsel on June 16, 2021.

14 5. Attached hereto as **Exhibit 3** is a true and correct copy of the Civil Case Cover
15 Sheet Addendum that I received from plaintiffs’ counsel on June 16, 2021.

16 6. Attached hereto as **Exhibit 4** is a true and correct copy of the Attachment to the
17 Civil Case Cover Sheet that I received from plaintiffs’ counsel on June 16, 2021.

18 7. Attached hereto as **Exhibit 5** is a true and correct copy of Summons that I
19 received from plaintiffs’ counsel on June 16, 2021.

20 8. Attached hereto as **Exhibit 6** is a true and correct copy of all other documents on
21 file in the Superior Court, including the Notice of Assignment of Judge for All Purposes and
22 Notice of Case Management Conference, that I received from plaintiffs’ counsel on June 16,
23 2021, and/or as revealed on the public docket of this case.

24 9. Plaintiffs sent a Notice and Acknowledgement of Receipt to Defendants dated
25 June 15, 2021, which Defendants received on June 16, 2021. On July 6, 2021, Defendants signed
26 and returned the notice.

27 10. Defendants did not answer or otherwise respond to plaintiffs’ Complaint in the
28 Superior Court prior to removal and are not aware of any further proceedings or filings regarding

1 this action in the Superior Court. Defendants' time to answer or otherwise respond has not yet
2 run.

3 11. Notice of this removal will promptly be given both to plaintiffs and to the
4 Superior Court pursuant to 28 U.S.C. § 1446(d).

5 12. I declare under penalty of perjury under the laws of the United States that the
6 foregoing facts are true and correct.

7 Executed this 3rd day of August at Los Angeles, California.

8
9 /s/ Dale J. Giali
Dale J. Giali

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EXHIBIT 1



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Wyatt A. Lison (SBN – 316775)
wlison@fdpklaw.com
Joseph N. Kravec, Jr. (Pro Hac to be filed)
jkravec@fdpklaw.com
**FEINSTEIN DOYLE PAYNE
& KRAVEC, LLC**
429 Fourth Avenue, Suite 1300
Pittsburgh, PA 15219
Tel.: (412) 281-8400
Fax: (412) 281-1007

Daniel L. Warshaw (SBN – 185365)
dwarshaw@pswlaw.com
PEARSON, SIMON & WARSHAW, LLP
15165 Ventura Blvd., Suite 400
Sherman Oaks, CA 91403
Tel.: (818) 788-8300
Fax: (818) 788-8104

Melissa S. Weiner (Pro Hac to be filed)
mweiner@pswlaw.com
PEARSON, SIMON & WARSHAW, LLP
800 LaSalle Avenue
Suite 2150
Minneapolis, MN 55402
Tel.: (612) 389-0600
Fax: (612) 389-0610

**ATTORNEYS FOR PLAINTIFFS
AND THE PROPOSED CLASSES**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

**DENISE CLEVELAND AND LANNA
RAINWATER, on behalf of themselves and
all others similarly situated,**

Plaintiffs,

v.

**CAMPBELL SOUP COMPANY AND
PEPPERIDGE FARM, INC.,**

Defendants.

CASE NO.: RG21101115

CLASS ACTION COMPLAINT FOR:

- (1) Violation of California’s Consumers Legal Remedies Act, California Civil Code §§ 1750, et seq.**
- (2) Violation of California’s False Advertising Law, Cal. Bus. Prof. Code §§ 17500, et seq.**
- (3) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.**

**FILED
ALAMEDA COUNTY**

MAY 26 2021

CLERK OF THE SUPERIOR COURT

By *Andreal Gospel*

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- (4) Violation of New York's General Business Law § 349**
- (5) Violation of New York's General Business Law § 350**
- (6) Restitution based on Quasi Contract/Unjust Enrichment**
- (7) Breach of Warranty**

1 Plaintiffs Denise Cleveland and Lanna Rainwater, by and through their attorneys, bring this
2 action against Defendants Campbell Soup Company and Pepperidge Farm, Inc. (collectively,
3 “Defendants”) and allege as follows based upon their personal experience as to their own acts and
4 status, and based upon the investigation of their counsel, and information and belief as to all other
5 matters:

6 I. NATURE OF THE CASE

7 1. This is a class action on behalf of persons who purchased various flavors of
8 Defendants’ Goldfish brand snack crackers¹ (“Goldfish”), which are prominently labeled as
9 containing “0g Sugars” or “0g Total Sugars” (hereinafter “0g Sugars”) on the products’ principal
10 display panel (“PDP”), without warning that they are “not a low calorie food,” “not a reduced calorie
11 food,” or “not for weight control.” The U.S. Food and Drug Administration (“FDA”), tasked with
12 ensuring that food labels are not misleading, determined after fact finding that when consumers read
13 a food label that states, “0g Sugars,” they reasonably expect the food to be low or significantly reduced
14 in calories. Thus, the law requires that when a food is labeled as having “0g Sugars,” but it *is not* low
15 calorie or significantly reduced in calories (as reasonably expected by consumers), it must include a
16 prominent, immediately-accompanying warning that the food is “not a low calorie food,” “not a
17 reduced calorie food,” or “not for weight control.” 21 C.F.R. § 101.60(c)(1)(iv); Cal. Health & Safety
18 Code § 110100 (adopting this and other federal food labeling regulations as the regulations in
19 California); N.Y. Comp. Codes R. & Regs. tit. 1, ch. VI, sub. ch. § 259.1(a) (adopting this and other
20 federal food labeling regulations as the regulations in New York).

21 2. Despite the Goldfish being labeled as having “0g Sugars” and not being low calorie or
22 significantly reduced in calories, Defendants fail to include the prominent warning that the Goldfish

23
24 ¹ This action includes the following products, hereinafter referred to as (“Goldfish”): Cheddar Goldfish
25 (Exhibit 1), Organic Cheddar Goldfish (Exhibit 2), Organic Original Goldfish (Exhibit 3), Parmesan
26 Goldfish (Exhibit 4), Princess Goldfish (Exhibit 5), Whole Grain Cheddar Goldfish (Exhibit 6), Flavor
27 Blasted Cheesy Pizza Goldfish (Exhibit 7), Flavor Blasted Xplosive Pizza Goldfish (Exhibit 8), Baby
28 Cheddar Goldfish (Exhibit 9), Mix Cheesy Pizza + Parmesan Goldfish (Exhibit 10), Organic Parmesan
Goldfish (Exhibit 11), Whole Grain XTRA Cheddar Goldfish (Exhibit 12), Colors Cheddar Goldfish
(Exhibit 13), Disney Mickey Mouse Goldfish (Exhibit 14), Whole Grain Colors Cheddar Goldfish
(Exhibit 15), and Flavor Blasted XTRA Cheddar Goldfish (Exhibit 16).

1 are not low or reduced calorie foods, or not for weight control, prominently accompanying the “0g
2 Sugars” claim. *See* Exhibits 1-16.

3 3. The claim on the Goldfish’s labels that they contain “0g Sugars” without warning that
4 the Goldfish are not low or reduced calorie foods, or not for weight control, is materially misleading
5 to Plaintiffs and other reasonable consumers, as set forth in the regulation itself: **“Consumers may
6 reasonably be expected to regard terms that represent that the food contains no sugars or
7 sweeteners e.g., ‘sugar free,’ or ‘no sugar,’ as indicating a product which is low in calories or
8 significantly reduced in calories.”** 21 C.F.R. § 101.60(c)(1) (emphasis added).

9 4. Defendants materially mislead consumers with their “0g Sugars” claim despite the
10 inclusion of the calorie content. The reason for this is simple. The average consumer cannot—and
11 should not be expected—to determine if a food is low calorie simply by looking at the calorie content.
12 This is exactly why the aforementioned language is required on labels stating they contain “0g Sugars.”

13 5. As food manufacturers, Defendants know that to be “low calorie,” the FDA requires
14 that a snack food, like Goldfish, must have 40 calories or less per the reference amount customarily
15 consumed (“RACC”) – a standard set by FDA regulation. The average consumer, however, has no
16 idea there is any such thing as a RACC, let alone what a RACC is or how to find it, how to calculate
17 how many calories per RACC a food has, or that 40 calories or less per RACC is the FDA’s low-
18 calorie threshold. Nor would the average consumer know that to be reduced calorie the food must be
19 at least 25% less in calories than an appropriate reference food, and that the differential in calories
20 between the two is measured based upon the calories of each at RACC – another standard set by FDA
21 regulation. Indeed, unbeknownst to consumers, the RACC is different for different types of foods,
22 and the serving size stated in the Nutrition Facts Panel (“NFP”) on the product label need not be the
23 RACC. Thus, merely reading the calorie statement on a label without knowing the RACC for the
24 product or the amount of calories the FDA considers to be low calorie at that RACC, the FDA standard
25 for a food to be reduced calorie or what the appropriate reference food is to determine if a food is
26 reduced calorie does not inform the average consumer whether any food is, in fact, low or reduced in
27 calories.

28

1 6. On the other hand, food manufacturers are in the perfect position to disclose necessary
2 information to consumers as they are required by law to know the facts about their products and the
3 requirements for food labeling. This is why the FDA in 21 C.F.R. § 101.60(c)(1) put the onus squarely
4 on the manufacturer (*i.e.*, Defendants), not consumers, to make these complicated calculations and to
5 disclose to consumers on the label when a food labeled 0g sugar is low or reduced calorie, or to state
6 that the product is not a low or reduced calorie food to avoid misleading consumers into thinking that
7 a food is low or reduced calorie when it is not. In choosing to label Goldfish as having “0g Sugars” on
8 their principal display panels, Defendants have subjected themselves to the regulatory requirements
9 related to such nutrition content claims and are therefore required to make these material disclosures
10 so that consumers can make informed choices about the food they eat. Yet, Defendants have failed to
11 do so.

12 7. Even worse, the Goldfish actually contain sugar. Indeed, 13 of 16 varieties of the
13 Goldfish, including the most popular “Cheddar” flavor of the Goldfish, list sugar or dextrose in their
14 ingredient lists.² Moreover, all varieties of Goldfish are made with wheat flour that contains small
15 amounts of sugar.³ Given that the Goldfish have sugar, the “0g Sugars” statement on the front label
16 is literally false. While FDA regulations authorize the rounding sugar content down to “0” if there is
17 0.5g or less of sugar, Defendants are only permitted to round down on a sugar content claim outside
18 the NFP if they otherwise comply with the “not a low calorie food,” “not a reduced calorie food” or
19 “not for weight control” warning requirements of 21 C.F.R. § 101.60(c)(1). This is because the
20 regulation authorizing the rounding down of sugar content to “0” outside the NFP is part of the very
21 same regulation, 21 C.F.R. § 101.60(c)(1), that requires the warning and compliance with each subpart
22 is mandated by the express language of that regulation. Having failed to comply with those FDA

23 ² The varieties of Goldfish listing sugar as an ingredient includes Cheddar Goldfish (Exhibit 1),
24 Organic Cheddar Goldfish (Exhibit 2), Organic Original Goldfish (Exhibit 3), Parmesan Goldfish
25 (Exhibit 4), Flavor Blasted Xplosive Pizza Goldfish (Exhibit 8) Baby Cheddar Goldfish (Exhibit 9),
26 Mix Cheesy Pizza + Parmesan Goldfish (Exhibit 10), Organic Parmesan Goldfish (Exhibit 11), Whole
27 Grain XTRA Cheddar Goldfish (Exhibit 12), Colors Cheddar Goldfish (Exhibit 13), Disney Mickey
28 Mouse Goldfish (Exhibit 14), Whole Grain Colors Cheddar Goldfish (Exhibit 15), and Flavor Blasted
XTRA Cheddar Goldfish (Exhibit 16).

³ See <https://fdc.nal.usda.gov/fdc-app.html#/food-details/567626/nutrients>.

1 regulatory requirements, Defendants are not permitted to round down or otherwise make any claim on
2 the Goldfish's labels about the sugar content (*i.e.*, a nutrient content claim) outside the NFP. *See* 21
3 U.S.C. §§ 343(r)(1)(A) and (r)(2)(A)(i); *see also* Sherman Law 110670 (same for California); 21
4 C.F.R. § 101.13(b) (nutrient content claims cannot appear on a label unless made in accordance with
5 applicable regulations). In other words, Defendants simply cannot have it both ways.

6 8. Plaintiffs allege that Defendants' conduct violates the unlawful, unfair, and fraudulent
7 prongs of California's Business and Professions Code §§ 17200, et seq. (the "UCL"), California's
8 Business and Professions Code §§ 17500, et seq. (the "FAL"), the Consumers Legal Remedies Act of
9 the California Civil Code §§ 1750, et seq. (the "CLRA"), New York's General Business Law §§ 349
10 and 350, and gives rise to a breach of express warranty. Plaintiffs allege in the alternative that
11 Defendants' conduct is grounds for restitution on the basis of quasi-contract/unjust enrichment.

12 9. Plaintiffs also seek injunctive and declaratory relief based upon Defendants' conduct
13 asserted in this Complaint. As of the date of this Complaint, retail stores in California, New York,
14 and throughout the United States are selling Goldfish labeled as having "0g Sugars" without warning
15 that they are not low calorie, not reduced calorie, or not for weight control, even though applicable
16 law requires such a warning and without the warning the Goldfish is misleadingly represented as being
17 low or significantly reduced in calorie. Moreover, even if Defendants elect to remove the "0g Sugars"
18 representation from the Goldfish's labels, Defendants are not presently enjoined from putting the "0g
19 Sugars" representation back on the Goldfish's labels at any time Defendants so decide, even if the
20 Goldfish are not also labeled as being not low calorie, not reduced calorie, or not for weight control.
21 Accordingly, Plaintiffs seek declaratory and injunctive relief to stop Defendants from selling Goldfish
22 products with the "0g Sugars" claim that are not low calorie or significantly reduced in calories as
23 long as these food products are not also prominently labeled as being "not low calorie," "not reduced
24 calorie," or "not for weight control."

25 10. Defendants' conduct alleged herein is unlawful, false and misleading in violation of the
26 Federal Food, Drug and Cosmetic Act ("FDCA") and the regulations promulgated thereunder by the
27 FDA, including 21 U.S.C. 403(f), (r)(1)(A) and (r)(2)(B), and 21 C.F.R. § 101.60(c)(1). Defendants'
28 identical conduct that violates the FDCA and the FDA regulations thereunder also violates both

1 California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), §§ 110670, 110705, 110760,
2 110765, 110770 and 110100, N.Y. Comp. Codes R. & Regs. tit. 1, ch. VI, sub. ch. § 259.1(a), N.Y.
3 Agric. & Mkts. Law § 201.1 and § 214-b, and other applicable state laws. This identical conduct
4 serves as the sole factual basis of each state law cause of action brought by this Complaint, and
5 Plaintiffs do not seek to enforce any of the state law claims raised herein to impose on Defendants any
6 standard of conduct that exceeds that which would violate the FDCA and regulations adopted pursuant
7 thereto. Thus, Plaintiffs' state law claims are not preempted by the FDCA because Plaintiffs' claims
8 for state law violations seek to enforce the same standard of conduct required for Defendants by federal
9 law and Plaintiffs' state law claims are based upon Defendants' breach of that standard of conduct.
10 For any of Plaintiffs' state law causes of action, the allegations supporting those causes of action and
11 any forms of relief sought for those state law causes of action, Plaintiffs expressly disclaim any attempt
12 to hold Defendants to a higher standard of conduct than what is required under federal law, and do not
13 seek any form of relief based on conduct exceeding that which is required for Defendants under federal
14 law. All state law causes of action asserted in this Complaint, the allegations supporting those state
15 law causes of action asserted herein and any forms of relief sought for those state law causes of action
16 asserted herein shall be read consistent with the limitations set forth in this paragraph.

17 **II. JURISDICTION AND VENUE**

18 11. This Court has jurisdiction and venue pursuant to Cal. Civ. Code §§ 395.5, 410.10 and
19 1780(d) over the claims raised in this Complaint for the following reasons: (i) Defendants regularly
20 sell, advertise, market and/or distribute the Goldfish in Alameda County and throughout the State of
21 California; (ii) a substantial portion of the underlying transactions and events complained of herein
22 occurred in Alameda County; and (iii) Plaintiff Rainwater purchased Goldfish in Alameda County.
23 Attached hereto as Exhibit 17 is a declaration in compliance with Cal. Civ. Code § 1780(d).

24 **III. THE PARTIES**

25 12. Plaintiff Denise Cleveland is a citizen of the State of California and a resident of San
26 Bernardino County, California. From at least August 2017 and into February 2019, Ms. Cleveland
27 purchased at least the following Goldfish varieties for her grandchildren: Cheddar Goldfish, Princess
28 Goldfish, Colors Cheddar Goldfish and Baby Cheddar Goldfish. During this period of time, Ms.

1 Cleveland purchased the Princess Goldfish and Baby Cheddar Goldfish about once a month and
2 purchased the Cheddar Goldfish and Colors Goldfish only occasionally. Ms. Cleveland purchased
3 various sizes of these products from Albertsons, Walmart, Sam's Club, Ralph's, and Stater Bros. stores
4 in San Bernardino County, California, and usually paid somewhere between \$2.00 - \$8.50 for the
5 products. The Goldfish Ms. Cleveland purchased were each prominently labeled as containing "0g
6 Sugars," but did not prominently warn that the products were not a low calorie food, not a reduced
7 calorie food, or not for weight control. Ms. Cleveland purchased the Goldfish relying, in part, on the
8 labeled "0g Sugars" claim that caused her to believe they were lower in calories in comparison to other
9 similar products. Had the Goldfish that Ms. Cleveland purchased been labeled with the required
10 warnings for foods labeled as having "0g Sugars" that are not low or reduced in calories, this would
11 have affected Ms. Cleveland's purchasing decisions in that she would have purchased a lesser quantity
12 of the Goldfish, and/or would have purchased other snack products that were actually low or reduced
13 calorie. Indeed, since learning the Goldfish are not low or reduced calorie products, Ms. Cleveland
14 stopped purchasing the Princess Goldfish, Colors Cheddar Goldfish and Baby Cheddar Goldfish, and
15 only rarely purchases the Cheddar Goldfish.

16 13. From at least August 2017 and into April 2018, Plaintiff Lanna Rainwater was a citizen
17 of the State of California, and a resident of Alameda County, California. During the period of time
18 when she lived in Alameda County, California, Ms. Rainwater purchased Cheddar Goldfish
19 approximately twice a month from Safeway retail stores near her home in Alameda County, California,
20 including at least one purchase of the Cheddar Goldfish in April 2018. Since August 2019, Plaintiff
21 Lanna Rainwater has been a citizen of the State of New York, and a resident of Madison County, New
22 York. From August 2019 and into December 2019, Ms. Rainwater purchased Cheddar Goldfish
23 approximately twice a month from Tops retail stores near her home in Madison County, New York.
24 Ms. Rainwater usually purchased the 6.6-ounce bag of Cheddar Goldfish, which she believes usually
25 ranged in price between \$3.00 and \$5.00 per package. The Goldfish Ms. Rainwater purchased were
26 each prominently labeled as containing "0g Sugars," but did not prominently warn that the products
27 were not a low calorie food, not a reduced calorie food, or not for weight control. Ms. Rainwater
28 purchased these Goldfish products relying, in part, on the labeled "0g Sugars" claim that caused her

1 to believe they were lower in calories in comparison to other similar products. Had the Goldfish that
2 Ms. Rainwater purchased been labeled with the required warnings for foods labeled as having “0g
3 Sugars” that are not low or reduced in calories, this would have affected Ms. Rainwater’s purchasing
4 decisions in that she would not have purchased the Goldfish. Indeed, since learning the Goldfish are
5 not low or reduced calorie products, Ms. Rainwater has not purchased them.

6 14. Defendant Pepperidge Farm, Inc. (“Pepperidge Farm”) manufacturers, packages,
7 labels, advertises, markets, distributes and sells the Goldfish in California, New York and throughout
8 the United States. Pepperidge Farm is a Connecticut corporation with its headquarters and principal
9 place of business at 595 Westport Avenue, Norwalk, Connecticut 06851. Pepperidge Farm is
10 registered to do business in California as entity number C0403685. Pepperidge Farm has a direct-
11 store-delivery distribution model that uses independent contractor distributors throughout the United
12 States, including in California and New York.

13 15. Defendant Campbell Soup Company (“Campbell’s”), through its wholly-owned
14 subsidiary Pepperidge Farm, manufacturers, packages, labels, advertises, markets, distributes and sells
15 the Goldfish in California, New York and throughout the United States. Campbell’s is a New Jersey
16 corporation with its headquarters and principal place of business at 1 Campbell Place, Camden, New
17 Jersey 08103. Campbell’s is registered to do business in California as entity number C0206561.
18 Campbell’s noted in its 2019 SEC Form 10-K sales increases in its “snacks” portfolio, specifically due
19 to growth in sales of the Goldfish products in 2018 and 2019. Campbell’s also owns and controls the
20 trademark for the “Goldfish” brand, and responded on behalf of Pepperidge Farm to Ms. Cleveland’s
21 March 13, 2019 pre-litigation demand letter under the CLRA that was sent to Campbell’s and
22 Pepperidge Farm prior to commencing this action. Moreover, Campbell’s 2019 Annual Report touts
23 Pepperidge Farm as part of its “Snacks division” and Goldfish as a leading revenue generating brand
24 for Campbell’s.⁴ Campbell’s also controls the advertising of Goldfish. Campbell’s also directly
25 participated in the marketing strategy and advertising of Goldfish as further specified herein.

26 _____
27 ⁴ “In our Snacks division, we are focused on accelerating the growth of this unique and differentiated
28 portfolio. The combination of the Pepperidge Farm and Snyder’s-Lance brands provide us with a
world-class portfolio and seasoned snacks leadership team. The combined brands make Campbell the
No. 3* snacks company in the United States. We know how to win in snacks. Pepperidge Farm has

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IV. FACTUAL ALLEGATIONS

16. Goldfish are extremely popular snack crackers sold nationwide. The Goldfish are prominently labeled as containing “0g Sugars” on their PDP as shown in Exhibits 1-16, and illustrated below:



17. A claim that a food has “0g Sugars” is a nutrient content claim, which is defined as “[a] claim that expressly or implicitly characterizes the level of a nutrient of the type required to be in nutrition labeling under § 101.9 or under § 101.36.” 21 C.F.R. § 101.13(b). Packaged foods require specific “Nutrition labeling” that is located within the NFP on a food product’s packaging. See 21

grown net sales for 19 consecutive quarters and has experienced a nearly 3-percent compound annual growth rate (CAGR) over the last three years.... With leading brands like Goldfish, ... our Snacks division has critical scale and is poised for accelerated growth.” Annual Report, p. 11 (<https://investor.campbellsoupcompany.com/static-files/7fdd1232-f047-4121-ac8d-31f07c48b5d1>).

1 C.F.R. § 101.9. Sugars are nutrients subject to 21 C.F.R. § 101.13(b) as they are required in nutrition
 2 labeling. See 21 C.F.R. § 101.9(c)(6)(ii). “Information that is required or permitted by 101.9 or
 3 101.36, as applicable, to be declared in nutrition labeling, and that appears as part of the nutrition label,
 4 is not a nutrient content claim and is not subject to the requirements of this section. *If such*
 5 *information is declared elsewhere on the label or in labeling, it is a nutrient content claim and is*
 6 *subject to the requirements for nutrient content claims.”* See 21 C.F.R. § 101.13(c) (emphasis
 7 added). Thus, a “0g Sugars” statement on the PDP, like the one on the Products here, is a nutrient
 8 content claim subject to the requirements for nutrient content claims.

9 18. The FDCA prohibits all nutrient content claims on foods’ labels or labeling, except
 10 those expressly authorized by regulation by the U.S. Secretary of Health and Human Services (or
 11 which are otherwise exempted). 21 U.S.C. §§ 343(r)(1)(A) and (r)(2)(A)(i); *see also* Sherman Law
 12 110670 (same for California); 21 C.F.R. § 101.13(b) (nutrient content claims cannot appear on a label
 13 unless made in accordance with applicable regulations); N.Y. Comp. Codes R. & Regs. tit. 1, ch. VI,
 14 sub. ch. § 259.1(a) (adopting for New York). The FDCA specifically prohibits a statement of the
 15 absence of a nutrient except “as defined by the Secretary [of Health and Human Services] by
 16 regulation.” 21 U.S.C. § 343(r)(2)(A)(ii)(I).

17 19. 21 C.F.R. § 101.60(c)(1) defines the use of nutrient content claims for the absence of
 18 sugar as follows (emphasis added):

19 (1) Use of terms **such as** “sugar free,” “free of sugar,” “no sugar,” “zero sugar,” “without
 20 sugar,” “sugarless,” “trivial source of sugar,” “negligible source of sugar,” or “dietarily
 21 insignificant source of sugar.” **Consumers may reasonably be expected to regard terms**
 22 **that represent that the food contains no sugars or sweeteners e.g., “sugar free,” or**
 23 **“no sugar,” as indicating a product which is low in calories or significantly reduced**
 24 **in calories.** Consequently, except as provided in paragraph (c)(2) of this section, a food
 25 may not be labeled with such terms unless:

26 (i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii), per reference
 27 amount customarily consumed and per labeled serving or, in the case of a meal product or
 28 main dish product, less than 0.5 g of sugars per labeled serving; **and**

1 (ii) The food contains no ingredient that is a sugar or that is generally understood by
 2 consumers to contain sugars unless the listing of the ingredient in the ingredient statement
 3 is followed by an asterisk that refers to the statement below the list of ingredients, which
 4 states “adds a trivial amount of sugar,” “adds a negligible amount of sugar,” or “adds a
 5 dietarily insignificant amount of sugar;”⁵ **and**

6 (iii)(A) It is labeled “low calorie” or “reduced calorie” or bears a relative claim of special
 7 dietary usefulness labeled in compliance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of
 8 this section, or, if a dietary supplement, it meets the definition in paragraph (b)(2) of this
 9 section for “low calorie” but is prohibited by §§ 101.13(b)(5) and 101.60(a)(4) from
 10 bearing the claim; or

11 **(B) Such term is immediately accompanied, each time it is used, by either the**
 12 **statement “not a reduced calorie food,” “not a low calorie food,” or “not for weight**
 13 **control.”**

14 20. Based on the unambiguous plain language of 21 C.F.R. § 101.60(c)(1)(iii), a reasonable
 15 consumer can expect a food labeled with a nutrient content claim “0g Sugars” to be low or significantly
 16 reduced in calories. *Id.*, § 101.60(c)(1). Therefore, in order for consumers to not be misled by a “0g
 17 Sugars” nutrient content claim as suggesting the food is a low or significantly reduced calorie food,
 18 the food must contain a prominent, immediately accompanying warning that it is not a reduced calorie
 19 food, not a low calorie food, or not for weight control. *Id.* at 101.60(c)(1)(iii).

20 21. If a food labeled with a “0g Sugars” nutrient content claim does not comply with the
 21 requirements of 21 C.F.R. § 101.60(c)(1), it is misbranded. 21 U.S.C. § 343(r) (a food is misbranded
 22 if it bears a nutrient content claim unless it is used as defined by the secretary of Health and Human
 23 Services); Sherman Law § 110670 (same).

24 _____
 25 ⁵ In addition to failing to warn that the Goldfish are “not a low calorie food,” “not a reduced calorie
 26 food,” or “not for weight control” immediately adjacent to the “0g Sugars” claim, as explained above
 27 12 of 16 varieties of the Goldfish list sugar as an ingredient. Since these Goldfish have sugar, they
 28 are misbranded because the labeling does not contain the statement that the sugar “adds a trivial
 amount of sugar,” “adds a negligible amount of sugar,” or “adds a dietarily insignificant amount of
 sugar” regarding the sugar added to the products.

1 22. Further, a food is misbranded when a statement is required to be on a food's label, such
2 as the requirement to warn that a food is not a low calorie food, not a reduced calorie food, or not for
3 weight control, but such statement is not made prominently "with such conspicuousness (as compared
4 with other words, statements, designs, or devices, in the labeling) and in such terms as to render it
5 likely to be read and understood by the ordinary individual under customary conditions of purchase
6 and use." 21 U.S.C. § 343(f); Sherman Law §110705 (same).

7 23. Goldfish are not "low calorie" foods as set forth in 21 C.F.R. § 101.60(b)(2) and are
8 not labeled as being "low calorie." To be "low calorie," a food with a RACC⁶ of 30 grams must have
9 40 calories or less per RACC. 21 C.F.R. § 101.60(b)(2)(i)(B).

10 24. "Snacks: All varieties, chips, pretzels, popcorn, extruded snacks, fruit and vegetable-
11 based snacks (e.g., fruit chips), grain-based snack mixes" have a RACC of 30 grams. 21 C.F.R. §
12 101.12(b). Goldfish are a snack food that contain 140 calories per 30 gram serving, far greater than
13 the 40 calories per RACC needed to meet the requirement for a "low calorie" food. *See* Exhibits 1-
14 16.

15 25. Goldfish are also not "reduced calorie" foods and are not labeled as being reduced
16 calorie foods. *See* Exhibits 1-16. To be "reduced calorie," the food must contain at least 25% fewer
17 calories per RACC than an appropriate reference food. *See* 21 C.F.R. § 101.60(b)(4)(i). Additionally,
18 a food's label or labeling may bear a "reduced calorie" nutrient content claim only if "[t]he identity of
19 the reference food and the percent (or fraction) that the calories differ between the two foods are
20 declared in immediate proximity to the most prominent such claim" and "[q]uantitative information
21 comparing the level of the nutrient per labeled serving size with that of the reference food that it
22 replaces . . . is declared adjacent to the most prominent claim or to the nutrition label." 21 C.F.R.
23 § 101.60(b)(4)(ii)(A)-(B). Goldfish's labels do not reference any other food that Goldfish replace that
24 have 25% more calories than Goldfish.

25
26 _____
27 ⁶ The RACC is not necessarily the serving size manufacturers use on their labels. Frequently,
28 manufacturers use differing serving sizes making comparing calories, sugar content, etc. between
brands difficult for consumers, especially at brick-and-mortar stores.

1 26. Indeed, competing flavored snack crackers that are not labeled as having “0g Sugars”
2 have comparable calories based on the RACC serving size. For example, Annie’s Organic Cheddar
3 Bunnies are made of similar ingredients as Goldfish and have a similar calorie content (*i.e.*, 140
4 calories) per RACC, not 25% more calories per RACC.⁷

5 27. Despite not being low calorie or significantly reduced calorie foods, Goldfish are
6 labeled as containing “0g Sugars,” but do not prominently warn that they “are not a low calorie food,”
7 “not a reduced calorie food,” or “not for weight control” in violation of 21 C.F.R. 101.60(c)(1)(iii)(B)
8 and Sherman Law § 110100 (adopting this FDA regulation as California law). *See* Exhibits 1-16
9 (showing the Goldfish’s labels all bearing the “0g Sugars” claim without the required warning).

10 28. Defendants’ labeling of Goldfish as having “0g Sugars” without prominently warning
11 that the Goldfish are “not a low calorie food,” “not a reduced calorie food,” or “not for weight control”
12 is also misleading and renders the Goldfish misbranded.

13 29. Moreover, the Goldfish have sugar in them as an ingredient or have ingredients which
14 have sugars naturally in them.⁸ By using the “0g Sugars” claim on the PDP in violation of 21 C.F.R.
15 § 101.60(c)(1)(iii)(B), Defendants were not authorized to round down to “0g” on the PDP even if the
16 Products actually contain .5g or less sugar content. As such, the Goldfish “0g Sugars” claim on the
17 PDP is an unauthorized nutrient content claim that is also literally false. Alternatively, if the “0g
18 Sugars” claim on the Products is found to not be a defined nutrient content claim for the absence of
19 sugar so that 21 C.F.R. § 101.60(c)(1) would not apply, then the “0g Sugars” claim on the Goldfish
20
21

22 ⁷ *See* <https://www.annies.com/product/organic-cheddar-bunnies/>.

23 ⁸ The Goldfish flavors that include sugar or dextrose, a simple sugar made from corn that is chemically
24 identical to glucose (*a/k/a* sugar), as an ingredient include: Cheddar Goldfish (Exhibit 1), Organic
25 Cheddar Goldfish (Exhibit 2), Organic Original Goldfish (Exhibit 3), Parmesan Goldfish (Exhibit 4),
26 Flavor Blasted Xplosive Pizza Goldfish (Exhibit 8), Baby Cheddar Goldfish (Exhibit 9), Mix Cheesy
27 Pizza + Parmesan Goldfish (Exhibit 10), Organic Parmesan Goldfish (Exhibit 11), Whole Grain
28 XTRA Cheddar Goldfish (Exhibit 12), Colors Cheddar Goldfish (Exhibit 13), Disney Mickey Mouse
Goldfish (Exhibit 14), Whole Grain Colors Cheddar Goldfish (Exhibit 15), and Flavor Blasted XTRA
Cheddar Goldfish (Exhibit 16). All of the products are made with wheat flour which naturally contains
small amounts of sugar.

1 still is literally false because the Goldfish have sugar in them as an ingredient or have ingredients
2 which have sugars naturally in them.

3 **A. DEFENDANTS' "0G SUGAR" NUTRIENT CLAIM IS MATERIALLY**
4 **MISLEADING TO CONSUMERS**

5 30. When the FDA promulgated its regulation for nutrient content claims for the absence
6 of sugar, the agency explained why labeling a food that is not low calorie or significantly reduced in
7 calories as having "0g Sugars" without warning that it is "not a low calorie food," "not a reduced
8 calorie food," or "not for weight control" is materially misleading to consumers. Specifically, the
9 FDA's regulation states: "Consumers may reasonably be expected to regard terms that represent that
10 the food contains no sugars or sweeteners, e.g., 'sugar free,' or 'no sugar,' as indicating a product
11 which is low in calories or significantly reduced in calories. Consequently . . . a food may not be
12 labeled with such terms unless ... [s]uch term is immediately accompanied, each time it is used, by
13 either a statement 'not a reduced calorie food,' 'not a low calorie food,' or 'not for weight control.'"
14 21 C.F.R. § 101.60(c)(1).

15 31. It is of significant consequence that the FDA included in the text of the regulation its
16 reasoning for the warning at issue in this action. FDA's research yielded the conclusion that consumers
17 reasonably expect foods which labels bear such claims to be low in calories or significantly reduced
18 in calories. *See* Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of
19 Terms, 56 Fed. Reg. 60421-01, 60437-38, 60648-49 (Nov. 27, 1991) (to be codified at 21 C.F.R. pts.
20 5, 101 & 105). Based on its research, the FDA concluded

21 *[C]onsumers may associate the absence of sugar with weight control claims and with*
22 *foods that are low calorie or that have been altered to reduce calories significantly.*
23 The agency concluded that any food making a statement about the absence of sugar
24 would have to bear a statement that the food is not low calorie or calorie reduced, unless
25 the food is a low or reduced calorie food. *The agency stated that without this*
26 *disclosure, some consumers might think the food was offered for weight or calorie*
27 *control.*

28 Id. (emphasis added).

29 32. The FDA's conclusion that consumers may associate the absence of sugar with foods
30 that are low calorie or that have been altered to reduce calories significantly is not a novel concept.
31 The FDA first determined based on findings of fact that consumers associate terms such as "no sugar"

1 and “sugar free” with weight control claims and foods that are low calorie or have been altered to
2 reduce calories significantly in 1977. See 42 Fed. Reg. 36898, 37170. Based on these findings, the
3 FDA has had a long-standing policy that a company making a “0g Sugars” claim is required to
4 affirmatively disclose that the food is not low calorie or calorie reduced, unless the food is a low or
5 reduced calorie food. *Id.*

6 33. Critically, the FDA also considered evidence that, absent the disclosure that a food is
7 not low calorie, not reduced calorie, or not for weight control, “0g Sugars” nutrient content claims can
8 mislead consumers “even though the nutrition labeling will list calorie content.” 56 Fed. Reg. at
9 60,436 (emphasis added). The reason for this should be obvious – consumers generally do not know
10 that there is such a thing as a RACC, let alone what the RACC for any given food is, and based simply
11 on the listing of the calories, whether it is a “low calorie food,” or is a “reduced calorie food” under
12 the standards established by the FDA that are specified in its regulations. Unsurprisingly, the FDA
13 referenced no comments challenging or criticizing this principle in its commentary accompanying the
14 final rule. See 58 Fed. Reg. 2302-01, 2326–28. Rather, it confirmed consumers reasonably expect
15 foods whose labels bear claims that a product contains no sugar to be low or significantly reduced in
16 calories, or superior to substitute products. 56 Fed. Reg. 60,421-01, 60,436–38.

17 34. In September 2007, FDA “highlight[ed] accurate claims about the absence of sugar as
18 a regulatory priority.” FDA Guidance for Industry and FDA: Dear Manufacturer Letter Regarding
19 Sugar Free Claims, Sept. 2007⁹ (last updated Nov. 8, 2017). FDA further indicated that it “is
20 concerned about the number of products we have seen that contain claims regarding the absence of
21 sugar, such as, ‘sugar free’ but that fail to bear the required disclaimer statement when these foods are
22 not ‘low’ or ‘reduced in’ calories or fail to bear the required disclaimer statement in the location or
23 with the conspicuousness required by regulation.” *Id.* Finally, it noted that, “[a]s part of our
24 continuing effort to reduce the incidence of obesity in the United States, FDA wants to ensure that
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27 ⁹ [https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-and-fda-dear-manufacturer-letter-regarding-sugar-free-claims)
28 [and-fda-dear-manufacturer-letter-regarding-sugar-free-claims.](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-and-fda-dear-manufacturer-letter-regarding-sugar-free-claims)

1 consumers are provided with the label information they need to make informed choices for
2 maintaining a healthy diet.” *Id.*

3 35. In addition to noting the importance for such disclosures, since 2007, FDA has sent
4 warning letters to food manufacturers stating that each manufacturer’s foods were misbranded for
5 failing to provide an immediately accompanying statement that the product is “not a reduced calorie
6 food,” “not a low calorie food” or “not for weight control”:

7 a. FDA Warning Letter to The South Bend Chocolate Co., Inc., June 5, 2009¹⁰;

8 b. FDA Warning Letter to Carmack Industries LLC, Aug. 12, 2013¹¹;

9 c. FDA Warning Letter to BestLife International, Inc., February 4, 2009¹²; and

10 d. FDA Warning Letter to Oberlander Baking Co., August 29, 2007¹³.

11 36. The FDA issues warning letters such as these “only for violations of regulatory
12 significance.”¹⁴

13 37. The foregoing regulatory materials and actions demonstrate that “0g Sugars” nutrient
14 content claims are material to consumers – a conclusion that FDA articulated at least as early as 1977
15 – and that claims about the absence of sugar that do not comply with applicable regulations have been,
16 and continue to be, a regulatory priority for FDA.

17
18 ¹⁰ [https://wayback.archive-](https://wayback.archive-it.org/7993/20170112195609/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm170016.htm)
19 [it.org/7993/20170112195609/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm170016.htm)
20 [ucm170016.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm170016.htm).

21 ¹¹ [https://wayback.archive-](https://wayback.archive-it.org/7993/20170723015302/https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm365649.htm)
22 [it.org/7993/20170723015302/https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013](https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm365649.htm)
23 [/ucm365649.htm](https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm365649.htm).

24 ¹² [https://wayback.archive-](https://wayback.archive-it.org/7993/20170112195846/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm148648.htm)
25 [it.org/7993/20170112195846/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm148648.htm)
26 [ucm148648.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm148648.htm).

27 ¹³ <https://www.fdalabelcompliance.com/letters/ucm076486>.

28 ¹⁴ 1. FDA, Regulatory Procedures Manual at p. 4-2 (Mar. 2017), available at <http://www.fda.gov/downloads/ICECI/ComplianceManuals/RegulatoryProceduresManual/UCM074330.pdf>. Warning letters are intended “to correct violations of the statutes or regulations” and “communicate[] the agency’s position on a matter.” *Id.* at 4-2 to 4.

1 38. The fact that Defendants' nutrient content claim on Goldfish states "0g Sugars," and
2 not "no sugar" or "sugar free," is irrelevant. The FDA's list of examples how to express a nutrient
3 content claim for the absence of sugar is not exclusive as evidenced by the FDA's choice of the phrase
4 "terms such as" before listing the examples in the regulation. *See* 21 C.F.R. § 101.60(c)(1). Moreover,
5 as recognized in a published opinion by the United States Court of Appeals for the Ninth Circuit, there
6 is no rational difference between "zero" and "0" for nutrient content claims in food labeling. *Hawkins*
7 *v. Kroger Co.*, 906 F.3d 763, 771 (9th Cir. 2018). "Spelling out the number does not change its
8 meaning. To hold otherwise would create an illogical rule" *Id.*

9 39. Critically, because Goldfish actually contain 0.5 g sugar or less and the ability to round
10 down to "0" outside the NFP is tied to providing the prominent warning under 21 C.F.R. §
11 101.60(c)(1), Goldfish was not permitted to round its sugar content down to "0" on its PDP since it
12 failed to provide the required warning, rendering Goldfish's "0g Sugar" claim on the PDP a literally
13 false nutrient content claim. Conversely, even if the "0g Sugars" statement on Goldfish's labeling was
14 somehow found not to be a defined nutrient content claim for the absence of sugar subject to 21 C.F.R.
15 § 101.60(c)(1), then the claim would be literally false (as well as misleading) and violates the law
16 given that all of the Goldfish contain sugar or an ingredient that contains sugar, including 13 of the 16
17 Goldfish that expressly list sugar in the ingredients list on the labels. 21 U.S.C. § 343(a) (a food is
18 misbranded if its labeling is false or misleading in any particular); 21 C.F.R. § 101.13(i)(3) (a statement
19 that expressly characterizes the level of a nutrient in food may not be false or misleading in any
20 respect).

21 40. The NFP states that the Goldfish have 0g total sugar by virtue of the FDA's rounding
22 rule because they presumably have less than 0.5g sugar per RACC. 21 C.F.R. § 101.9(c)(6)(ii). This
23 rounding rule applies only to the declaration of total sugars made within the NFP. *See* 21 C.F.R. §
24 101.13(j)(3) (an express nutrient content claim made outside the NFP may not be false or misleading).
25 For absence of sugar content statements outside the NFP, 21 C.F.R. § 101.60(c)(1)(i) controls
26 rounding. However, as noted, 13 of 16 varieties of the Goldfish contain sugar or a sugar known as
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1 dextrose as reflected in the Goldfish's ingredients lists.¹⁵ Moreover, each Goldfish variety is made
2 with wheat flour which itself contains a small amount of sugar naturally.¹⁶ Thus, if 21 C.F.R. §
3 101.60(c)(1) and its rounding down provision does not apply to the Goldfish's "0g Sugars" claim
4 despite it being a claim about the absence of sugar, then the "0g Sugars" claim outside the NFP is
5 literally false because all of the Goldfish contain sugar and there is no applicable rule permitting
6 rounding down to zero. Yet, Defendants try to take advantage of the allowance to round sugar down
7 to zero in 21 C.F.R. § 101.60(c)(1), but without giving consumers the warning required by the same
8 regulation that the Products are not low calorie, not reduced calorie, or not for weight control.
9 Defendants may not take the benefit of part of the regulation without complying with all the
10 requirements of the regulation.

11 **B. DEFENDANTS MISLEADINGLY SUGGEST GOLDFISH ARE SUPERIOR**
12 **TO THEIR COMPETITORS' PRODUCTS**

13 41. Defendants market the Goldfish to children and parents and use the "0g Sugar" claim
14 on the Goldfish to get an advantage over competing products by suggest that the Goldfish are a
15 healthful snack for children. In Campbell's "Commitment Concerning Advertising to Children"
16 (CCAC), Campbell's acknowledges that "Schedule A identifies the products we will advertise to
17 children and includes ingredient statements and nutrition facts for those products." CCAC, p. 1.¹⁷
18 Schedule A is entitled "Campbell Soup Company – Product List Effective as of April 1, 2016" and
19 goes on to identify in that list each of the Goldfish and their corresponding NFPs.¹⁸ Campbell's in the
20 CCAC applicable to Goldfish also acknowledges that, "[m]ost marketing campaigns are interactive.
21 To the extent those campaigns engage with children, we believe it is important that they contain or
22 model healthy lifestyle messages, such as those in support of efforts to reduce obesity among children.

23 ¹⁵ See Exhibits 1-4, and 8-16.

24 ¹⁶ <https://fdc.nal.usda.gov/fdc-app.html#/food-details/168944/nutrients> (whole grain wheat flour).

25 ¹⁷ [https://www.campbellsoupcompany.com/wp-](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/CPB_CommitmentConcerningAdvertisingtoChildrenUS.pdf)
26 [content/uploads/sites/31/2019/05/CPB_CommitmentConcerningAdvertisingtoChildrenUS.pdf](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/CPB_CommitmentConcerningAdvertisingtoChildrenUS.pdf).

27 ¹⁸ Schedule A [https://www.campbellsoupcompany.com/wp-](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/ScheduleA.pdf)
28 [content/uploads/sites/31/2019/05/ScheduleA.pdf](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/ScheduleA.pdf).


1 We will continue to provide healthy lifestyle messages in some part of our advertising to children.
2 Advertising supports a healthy lifestyle when it addresses a recognized need of children, either (a) to
3 control caloric intake or increase activity level to help achieve a healthy weight or (b) with respect to
4 positive emotional, social, or physical development.” CCAC, p. 2. Campbell’s further acknowledges
5 that such advertising is directed “to both children and adults.” CCAC, p. 3.

6 42. Campbell’s express purpose of advertising Goldfish “to control caloric intake” or “to
7 help achieve a healthy weight” is precisely why the FDA concluded claims such as “0g Sugar” must
8 include the “not a low calorie food,” “not a reduced calorie food” or “not for weight control” disclosure
9 required by 21 C.F.R. § 101.60(c)(1)(B). Indeed, “[t]he agency stated that without this disclosure,
10 *some consumers might think the food was offered for weight or calorie control.*” See Food Labeling:
11 Nutrient Content Claims, General Principles, Petitions, Definition of Terms, 56 Fed. Reg. 60421-01,
12 60437–38, 60648–49 (Nov. 27, 1991) (to be codified at 21 C.F.R. pts. 5, 101 & 105) (emphasis added).

13 43. In targeting the advertising of their Goldfish to children and parents, Defendants use
14 the “0g Sugar” claim to gain a competitive advantage over its competitors’ products. For example,
15 cheddar flavor Goldfish list sugar as an ingredient and are made with wheat flour which contains innate
16 sugar but is labeled with a “0g Sugar” claim on the PDP without being low or reduced in calories and
17 without the required warning. Yet, Annie’s Cheddar Bunnies snack crackers, which are also made
18 with wheat flour but do not list sugar an ingredient, are not labeled as having “0g Sugar” on the
19 product’s PDP despite being labeled as having 0g sugar in the products’ NFP.


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CERTIFIED ORGANIC



Annie's

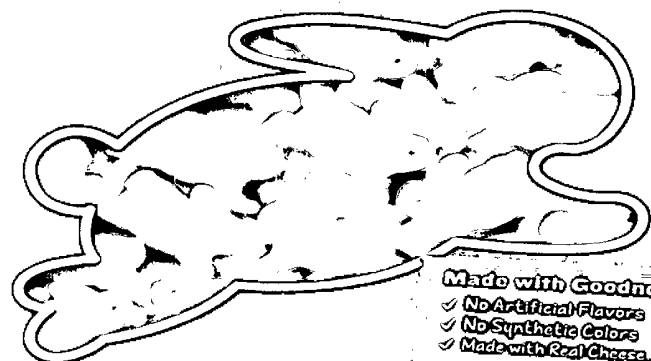
HOMEGROWN





Organic

Cheddar Bunnies™

Baked Snack Crackers



NET WT 7.5 OZ (213g)

Nutrition Facts

7 servings per container
Serving size **51 crackers (30g)**

Amount per serving
Calories 140

% Daily Value*

Total Fat 6g	8%
Saturated Fat 1g	4%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 250mg	11%
Total Carbohydrate 19g	7%
Dietary Fiber less than 1g	2%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 3g	
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	0%


*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Best Ingredients:
Organic Wheat Flour, Organic Expeller-Pressed Sunflower Oil, Salt, Organic Cheddar Cheese (pasteurized organic milk, cheese cultures, sea salt, non-animal enzymes), Baking Soda, Organic Yeast, Organic Paprika, Monocalcium Phosphate, Cultured Organic Milk, Organic Nonfat Dry Milk, Organic Annatto (for color), Organic Onion Powder, Organic Galaxy Seed Powder, Non-Animal Enzymes.

CONTAINS WHEAT AND MILK; MAY CONTAIN SOY INGREDIENTS.

MANUFACTURED FOR ANNIE'S, INC.
1610 5TH STREET, BERKELEY, CA 94710
© ANNIE'S, INC.
Certified Organic by Oregon Tilth

We work with trusted suppliers to source only non-GMO ingredients.



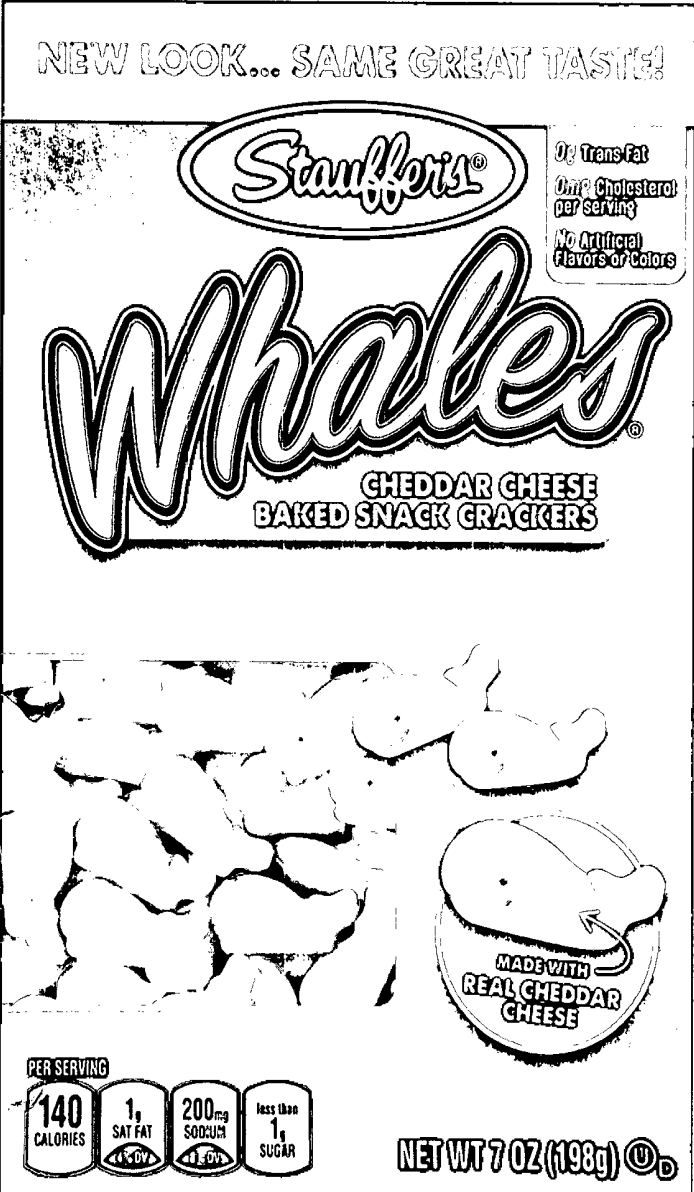
We Love to Hear Your Feedback!
Contact Us at Annie's.com or
1-800-285-1081 and reference the "Best If Used By" date.
Store in a Cool, Dry Place.

44. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as Annie's Cheddar Bunnies for the same serving size (30g).

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1 45. Stauffer's cheddar cheese Whales, which are made with wheat flour wheat flour and
 2 contain sugar as an ingredient just like Goldfish, are truthfully labeled as having "less than 1g sugar"
 3 on the product's PDP, and not 0g Sugar as shown below.

5 NEW LOOK... SAME GREAT TASTE!



6 **Stauffer's**
 7 **Whales**
 8 **CHEDDAR CHEESE**
 9 **BAKED SNACK CRACKERS**

10 **0g Trans Fat**
 11 **0mg Cholesterol**
 12 **per serving**
 13 **No Artificial**
 14 **Flavors or Colors**

15 **PER SERVING**
 16 **140** CALORIES
 17 **1g** SAT FAT
 18 **200mg** SODIUM
 19 **less than 1g** SUGAR

20 **NET WT 7 OZ (198g) ©**

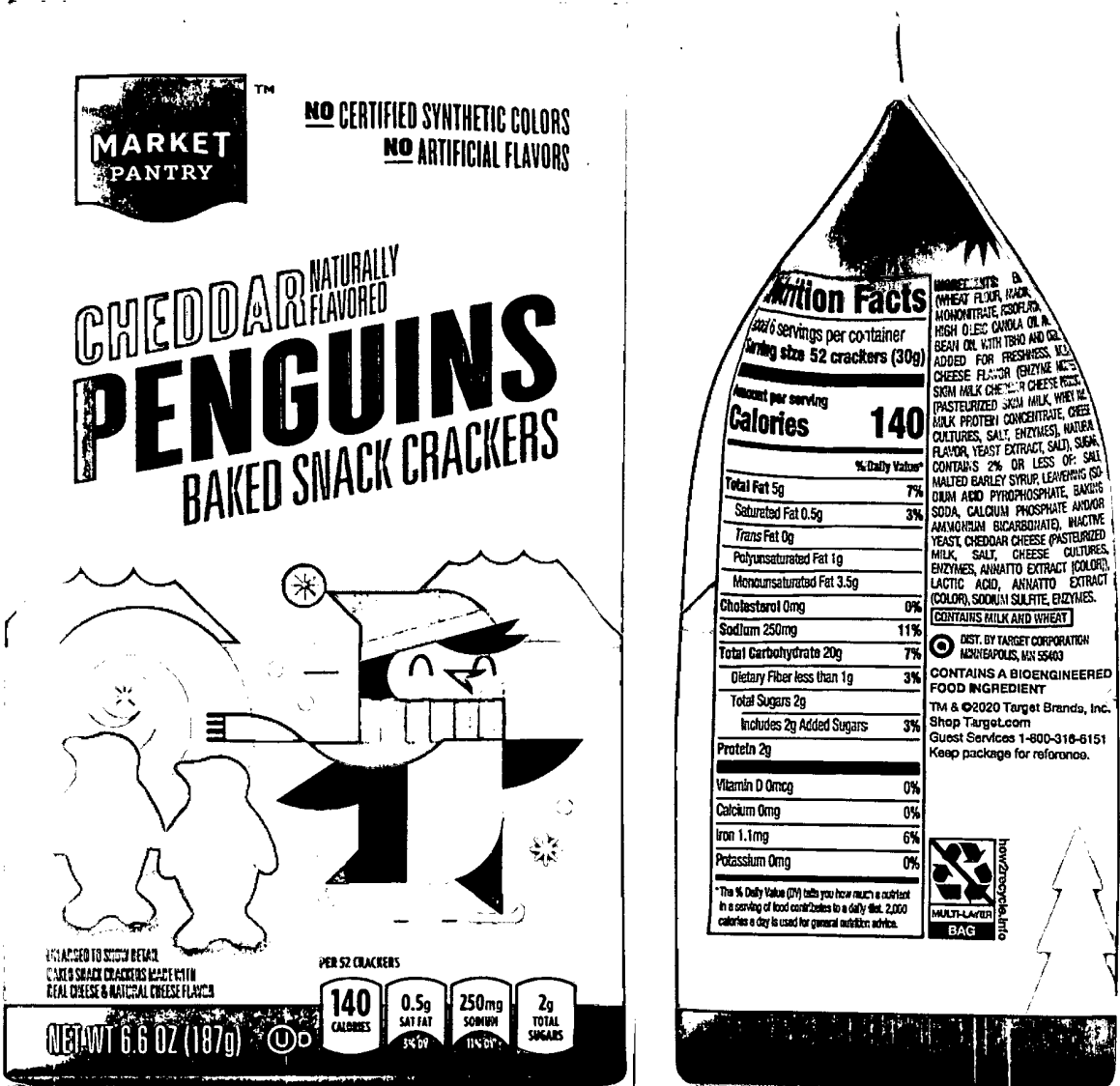
Nutrition Facts
 Serving Size 33 crackers (30g/1.1oz)
 Servings Per Container about 6

Amount Per Serving	
Calories 140	Calories from Fat 45
% Daily Value*	
Total Fat 5g	8%
Saturated Fat 1g	4%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 200mg	8%
Total Carbohydrate 20g	7%
Dietary Fiber less than 1g	3%
Sugars less than 1g	
Protein 3g	

INGREDIENTS: ENRICHED FLOUR (WHEAT FLOUR, MALTED BARLEY FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), VEGETABLE OILS (SUNFLOWER, CANOLA AND/OR SOYBEAN), CHEDDAR CHEESE BLEND (CHEDDAR CHEESE [PASTEURIZED MILK, CHEESE CULTURES, SALT, ENZYMES, CALCIUM CHLORIDE], MALTODEXTRIN, SALT, WHEY, CORN SYRUP SOLIDS, DISODIUM PHOSPHATE, SOUR CREAM POWDER [CREAM, CULTURES, LACTIC ACID, CULTURED NONFAT DRY MILK, CITRIC ACID], NATURAL FLAVORS, YEAST EXTRACT, SOYBEAN OIL, LACTIC ACID, CITRIC ACID), YEAST EXTRACT, NATURAL COLOR (ANNATTO AND OLEORESIN PAPRIKA), SUGAR, SALT, CITRIC ACID, BAKING SODA (LEAVENING), PAPRIKA, TURMERIC, GARLIC POWDER, ONION POWDER, SPICE, TRICALCIUM PHOSPHATE.
CONTAINS: WHEAT, MILK
 Made in a Bakery that uses Peanuts and Tree Nuts.

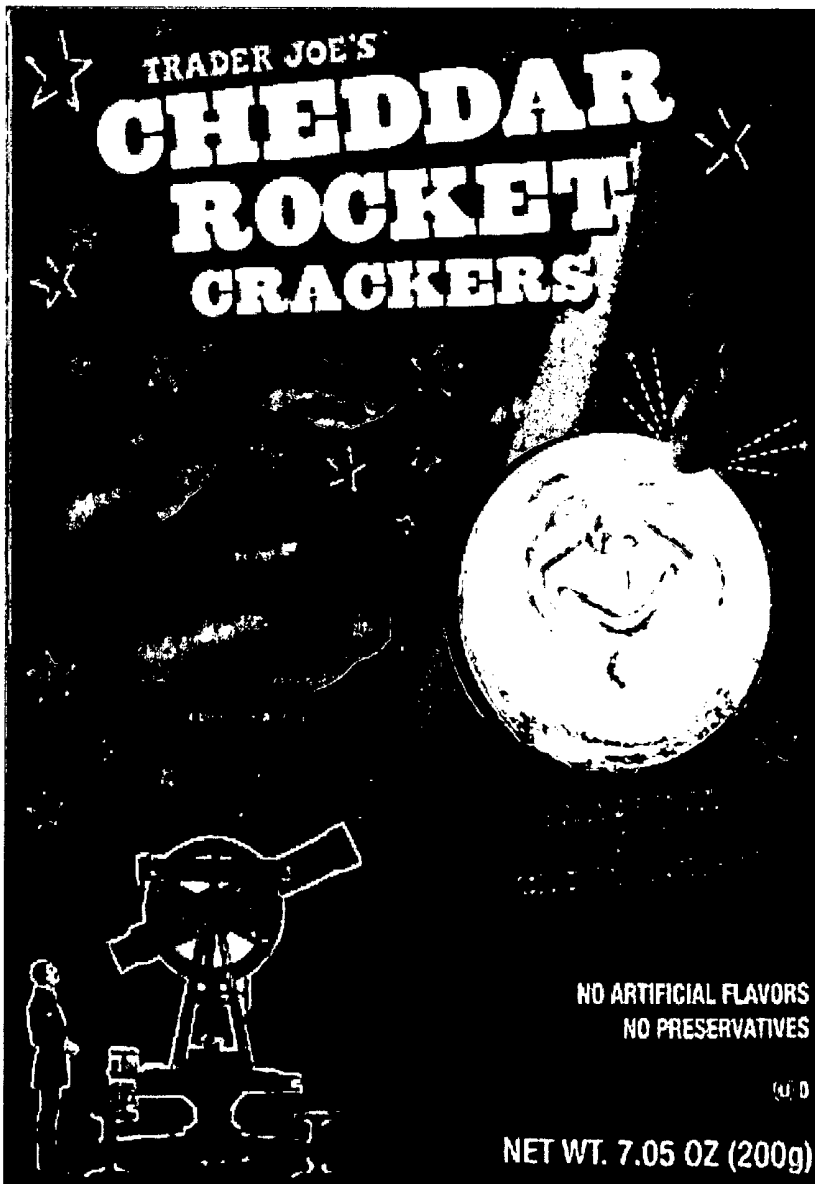
23 46. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low
 24 calorie or significantly reduced in calorie compared to similar products, it contains the same number
 25 of calories (140) as Stauffer's Whales for the same serving size (30g).
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47. Target's Market Pantry brand Cheddar Penguins snack crackers are made with wheat flour and have sugar as an ingredient, and are labeled as having "2g Total Sugar" on the product's PDP as shown below.



48. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as the Market Pantry cheddar Penguins for the same serving size (30g), despite the Market Pantry product having 2g of sugar listed in the NFP.

49. Trader Joe's Cheddar Rocket Crackers are similarly made with wheat flour and, like cheddar Goldfish, have less than 2% of sugar listed as an ingredient as shown below.



Nutrition Facts	
7 servings per container	
Serving size 46 crackers (30g)	
Amount per serving	
Calories	140
% Daily Value*	
Total Fat 5g	6%
Saturated Fat 1.5g	8%
Trans Fat 0g	
Cholesterol 5mg	2%
Sodium 280mg	12%
Total Carbohydrate 19g	7%
Dietary Fiber 1g	4%
Total Sugars 1g	
Includes <1g Added Sugars	2%
Protein 4g	
Vitamin D 0mcg	0%
Calcium 110mg	8%
Iron 0.9mg	6%
Potassium 50mg	2%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, CALCIUM CARBONATE, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), CHEDDAR CHEESE (CULTURED MILK, SALT, MICROBIAL ENZYME), SUNFLOWER OIL, SALT, CONTAINS 2% OR LESS OF EACH OF THE FOLLOWING: SUGAR, LEAVENING (AMMONIUM BICARBONATE, BAKING SODA), NATURAL CHEESE FLAVOR (CHEDDAR CHEESE (MILK CULTURES, SALT, ENZYMES), WATER, DISODIUM PHOSPHATE, ENZYMES), ANIATTO (FOR COLOR), SPICES (CAYENNE PEPPER, PAPRIKA (FOR COLOR)), ONION POWDER, ENZYMES, SOY LECITHIN (AN EMULSIFIER).

CONTAINS WHEAT, MILK, SOY.
 DIST. & SOLD EXCLUSIVELY BY:
 TRADER JOE'S, MONROVIA, CA 91016
 PRODUCT OF CANADA
 SKU#99083



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50. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as the Trader Joe's Cheddar Rocket crackers for the same serving size (30g), despite Trader Joe's listing less than 1g sugar in the NFP.

51. Similarly, Imagine brand white cheddar cheese Stars are made with wheat flour but are not labeled as containing "0g Sugar" on their PDP as shown below.

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Nutrition Facts	
Servings Size 1 oz (28g)	
Servings Per Container: 5	
Amount Per Serving	
Calories 130	Calories from Fat 70
% Daily Value*	
Total fat 7g	11%
Saturated Fat 4.5g	23%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 130mg	6%
Total Carbohydrate 10g	3%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 4g	
Vitamin A 4%	Vitamin C 0%
Calcium 11%	Iron 0%

INGREDIENTS: Sharp Cheddar (Pasteurized Cheddar Cheese, Milk, Cheese Cultures, Enzymes, Annatto [Vegetable Color]), White Rice Flour, Cream (Cream, Salt), Potato Starch, Tapioca Starch, Cultured Buttermilk, Guar Gum, Cream of Tartar, Baking Soda, Sea Salt

CONTAINS: Milk

Processed in a Dedicated Gluten Free and Peanut Free Facility

54. Defendants’ “0g Sugar” claim on the PDP without warning they are “not a low calorie food,” “not a reduced calorie food,” or “not for weight control” as required by 21 C.F.R. § 101.60(c)(1)(iii) misleadingly suggests to consumers that their Goldfish are somehow superior to their competitors’ materially similar products that made no “0g Sugar” claim outside the NFP. The misleading suggestion to consumers from the “0g Sugar” claim with no warning that Goldfish are superior to competitors by being low or reduced in calories or for weight control fits precisely with Campbell’s express goal of advertising its Goldfish “to control caloric intake” or “to help achieve a healthy weight”. CCAC, p. 2. By misleading consumers in this fashion, Defendants have gained an unfair competitive advantage over their competitors from which they profited by their sales to unwitting consumers.

C. DEFENDANTS REFUSED TO CEASE THEIR WRONGDOING

55. On March 3, 2019, Plaintiff Cleveland, through her counsel and pursuant to the CLRA and New York law, sent Defendants a certified letter, return receipt requested, notifying Defendants of the particular violations of Civil Code § 1770, and demanding that Defendants correct, repair or otherwise rectify the problems associated with its unlawful behavior which are in violation of Civil Code § 1770 (“CLRA Letter”).

1 56. In a letter dated April 15, 2019, Defendant Campbell's, on behalf of Defendant
2 Pepperidge Farm, responded to the CLRA Letter and declined to cure the practices identified in
3 Plaintiffs' CLRA Letter.

4 57. On July 16, 2020, Plaintiff Rainwater, through her counsel and pursuant to New York's
5 Uniform Commercial Code, N.Y. U.C.C. §§ 2-313 & 2-314 ("NY UCC") and the CLRA, sent
6 Defendants a certified letter notifying Defendants of the particular violations of the NY UCC and of
7 Civil Code § 1770, and demanding that Defendants correct, repair or otherwise rectify the problems
8 associated with its unlawful behavior which are in violation of NY UCC and Civil Code § 1770 ("NY
9 UCC Letter").

10 58. As of the filing of this Complaint, Defendants have not cured the practices identified
11 in Plaintiffs CLRA Letter or NY UCC Letter for all of the Goldfish at issue in this action.

12 **D. CLASS ACTION ALLEGATIONS**

13 59. Plaintiffs seek to bring this action as a class action, under Cal. Civ. Proc. Code § 382,
14 individually and on behalf of all others similarly situated. Plaintiffs seek to represent the Nationwide
15 Class and California Class as defined below, and Plaintiff Rainwater seeks to represent the New York
16 Class as defined below:

17 (1) The Nationwide Class: All persons who purchased Goldfish labeled as having 0g Sugar
18 outside the Nutrition Fact Panel in the United States within the applicable statute of limitations
19 ("Nationwide Class");

20 (2) The California Class: All persons who purchased Goldfish labeled as having 0g Sugar
21 outside the Nutrition Fact Panel in California within the applicable statute of limitations ("California
22 Class"); and

23 (3) The New York Class: All persons who purchased Goldfish labeled as having 0g Sugar
24 outside the Nutrition Fact Panel in New York within the applicable statute of limitations ("New York
25 Class") (collectively, the "Classes").

26 60. Excluded from the Classes are: (i) Campbell's Soup Company, including any entity in
27 which, Campbell's Soup Company has a controlling interest, is a parent or subsidiary, or which is
28 controlled by Campbell's Soup Company, as well as its officers, directors, affiliates, legal

1 representatives, heirs, predecessors, successors, and assigns; (ii) Pepperidge Farm, Inc., including any
2 entity in which, Pepperidge Farm, Inc. has a controlling interest, is a parent or subsidiary, or which is
3 controlled by Pepperidge Farm, Inc., as well as its officers, directors, affiliates, legal representatives,
4 heirs, predecessors, successors, and assigns; (iii) the judges to whom this action is assigned and any
5 members of their immediate families; and (iv) purchases made outside the applicable statutes of
6 limitations period.

7 61. Plaintiffs reserve the right to re-define the Classes prior to class certification, or to seek
8 certification of one or more multi-state classes.

9 **A. Numerosity**

10 62. The members of the Classes are so numerous that joinder of all members of the Classes
11 is impracticable. Although the precise number of class members is unknown to Plaintiffs at this time,
12 on information and belief, the proposed Classes contain thousands of purchasers of Goldfish who have
13 been damaged by the conduct alleged herein.

14 **B. There is a Well-Defined Community of Interest**

15 63. In order to determine if there is a well-defined community of interests such that the
16 question is one of a common or general interests, a court should consider: (1) whether common
17 questions of law and facts predominate; (2) whether the class representatives' claims or defenses are
18 typical of the Classes; and (3) whether the class representatives can adequately represent the Classes.

19 **i. Common Questions of Law and Fact Predominate**

20 64. Common questions of law or fact exist as to all members of the Nationwide Class, the
21 California Class, and the New York Class which predominate over any questions affecting only
22 individual members of those Classes. These common legal or factual questions include:

- 23 a. Whether the Goldfish as described herein were labeled as having "0g Sugars";
24 b. Whether the Goldfish labeling complies with the FDA's requirements for 0g sugar
25 nutrient content claims;
26 c. Whether the Goldfish's labels as described herein are unlawful;
27 d. Whether the Goldfish contains sugar rendering the "0g Sugars" claim literally false;
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- 1 e. Whether Defendants' misrepresentations and omissions were material to reasonable
- 2 consumers;
- 3 f. Whether Defendants' labeling, marketing, and sale of Goldfish constitutes false
- 4 advertising;
- 5 g. Whether Defendants' "0g Sugars" labeling of Goldfish is an express warranty that
- 6 Defendants' breached;
- 7 h. Whether Defendants' conduct injured Plaintiffs and the Classes, and, if so, the nature
- 8 and extent of the appropriate damages and/or restitution; and
- 9 i. The appropriate injunctive relief to prevent Defendants from selling Goldfish with
- 10 labels that fail to comply with the FDA's requirements for 0g sugar nutrient content
- 11 claims.

12 65. All questions as to the labeling, representations and publicly disseminated
13 advertisements and statements attributable to Defendants at issue herein are similarly common. A
14 determination of Defendants' knowledge as to the misleading and deceptive nature of the statements
15 and omissions made on each and every label of the Goldfish will be applicable to all members of the
16 Classes. Further, whether Defendants violated any applicable state laws and pursued the course of
17 conduct complained of herein, whether Defendants acted intentionally or recklessly in engaging in the
18 conduct described herein, and the extent or form of the appropriate injunctive relief, declaratory relief,
19 damages, and/or restitutionary relief are common questions to the Classes.

20 **ii. Plaintiffs' Claims are Typical of the Classes**

21 66. Plaintiffs' claims are typical of the Classes because Defendants injured all members of
22 the Classes through the uniform misconduct described herein; all members of the Classes were subject
23 to Defendants' false, misleading, and unfair marketing practices and representations, including the
24 misleading claim the Goldfish products contain "0g Sugars" without warning they are "not a reduced
25 calorie food," "not a low calorie food," or "not for weight control." Plaintiffs are no different in any
26 material respect from any other member of the Classes they seek to represent, and the relief sought by
27 Plaintiffs is common to the relief sought by the Classes.

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iii. Adequacy of Representation

67. Plaintiffs are fair and adequate representatives of the Classes they seek to represent because Plaintiffs' interests do not conflict with the interests of the members of the Classes. Plaintiffs will prosecute this action vigorously and are highly motivated to seek redress against Defendants. Further, Plaintiffs have selected competent counsel that are experienced in class action and other complex litigation. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Classes and have the resources to do so.

C. A Class Action Is Superior to All Other Available Methods for the Fair and Efficient Adjudication of Plaintiffs' and Class Members' Claims

68. A class action is superior to other available means for the fair and efficient adjudication of this dispute. It would be virtually impossible for members of the Classes individually to obtain the relief sought in this Complaint. The damages suffered by each individual member of the Classes will likely be relatively small, especially given the relatively small cost of the Goldfish at issue and the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' misconduct.

69. Even if members of the Classes could afford individual actions, a multitude of such individual actions still would not be preferable to class-wide litigation. Individual actions also present the potential for inconsistent or contradictory judgments, which would be dispositive of at least some of the issues and hence interests of the other members not party to the individual actions, would substantially impair or impede their ability to protect their interests, and would establish incompatible standards of conduct for the party opposing the Classes.

70. A class action presents far fewer litigation management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

71. The Class may also be certified because Defendants acted or refused to act on grounds generally applicable to the Classes, thereby making preliminary and final injunctive relief and corresponding declaratory relief appropriate.

72. Also, in the alternative, the Classes may be certified with respect to particular issues.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Consumers Legal Remedies Act (CLRA)

Cal. Civ. Code §§ 1750, *et seq.*

(On behalf of Plaintiffs and the California Class)

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4 73. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
5 forth herein.

6 74. Plaintiffs and the California Class have standing to pursue this claim as they purchased
7 the Goldfish for personal use and have suffered injury in fact and lost money as a result of Defendants'
8 actions, as set forth herein.

9 75. At all times relevant hereto, each Defendant was and is a "person," as defined in Cal.
10 Civ. Code § 1761(d).

11 76. At all times relevant hereto, the Goldfish are a "good," as defined in Cal. Civ. Code §
12 1761(d).

13 77. At all times relevant hereto, Plaintiffs and the California Class members' purchases of
14 the Goldfish constitute "transactions," as defined in Cal. Civ. Code § 1761(e).

15 78. The following subsections of the CLRA prohibit the following unfair methods of
16 competition and unfair or deceptive acts or practices undertaken by any person in a transaction is
17 intended to result or which results in the sale or lease of goods or services to any consumer:

18 79. Cal. Civ. Code § 1770(a)(5): Representing that goods or services have sponsorship,
19 approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a
20 person has a sponsorship, approval, status, affiliation, or connection which they do not have;

21 80. Cal Civ. Code § 1770(a)(7): Representing that goods or services are of a particular
22 standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

23 81. Cal. Civ. Code § 1770(a)(9): Advertising goods or services with intent not to sell them
24 as advertised; and,

25 82. Cal. Civ. Code § 1770(a)(16): Representing that the subject of a transaction has been
26 supplied in accordance with a previous representation when it has not.

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1 83. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(5) by
2 representing that the Goldfish have sponsorship, approval, characteristics, ingredients, benefits or
3 quantities which they do not have.

4 84. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(7) by
5 representing that the Goldfish are of a particular standard, quality or grade, which they are not.

6 85. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(9) by
7 advertising the Goldfish with the intent not to sell them as advertised.

8 86. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(16) by
9 representing the Goldfish have been supplied in accordance with previous representations when they
10 have not.

11 87. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(5), (a)(7),
12 (a)(9) and (a)(16) as Defendants knew or should have known that the “0g Sugars” representation,
13 without warning that the Goldfish were “not a low calorie food,” “not a reduced calorie food,” or “not
14 for weight control” violated the FDCA, FDA regulations, the Sherman Law and the CLRA, that such
15 a statement was material and that it would be relied upon by consumers including Plaintiffs. Moreover,
16 Defendants’ labeling Goldfish as containing “0g Sugars” when they have sugar in them also violated
17 and continues to violate these sections of the CLRA.

18 88. Indeed, Plaintiffs and the California Class relied on the Goldfish’s packaging and
19 marketing prior to purchase. Moreover, such reliance is implicit from the very nature of the false and
20 misleading “0g Sugars” claim as described herein. These representations and omissions were
21 uniformly made and would be important to a reasonable consumer in deciding whether to purchase
22 the Goldfish. Had consumers known the Goldfish were misleadingly labeled and marketed as
23 described herein, it would have affected reasonable consumers’ purchasing decisions, such as they
24 would not have purchased the Goldfish, would have purchased a lesser quantity of the Goldfish, or
25 insisted on paying a lower price for the Goldfish. Instead, Plaintiffs and the California Class paid a
26 premium for the Goldfish as a result of the false and misleading “0g Sugars” claim described herein.

27 89. Defendants’ misrepresentations and omissions were done with the intent to deceive
28 Plaintiffs and the members of the California Class and to deprive them of their legal rights and money.

1 90. Defendants knew that the “0g Sugars” labeling would deceive and confuse consumers
2 into believing that the Goldfish are a low or reduced calorie food, and Defendants deceptively
3 advertised or intentionally omitted the required disclaimer from the packaging.

4 91. Plaintiffs are concurrently filing the declaration of venue required by Cal. Civ. Code §
5 1780(d).

6 92. The policies, acts, and practices herein described were intended to result in the sale of
7 Goldfish to the consuming public, particularly to parents with children, and violated and continue to
8 violate Cal. Civ. Code § 1770(a)(5) by representing that the Goldfish have characteristics, benefits,
9 uses, or quantities which they do not have.

10 93. Defendants’ actions as described herein were done with conscious disregard of
11 Plaintiffs’ and the California Class’s rights, and Defendants have acted wantonly and maliciously in
12 their concealment of the same.

13 94. Defendants’ wrongful business practices constituted, and constitute, a continuing
14 course of conduct in violation of the CLRA as Defendants continue to make the same
15 misrepresentations and omit material information regarding the Goldfish.

16 95. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs, and the California Class, seek an order
17 enjoining Defendants from engaging in the methods, acts and practices alleged herein, and court costs
18 and attorneys’ fees.

19 96. As described in ¶¶ 55 and 57, pursuant to § 1782 of the Act, Plaintiffs notified
20 Defendants in writing of their violations of § 1770 described above and demanded that they correct
21 the problems associated with the actions detailed above and give notice to all affected consumers of
22 Defendants’ intent to so act. Defendants refused to repair or otherwise rectify the problems with their
23 unlawful acts.

24 97. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs, and the California Class, seek
25 damages, restitution, and an order enjoining Defendants from engaging in the methods, acts and
26 practices alleged herein, and any other relief deemed proper by the Court. Accordingly, Plaintiffs
27 hereby request damages from Defendants as provided for in Civil Code § 1780, including:

28 a. Actual damages;

- 1 b. Statutory damages allowable under Civil Code § 1780;
- 2 c. Punitive damages;
- 3 d. Any other relief which the Court deems proper; and
- 4 e. Court costs and attorneys' fees.

SECOND CAUSE OF ACTION
Violation of California's False Advertising Law
Cal. Bus. & Prof. Code §§ 17500, *et seq.*
(On behalf of Plaintiffs and the California Class)

8 98. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
9 forth herein.

10 99. At all times relevant hereto, each Defendant was and is a "person," as defined in Cal.
11 Bus. & Prof. Code § 17506.

12 100. In marketing, advertising and labeling the Goldfish, Defendants made, and continue to
13 make, false and misleading statements in order to induce consumers into purchasing the Goldfish on
14 a false premise.

15 101. In marketing, advertising and labeling the Goldfish, Defendants failed, and continue to
16 fail, to make material disclosures, including the disclosure that the Goldfish are "not a low calorie
17 food," "not a reduced calorie food," or "not for weight control."

18 102. Defendants are aware that the claims it makes about the Goldfish confuse and deceive
19 reasonable consumers.

20 103. Defendants engaged in the deceptive conduct alleged above in order to induce the
21 consuming public to purchase Goldfish.

22 104. In marketing, advertising, and labeling the Goldfish described above, Defendants knew
23 or should have known that the "0g Sugars" statements regarding the Goldfish were false and
24 misleading.

25 105. Defendants' misrepresentations of the material facts detailed above constitute unfair
26 and fraudulent business practices, as defined by Cal. Bus. & Prof. Code § 17500.

27 106. Defendants had reasonably available alternatives to further their legitimate business
28 interests, other than the conduct described herein.

1 107. All of the conduct alleged herein occurred, and continues to occur, in Defendants'
2 business. Defendants' wrongful action is part of a course of conduct that is repeated hundreds, if not
3 thousands, of times every day.

4 108. Plaintiffs were misled and, because the misrepresentations and omissions were uniform
5 and material, reasonable consumers were misled by the "0g Sugars" labeling as alleged above.

6 109. Additionally, Defendants' use of the forms advertising and marketing, as described
7 herein, have deceived and are likely to continue deceiving the consuming public, in violation of
8 California Business and Professions Code § 17500.

9 110. As a result of Defendants' wrongful conduct, Plaintiffs and the California Class have
10 suffered an injury in fact and a loss of money or property. Indeed, Plaintiffs and the California Class
11 purchased the Goldfish because of Defendants' misrepresentations that the Goldfish have "0g Sugars"
12 without the requisite disclaimer. Plaintiffs and the California Class would not have purchased the
13 Goldfish at all, would have purchased a lesser quantity of the Goldfish or would not have paid a
14 premium for the Goldfish if they had known that Defendants' advertising and representations were
15 false and misleading.

16 111. Accordingly, Plaintiffs and the California Class seek an order of this Court enjoining
17 Defendants from engaging in the false advertising alleged herein in connection with the sale of the
18 Products. Additionally, Plaintiffs and the California Class seek an order awarding restitution of the
19 money wrongfully acquired by Defendants by means of the false and misleading advertising and
20 representations alleged herein.

21 **THIRD CAUSE OF ACTION**
22 **Violations of Unfair Competition Law ("UCL")**
23 **Unlawful, Fraudulent & Unfair Business Practices**
24 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
25 **(On behalf of Plaintiffs and the California Class)**

26 112. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
27 forth herein.

28 113. As alleged above, Plaintiffs and the California Class have standing to pursue this claim
as they have suffered injury in fact and have lost money or property as a result of Defendants' actions.
Specifically, prior to the filing of this action, Plaintiffs and the California Class purchased the Goldfish

1 for their own personal household use. In so doing, Plaintiffs relied on Defendants' misrepresentations
2 and omissions of material facts, as alleged in detail above. As described in greater detail herein,
3 Defendants' Goldfish labeled as containing "0g Sugars" are not low calorie or significantly reduced
4 calorie foods, and do not have the required prominent warning adjacent to the "0g Sugars" claim that
5 they are "not a low calorie food," or "not a reduced calorie food," or "not for weight control."
6 Moreover, Defendants' "0g Sugar" claim on the PDP is false because the Goldfish contain sugar and
7 Defendants are not permitted to round its sugar content to "0g" on the PDP without the benefit of and
8 full compliance with 21 C.F.R. § 101.60(c)(1).

9 114. Defendants' misrepresentations and omissions of material fact as alleged herein
10 constitute unlawful, unfair, and fraudulent business practices in that they deceived Plaintiffs and the
11 California Class into purchasing and paying for a product or paying more for a product than they
12 would have had they known the truth.

13 115. Sherman Law § 110765 prohibits misbranding any food.

14 116. Sherman Law § 110760 prohibits manufacturing, selling, delivering, holding or
15 offering for sale any misbranded food.

16 117. Sherman Law § 110770 prohibits delivering or proffering for delivery misbranded
17 food.

18 118. Under California and identical Federal laws, a food is misbranded if any word,
19 statement, or other information required to be on a food's label or labeling is not prominently placed
20 thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in
21 the labeling, and in such terms as to render it likely to be read and understood by the ordinary
22 individual under customary conditions of purchase and use. Sherman Law § 110705; FDCA § 403(f).

23 119. Under California and identical Federal laws, a food is misbranded if its label bears a
24 claim that characterizes the level of any nutrient unless it is used as defined by the U.S. Secretary of
25 Health and Human Services. Sherman Law § 110670; FDCA §§ 403(r)(1) and (2)(A).

26 120. As described in greater detail herein, Defendants' Goldfish labeled as containing "0g
27 Sugars" are not low calorie or significantly reduced calorie foods, and do not have the required
28 prominent warning adjacent to the "0g Sugars" claim that they are "not a low calorie food," or "not a

1 reduced calorie food,” or “not for weight control” in violation of 21 C.F.R. § 101.60(c)(1)(iii) and
2 Sherman Law §§ 110670 and 110100 (adopting food regulations adopted pursuant to the FDCA as the
3 food labeling regulations of California). Moreover, Defendants’ Goldfish contain sugar and make a
4 “0g Sugar” claim on the PDP, but Defendants are not permitted to round its .5g or less sugar content
5 to “0g” on the PDP without full compliance with 21 C.F.R. § 101.60(c)(1) and Sherman Law §§
6 110670 and 110100. Thus, the Goldfish are “misbranded” under California and identical Federal laws
7 as the labeling fails to comply with Sherman Law §§ 110705 and 110670, and FDCA §§ 403(f),
8 (r)(1)(A) and (2).

9 121. Defendants violated and continue to violate Sherman Law § 110765, and hence also
10 violated and continues to violate the “unlawful” prong of the UCL, by misbranding the Goldfish.

11 122. Defendants violated and continue to violate Sherman Law § 110760, and hence also
12 violated and continues to violate the “unlawful” prong of the UCL, by manufacturing, selling,
13 delivering, holding or offering for sale the Goldfish which are misbranded.

14 123. Defendants violated and continue to violate Sherman Law § 110770, and hence also
15 violated and continues to violate the “unlawful” prong of the UCL, by delivering or proffering for
16 delivery the Goldfish which are misbranded.

17 124. Defendants’ identical conduct that violates the Sherman Law also violates FDCA §§
18 403(f), (r)(1)(A) and (r)(2)(B,) and 21 C.F.R. § 101.60(c)(1). This identical conduct serves as the sole
19 factual basis of each cause of action brought by this Complaint, and Plaintiffs do not seek to enforce
20 any of the state law claims raised herein to impose any standard of conduct that exceeds that which
21 would violate the FDCA and applicable FDA regulations.

22 125. Additionally, Defendants’ conduct constitutes an “unlawful” business practice within
23 the meaning of the UCL because it violates the CLRA and FAL.

24 126. Defendants’ actions as described herein constitute unfair competition within the
25 meaning of California’s UCL, insofar as the UCL prohibits “any unlawful, unfair or fraudulent
26 business act or practice” or “unfair, deceptive, untrue or misleading advertising.”

27 127. Defendants have and continue to violate the “unfair” prong of the UCL through their
28 misleading “0g Sugars” claim without warning Goldfish are “not a low calorie food,” “not a reduced

1 calorie food,” or “not for weight reduction.” Additionally, Defendants have and continue to violate
2 the “unfair” prong of the UCL through their misleading “0g Sugars” claim when, in fact Goldfish have
3 sugar in them. The gravity of the harm to members of the California Class resulting from such unfair
4 acts and practices outweighs any conceivable reasons, justifications and/or motives of Defendants for
5 engaging in such deceptive acts and practices. By committing the acts and practices alleged above,
6 Defendants have engaged, and continue to engage in unfair business practices within the meaning of
7 California Business and Professions Code §§ 17200, *et seq.*

8 128. Plaintiffs and the California Class were misled because the misrepresentations and
9 omissions were uniform and material.

10 129. Defendants’ conduct constitutes a “fraudulent” business practice within the meaning of
11 the UCL insofar as Defendants’ misrepresentations and omissions are likely to deceive members of
12 the public.

13 130. Defendants acts and practices of labeling Goldfish as containing “0g Sugars” without
14 a prominent, adjacent warning that they are “not a low calorie food,” “not a reduced calorie food,” or
15 “not for weight control” has the effect of misleading consumers into believing the Goldfish are low
16 calorie or significantly reduced calorie foods when they are not. Additionally, labeling Goldfish as
17 containing “0g Sugars” when they have sugar in them has the effect of misleading consumers into
18 believing the Goldfish have absolutely no sugar, when they actually contain some sugar.

19 131. As a direct and proximate result of Defendants’ wrongful business practices in violation
20 of the UCL, Plaintiffs and the California Class have suffered injury in fact and lost money or property
21 as a result of purchasing the Goldfish. Plaintiffs and California Class members would not have
22 purchased or paid as much for the Goldfish had they known the truth.

23 132. Defendants’ wrongful business practices constitute a continuing course of conduct of
24 unfair competition since Defendants are labeling, marketing, and selling the Goldfish in a manner
25 likely to deceive the public.

26 133. Defendants’ wrongful business practices also violates the UCL by giving them an
27 unfair competitive advantage. Specifically, Defendants’ “0g Sugar” claim on the PDP without
28 warning they are “not a low calorie food,” “not a reduced calorie food,” or “not for weight control” as

1 required by 21 C.F.R. § 101.60(c)(1)(iii) misleadingly suggests to consumers that their Goldfish are
2 somehow superior to their competitors' materially similar products that made no "0g Sugar" claim
3 outside the NFP. By misleading consumers in this fashion, Defendants have gained an unfair
4 competitive advantage over their competitors from which they profited by their sales to unwitting
5 consumers.

6 134. Pursuant to section 17203 of the UCL, Plaintiffs and the California Class seek an order
7 of this Court enjoining Defendants from engaging in the unlawful, unfair and fraudulent business
8 practices alleged herein, in connection with the sale of the Goldfish.

9 135. Additionally, Plaintiffs and the California Class seek an order awarding restitution of
10 the money wrongfully acquired by Defendants by means of the unlawful, unfair and fraudulent
11 business practices alleged herein.

12
13 **FOURTH CAUSE OF ACTION**

14 **Deceptive Acts or Practices**

15 **Violation of New York Gen. Bus. Law § 349**

16 **(On Behalf of Plaintiff Rainwater and the New York Class)**

17 136. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
18 forth herein.

19 137. This cause of action is brought by Plaintiff Rainwater on behalf of herself and the New
20 York Class.

21 138. New York General Business Law Section 349 ("GBL § 349") declares unlawful
22 "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing
23 of any service in this state"

24 139. The conduct of Defendants alleged herein constitutes recurring, "unlawful" deceptive
25 acts and practices in violation of GBL § 349, and as such, Plaintiff Rainwater and the New York
26 Subclass Members seek monetary damages and the entry of injunctive relief against Defendants,
27 enjoining them from inaccurately describing, labeling, marketing, and promoting the Products.

28 140. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts
and practices by labeling the Goldfish as containing "0g Sugars" without a prominent accompanying
warning that the Goldfish are "not a low calorie food," "not a reduced calorie food," or "not for weight

1 control.” Additionally, Defendants committed unfair or deceptive acts and practices by labeling the
2 Goldfish as containing “0g Sugars” when they contain sugar as described herein.

3 141. The foregoing deceptive acts and practices are consumer oriented, were directed at
4 consumers, including Plaintiff Rainwater and the New York Class, and have had a broad impact on
5 consumers in New York.

6 142. The foregoing deceptive acts and practices are misleading in a material way because
7 they suggest the Goldfish are low or significantly reduced in calories and do not contain sugar to
8 induce consumers to purchase the Goldfish.

9 143. Plaintiff Rainwater and the New York Class paid a premium for the Goldfish insofar
10 as they purchased products that promised to be of a certain quality and induced a higher payment than
11 would have reasonably been paid otherwise.

12 144. Plaintiff Rainwater and members of the New York Class were injured because they
13 paid for Goldfish labeled “0g Sugars,” which they would not have done had they known the truth that
14 the Goldfish were not low or significantly reduced calorie foods, and that the Goldfish contained sugar.

15 145. Plaintiff Rainwater, on behalf of herself and other members of the New York Class,
16 seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or \$50.00,
17 whichever is greater, three times actual damages, and reasonable attorneys’ fees and costs.

18

FIFTH CAUSE OF ACTION
False Advertising Law
Violation of New York Gen. Bus. Law § 350
(On Behalf of Plaintiff Rainwater and the New York Class)

19
20
21 146. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
22 forth herein.

23 147. By the acts and conduct alleged herein, Defendants have engaged in consumer-oriented
24 conduct that is deceptive or misleading in a material way which constitutes false advertising in
25 violation of Section 350 of the New York General Business Law.

26 148. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

27 False advertising in the conduct of any business, trade or commerce or in
28 the furnishing of any service in this state is hereby declared unlawful.

1 149. N.Y. Gen. Bus. Law § 350a(1) provides, in part, as follows:

2 The...term ‘false advertising, including labeling, of a commodity, or of the kind,
3 character, terms or conditions of any employment opportunity if such advertising is
4 misleading in a material respect. In determining whether any advertising is misleading,
5 there shall be taken into account (among other things) not only representations made by
6 statement, word, design, device, sound or any combination thereof, but also the extent to
7 which the advertising fails to reveal facts material in the light of such representations with
8 respect to the commodity or employment to which the advertising relates under the
9 conditions proscribed in said advertisement, or under such conditions as are customary or
10 usual

11 150. Defendants’ Goldfish labeled as containing “0g Sugars” without a prominent
12 immediately accompanying warning that the Goldfish are “not a low calorie food,” “not a reduced
13 calorie food,” or “not for weight control” were misleading and deceptive statements and
14 representations of fact that were directed to consumers. Additionally, Defendants also made false,
15 misleading and deceptive statements and representations of fact that were directed to consumers by
16 labeling Goldfish as containing “0g Sugars” when they contain sugar as described herein.

17 151. As a result of Goldfish’s false, misleading and deceptive “0g Sugars” statements and
18 representations of fact, Plaintiff Rainwater has suffered and continues to suffer economic injury.

19 152. Plaintiff Rainwater and members of the New York Class were injured because they
20 paid a premium for Goldfish labeled “0g Sugars,” which they would not have done had they known
21 the truth that the Goldfish were not low or significantly reduced calorie foods, and that the Goldfish
22 contained sugar.

23 153. Plaintiff Rainwater, on behalf of herself and other members of the New York Class
24 seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or \$500.00,
25 whichever is greater, three times actual damages, and reasonable attorneys’ fees and costs.

26 **SIXTH CAUSE OF ACTION**
27 **Restitution Based on Quasi-Contract/Unjust Enrichment**
28 **(On Behalf of Plaintiffs and the Classes)**

154. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
forth herein. Plaintiffs plead this Count in the alternative.

155. Defendants’ conduct in enticing Plaintiffs and the Classes to purchase Goldfish through
the use of false and misleading “0g Sugars” labeling as described throughout this Complaint is
unlawful because the statements contained on Goldfish are misleading and untrue. Defendants took

1 monies from Plaintiffs and the Classes for products labeled as containing “0g Sugars,” suggesting they
2 are low calorie or significantly reduced in calories, without warning that the Goldfish are “not a low
3 calorie food,” “not a reduced calorie food,” or “not for weight control,” and without warning that they
4 actually contained sugar. Moreover, Defendants took monies from Plaintiffs and the Classes for
5 products falsely labeled as containing “0g Sugars,” when they contain sugar. Defendants have been
6 unjustly enriched at the expense of Plaintiffs and the Classes as result of their unlawful conduct alleged
7 herein, thereby unjustly enriching Defendants and creating a quasi-contractual obligation on
8 Defendants to restore these ill-gotten gains to Plaintiffs and the Classes.

9 156. As a direct and proximate result of Defendants’ unjust enrichment, Plaintiffs and the
10 Classes are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

11 **SEVENTH CAUSE OF ACTION**
12 **Breach of Express Warranty**
(On Behalf of Plaintiffs and the Classes)

13 157. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
14 forth herein.

15 158. Defendants made express warranties to Plaintiffs and members of the Classes that the
16 Goldfish they were purchasing contained absolutely zero sugar by virtue of its “0g Sugars” statement
17 on the front label of the Goldfish.

18 159. The “0g Sugars” express warranty made to Plaintiffs and members of the Classes
19 appears on the PDP of every package of the Goldfish labeled “0g Sugars.” This promise regarding
20 the Goldfish specifically relates to the goods being purchased and became the basis of the bargain.

21 160. Plaintiffs and members of the Classes purchased the Goldfish in the belief that they
22 conformed to the express warranty that was made on the Goldfish packaging.

23 161. Despite expressly warranting that the Goldfish have “0g Sugars,” all of the Goldfish
24 contain more than absolutely zero sugar, as they list sugar as an ingredient or contain ingredients with
25 inherent sugars. Each of these products has more than absolutely no sugar, or 0g sugar.

26 162. As explained above, if, and only if, 21 C.F.R. § 101.60(c)(1) applies to Defendants’
27 “0g Sugars” claim and Defendants comply with all the requirements of that regulation could
28 Defendants have lawfully rounded down a small amount of sugar (.5g or less) to 0g on the Goldfish

1 labels outside the NFP as part of any nutrient content claim for the absence of sugar. 21 C.F.R. §
2 101.60(c)(1)(i). Defendants' Goldfish failed to comply with all the requirements of that regulation as
3 detailed throughout this Complaint and, as such, could not round down to state "0g Sugars" for the
4 Goldfish as they all contain sugar (including an ingredient with inherent sugar).

5 163. If the court finds that 21 C.F.R. § 101.60(c)(1) does not apply to Defendants' "0g
6 Sugars" claim on the Goldfish, then the "0g Sugars" claim is still a nutrient content claim subject to
7 21 C.F.R. § 101.13(i)(3) which requires any express claim about the amount or percentage of a nutrient
8 not be false or misleading in any respect.

9 164. In either event, the Goldfish have some amount of sugar greater than absolutely 0g of
10 sugar, so the "0g Sugars" statement is literally false.

11 165. Accordingly, Defendants breached the express warranty made to Plaintiffs and
12 members of the Classes by failing to supply goods that conformed to the "0g Sugar" warranty they
13 made on the PDP. As a result, Plaintiffs and members of the Classes suffered injury by virtue of the
14 value of the Goldfish with sugar that were delivered being less than the value of the "0g Sugars"
15 products expressly warranted, and deserve to be compensated for the damages they suffered.

16 166. Plaintiffs and members of the Classes paid money for the Goldfish. However, Plaintiffs
17 and members of the Classes did not obtain the full value of the products that were warranted.
18 Accordingly, Plaintiffs and members of the Classes have suffered injury in fact and lost money or
19 property as a result of Defendants' wrongful conduct.

20 167. On March 3, 2019, a reasonable time after she knew or should have known of such
21 breach, Plaintiff Cleveland, on behalf of herself and the other members of the Classes, sent a notice
22 letter to Defendants which provided notice of Defendants' breach and demanded that Defendants
23 correct, repair, replace, or otherwise rectify the breach complained of herein. Defendants received the
24 letter on March 18, 2019. The letter also stated that if Defendants refused to cure the breach, a
25 complaint would be filed seeking damages. Defendants failed to comply with the letter.

26 168. On July 16, 2020, a reasonable time after she knew or should have known of such
27 breach, Plaintiff Rainwater, on behalf of herself and the other members of the Classes, sent a notice
28 letter to Defendants which provided notice of Defendants' breach and demanded that Defendants

1 correct, repair, replace, or otherwise rectify the breach complained of herein. Defendants received the
2 letter on July 17, 2020. The letter also stated that if Defendants refused to cure the breach within 7
3 days of the receipt of the letter, a complaint would be filed seeking damages. Defendants failed to
4 comply with the letter.

5 169. As a direct and proximate cause of Defendants' breach of express warranties, Plaintiffs
6 and Class members have sustained damages, an economic loss equal to the total purchase price of
7 these unfit products, or the difference in value between the Goldfish as warranted and the Goldfish as
8 actually sold, as well as consequential and incidental damages, in the aggregate, in excess of \$50,000.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the
11 Classes and for the Counts so applicable on behalf of the general public request an award and relief as
12 follows:

13 A. An order certifying that this action is properly brought and may be maintained as a
14 class action, that Plaintiffs be appointed Nationwide Class Representatives and appointed California
15 Class Representatives, Plaintiff Rainwater be appointed New York Class Representative, and the
16 undersigned counsel be appointed Co-Lead Counsel for the Classes.

17 B. Restitution in such amount that Plaintiffs and all members of the Classes paid to
18 purchase Defendants' Goldfish or paid as a premium over alternatives, or restitutionary disgorgement
19 of the profits Defendants obtained from those transactions, for Causes of Action for which they are
20 available.

21 C. Compensatory damages for Causes of Action for which they are available.

22 D. Statutory damages for Causes of Action for which they are available.

23 E. Other statutory penalties for Causes of Action for which they are available.

24 F. Punitive Damages for Causes of Action for which they are available.

25 G. A declaration and Order enjoining Defendants from labeling and advertising the
26 Goldfish misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other
27 applicable laws and regulations as specified in this Complaint.

28

1 H. An Order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees
2 and pre- and post-judgment interest, and, to the extent available, awarding Plaintiffs' counsel
3 reasonable attorneys' fees and costs.

4 I. An Order requiring an accounting for, and imposition of, a constructive trust upon all
5 monies received by Defendants as a result of the unfair, misleading, fraudulent and unlawful conduct
6 alleged herein.

7 J. Such other and further relief as may be deemed necessary or appropriate.

8 **DEMAND FOR JURY TRIAL**

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

10 DATED: May 24, 2021

FEINSTEIN DOYLE PAYNE & KRAVEC, LLC
JOSEPH N. KRAVEC, JR.
WYATT A. LISON

11
12
13 By: 

WYATT A. LISON

14
15 **PEARSON, SIMON & WARSHAW, LLP**
DANIEL L. WARSHAW
MELISSA S. WEINER

16
17 ***ATTORNEYS FOR PLAINTIFFS AND THE
PROPOSED CLASSES***

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EXHIBIT 2

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Wyatt A. Lison (SBN #316775) FEINSTEIN DOYLE PAYNE & KRAVEC, LLC 429 Fourth Avenue, Law & Finance Building, Suite 1300 Pittsburgh, PA 15219 TELEPHONE NO.: (412) 281-8400 FAX NO.: (412) 281-1007 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY <div style="text-align: center; font-weight: bold; font-size: 1.2em;"> ENDORSED FILED ALAMEDA COUNTY </div> <div style="text-align: center; font-weight: bold; font-size: 1.2em;"> MAY 26 2021 </div> CLERK OF THE SUPERIOR COURT By <u>ANDREL GOSPEL</u> PG 211011-15
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice MAILING ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice CITY AND ZIP CODE: Alameda 94501 BRANCH NAME: Alameda		CASE NUMBER: <u>PG 211011-15</u> JUDGE: DEPT:
CASE NAME:		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

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

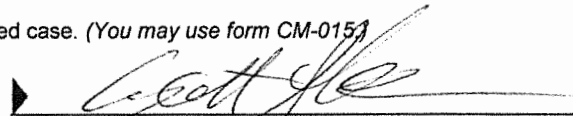
1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> 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): 7 - SEE ATTACHED
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: 5/24/2021
 Wyatt A. Lison

(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.

Page 1 of 2

EXHIBIT 3

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title:	Case Number:
---------------------	---------------------

CIVIL CASE COVER SHEET ADDENDUM**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

[] Hayward Hall of Justice (447)

[X] Oakland, Rene C. Davidson Alameda County Courthouse (446) [] Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	[] 34 Auto tort (G) Is this an uninsured motorist case? [] yes [] no
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	[] 75 Asbestos (D) [] 89 Product liability (<u>not</u> asbestos or toxic tort/environmental) (G) [] 97 Medical malpractice (G) [] 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	[X] 79 Bus tort / unfair bus. practice (G) [] 80 Civil rights (G) [] 84 Defamation (G) [] 24 Fraud (G) [] 87 Intellectual property (G) [] 59 Professional negligence - non-medical (G) [] 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36) Other employment (15)	[] 38 Wrongful termination (G) [] 85 Other employment (G) [] 53 Labor comm award confirmation [] 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	[] 04 Breach contract / Wrnty (G) [] 81 Collections (G) [] 86 Ins. coverage - non-complex (G) [] 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	[] 18 Eminent domain / Inv Cdm (G) [] 17 Wrongful eviction (G) [] 36 Other real property (G)
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	[] 94 Unlawful Detainer - commercial [] 47 Unlawful Detainer - residential [] 21 Unlawful detainer - drugs Is the deft. in possession of the property? [] Yes [] No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	[] 41 Asset forfeiture [] 62 Pet. re: arbitration award [] 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) [] Yes [] No [] 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	[] 77 Antitrust / Trade regulation [] 82 Construction defect [] 78 Claims involving mass tort [] 91 Securities litigation [] 93 Toxic tort / Environmental [] 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	[] 19 Enforcement of judgment [] 08 Confession of judgment
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	[] 90 RICO (G) [] 88 Partnership / Corp. governance (G) [] 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	[] 06 Change of name [] 69 Other petition

EXHIBIT 4

ATTACHMENT

CAUSES OF ACTION

- (1) Violation of California's Consumers Legal Remedies Act , California Civil Code §§ 1750, *et seq.*
- (2) Violation of California's False Advertising Law, California Business & Professions Code §§ 17500, *et seq.*
- (3) Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
- (4) Violation of New York's General Business Law § 349
- (5) Violation of New York's General Business Law § 350
- (6) Restitution Based On Quasi-Contract/Unjust Enrichment
- (7) Breach of Warranty

EXHIBIT 5

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Campbell Soup Company and Pepperidge Farm, Inc.

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

Denise Cleveland and Lanna Rainwater

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
**ENDORSED
FILED
ALAMEDA COUNTY**
MAY 26 2021
CLERK OF THE SUPERIOR COURT
By **ANDREL GOSPEL**
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): Superior Court of California - Alameda County
2233 Shoreline Drive / George E. McDonald Hall of Justice
Alameda, California 94501

CASE NUMBER: (Número del Caso):

RG21101115

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):

Wyatt A. Lison, 429 Fourth Avenue, Law & Finance Building, Suite 1300, Pittsburgh, PA 15219 (412) 281-8400

DATE:

(Fecha) MAY 26 2021

Chad Finke

Clerk, by

Executive Officer/Clerk

(Secretario)

ANDREL GOSPEL

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación 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)

EXHIBIT 6

Superior Court of California, County of Alameda



Notice of Assignment of Judge for All Purposes

Case Number: RG21101115
Case Title: Cleveland VS Campbell Soup Company
Date of Filing: 05/26/2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

Judge:	Julia Spain
Department:	520
Address:	Hayward Hall of Justice 24405 Amador Street Hayward CA 94544
Phone Number:	(510) 690-2729
Fax Number:	(510) 267-1531
Email Address:	Dept520@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording.

Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

Counsel(s) are expected to be familiar with the Statement of Professionalism and Civility, Alameda County Bar Association (www.acbanet.org).

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY

OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

General Procedures

Following assignment of a civil case to a specific department, all pleadings, papers, forms, documents and writings can be submitted for filing at either Civil Clerk's Office, located at the René C. Davidson Courthouse, Room 109, 1225 Fallon Street, Oakland, California, 94612, and the Hayward Hall of Justice, 24405 Amador Street, Hayward, California, 94544. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO
JUDGE Julia Spain
DEPARTMENT 520

All parties are expected to know and comply with the Local Rules of this Court, which are available on the court's website at: [http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules\(1\)](http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules(1)) and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processes (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days". Plaintiff received that form in the ADR information package at the time the complaint was filed. The court's website also contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

Appearances by attorneys not counsel of record are not permitted except for good cause shown. (Non-emergency scheduling conflicts are not good cause). Any appearing counsel must have full authority to make decisions on a case.

All references to counsel apply equally to self-represented parties and all must comply with all the rules cited in this Notice. Parties are reminded that the dept. clerk is prohibited from giving legal advice. Self-represented parties are encouraged to use the Self-Help Center at the Hayward Hall of Justice, 24405 Amador St., Dept. 501, Hayward.

Email is the best method of communicating with court staff. Email address for counsel or self-represented litigants must be listed in the caption of all filed papers, as required by CRC 2.111(1). All email communications must be copied to all parties for whom an email address is available. Pleadings/documents shall not be transmitted via email.

Schedule for Department 520

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Mondays, Tuesdays, Thursdays and Fridays, beginning at 9:30 a.m.
- Trial Readiness Conferences are held 2 weeks prior to trial date. Compliance with Local Rule 3.35 and personal appearance of trial counsel is required.
- Case Management Conferences are held: Wednesdays at 9:30 a.m. Timely filed and complete CMC Statements with courtesy copy to Dept. 520 are required. The

court will usually publish a Tentative Case Management Order. Check DOMAIN to see if Order waives CMC appearance.

- Law and Motion matters are heard: Wednesdays and Thursdays at 2:00 p.m.; Litigants must contact the dept. clerk to reserve a date before filing any law and motion matter. See further procedures below.
- Settlement Conferences are heard: Court resources are limited. Counsel are encouraged to consider alternative dispute resolution. Conferences will be specially set as appropriate.
- Ex Parte matters are heard: On written applications only on Mondays - Thursdays. Email Dept. 520 to request date. Moving party must give 48 hours prior notice to opponent advising written opposition must be filed and courtesy copy delivered to Dept. 520 within 24 hours.
- Check Domain, Dept. 520 webpage, click on "List of Documents" for other useful materials.
- DISCOVERY DISPUTES: Parties must exhaust Meet and Confer requirements before contacting the court for a hearing date. No Motion to Compel Discovery will be scheduled until after the parties complete an informal discovery resolution process thru the court. Email the dept. for a date and further details before preparing any Motion to Compel.

Law and Motion Procedures

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations
Email: dept520@alameda.courts.ca.gov

Please provide: 1) Name of case; 2) Case number; 3) Title of motion; 4) Moving party; 5) Name of Responding Party's Counsel and email address.

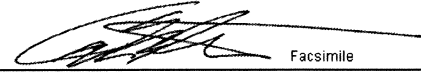
- Ex Parte Matters
Email: dept520@alameda.courts.ca.gov

Tentative Rulings

The court may issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 520
- Phone: 1-866-223-2244

Dated: 06/09/2021



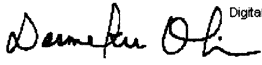
Facsimile

Presiding Judge,
Superior Court of California, County of Alameda

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 06/10/2021

By  Digital
Deputy Clerk

Feinstein Doyle Payne & Kravec, LLC Attn: Lison, Wyatt A. 429 Fourth Avenue Suite 1300 Pittsburgh, PA 15219	
---	--

Superior Court of California, County of Alameda

Cleveland <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Campbell Soup Company <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG21101115</u> NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER Unlimited Jurisdiction
--	--

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:
 Notice is given that a Case Management Conference has been scheduled as follows:

Date: 10/13/2021 Time: 09:30 AM	Department: 520 Location: Hayward Hall of Justice 3rd Floor 24405 Amador Street, Hayward CA 94544 Internet: www.alameda.courts.ca.gov	Judge: Julia Spain Clerk: Danielle Labrecque Clerk telephone: (510) 690-2729 E-mail: Dept520@alameda.courts.ca.gov Fax: (510) 267-1531
--	--	---

ORDERS

1. **Plaintiff must:**
 - a. **Serve** all named defendants and file proofs of service on those defendants with the court within 10 days of the filing of the complaint (Cal. Rules of Court, 3.110(b)); and
 - b. **Give notice** of this conference to all other parties and file proof of service.
2. **Defendant must** respond as stated on the summons.
3. **All parties who have appeared before the date of the conference must:**
 - a. **Meet and confer**, in person or by telephone as required by Cal. Rules of Court, rule 3.724;
 - b. **File and serve** a completed *Case Management Statement* on Form CM-110 at least **15** days before the Case Management Conference (Cal. Rules of Court, rule 3.725); and
 - c. **Post jury fees** as required by Code of Civil Procedure section 631.
4. If you do not follow the orders above, the court may issue an order to show cause why you should not be sanctioned under Cal. Rules of Court, rule 2.30. Sanctions may include monetary sanctions, striking pleadings or dismissal of the action.
5. You are further ordered to appear in person or through your attorney of record at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed. You may be able to appear at Case Management Conferences by telephone. Contact CourtCall, an independent vendor, at least three business days before the scheduled conference. Call 1-888-882-6878, or fax a service request to (888) 882-2946. The vendor charges for this service.
6. You may file *Case Management Conference Statements* by E-Delivery. Submit them directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to www.alameda.courts.ca.gov/ff.
7. The judge may place a *Tentative Case Management Order* in your case's on-line register of actions before the conference. This order may establish a discovery schedule, set a trial date or refer the case to Alternate Dispute Resolution, such as mediation or arbitration. Check the website of each assigned department for procedures regarding tentative case management orders at www.alameda.courts.ca.gov/dc.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 06/10/2021.

By

 Digital

Deputy Clerk



RELEASE OF FUNDS

FILED
ALAMEDA COUNTY

JUN 29 2021

Plaintiff Cleveland Case #: RG21101115

Defendant Campbell Soup Company vs
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

Original Amount: \$ 1,025.00 Receipt #: 9817542 Date: 06/10/21

Mode of Payment: Check

Reason for Release of Funds:

Amount to be Released/Refunded:

- Release of Deposit for Stay of Execution¹ \$ _____
- Overpayment of \$10.01 or more² \$ 25.00
- Exoneration of Bail³ \$ _____
- Small Claims Judgment Paid to Court⁴ \$ _____
- Filing Fee (Fee Type)⁵: _____ \$ _____
- Release of Clerk's/Reporter's Transcript Deposit⁵ \$ _____
- Court Order/Other (explain)⁵: _____ \$ _____

Payee: Feinstein Doyle Payne & Kravec LLC

Address: Law and Finance Building, Suite 1300
429 Fourth Avenue
Pittsburgh, PA 15219

I verify that to the best of my knowledge this release of funds complies with the appropriate statutes referenced above.

Completed by: Andrel Gospel on 06/10/21 Signature: [Signature]

Approved by: [Signature] on 6.29.21 Signature: [Signature]

Submit Release of Funds forms to FBRD@alameda.courts.ca.gov.

¹ CCP 1176
² GC 29375.1
³ PC 1463.006
⁴ CCP 116.860
⁵ At the discretion of the authorized approver
 @Court/Finance & Facilities/Forms/Refunds



Superior Court of California
County of Alameda

** COPY ** COPY ** COPY ** COPY ** COPY ** COPY ** COPY **

Superior Court of California, County of Alameda
 Rene C. Davidson Alameda County Courthouse
 1225 Fallon Street
 Oakland, CA 94612

Receipt Nbr: 981752
 Clerk: agospel
 Date: 06/10/2021

Type	Case Number	Description	Amount
Service	RG21101115	1 Complex Fee - Plaintiff Party(s)	\$1000.00

Total Amount Due: \$1,000.00
 Prior Payment:
 Current Payment: \$1,025.00
 Balance Due: \$.00
 Overage:
 Excess Fee: \$25.00
 Change:

Payment Method:
 Cash:
 Check: \$1,025.00

24060078

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Wyatt A. Lison (SBN #316775) FEINSTEIN DOYLE PAYNE & KRAVEC, LLC 429 Fourth Avenue, Law & Finance Building, Suite 1300 Pittsburgh, PA 15219 TELEPHONE NO.: (412) 281-8400 FAX NO.: (412) 281-1007 ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY <h1 style="margin: 0;">FILED</h1> <h2 style="margin: 0;">ALAMEDA COUNTY</h2> MAY 26 2021 CLERK OF THE SUPERIOR COURT By <i>Andreal Gospel</i> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice MAILING ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice CITY AND ZIP CODE: Alameda 94501 BRANCH NAME: Alameda	CASE NUMBER: <h2 style="margin: 0;">RG21101115</h2>
CASE NAME:	JUDGE: DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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 <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> 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): 7 - SEE ATTACHED
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: 5/24/2021
Wyatt A. Lison

(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.

Page 1 of 2

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Wyatt A. Lison (SBN - 316775) Feinstein Doyle Payne & Kravec, LLC 429 Fourth Avenue, Law & Finance Building, Suite 1300, Pittsburgh, PA 15219 TELEPHONE NO.: (412) 281-8400 FAX NO. (Optional): (412) 281-1007 E-MAIL ADDRESS (Optional): wlison@fdpklaw.com ATTORNEY FOR (Name): Plaintiffs		FILED BY FAX ALAMEDA COUNTY July 07, 2021 CLERK OF THE SUPERIOR COURT By Xian-xii Bowie, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice MAILING ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice CITY AND ZIP CODE: Alameda 94501 BRANCH NAME: Alameda		CASE NUMBER: RG21101115
PLAINTIFF/PETITIONER: Denise Cleveland and Lanna Rainwater DEFENDANT/RESPONDENT: Campbell Soup Company and Pepperidge Farm, Inc.		CASE NUMBER: RG21101115
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

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

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
 - summons
 - complaint
 - Alternative Dispute Resolution (ADR) package
 - Civil Case Cover Sheet (served in complex cases only) (with Addendum)
 - cross-complaint
 - other (specify documents): Notice of Case Management Conference and Order/Notice of Assignment of Judge for All Purposes
- Party served (specify name of party as shown on documents served):
Campbell Soup Company and Pepperidge Farm, Inc.
 - 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) (specify name and relationship to the party named in item 3a):
Dale Giali, Esquire - Counsel for Defendants
- Address where the party was served:
350 South Grand Avenue, 25th Floor, Los Angeles, CA 90071 / dgiali@mayerbrown.com
- I served the party (check proper box)
 - 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): _____ (2) at (time): _____
 - 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): _____
 - (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.
 - (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.
 - (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.
 - 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.
 - I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Denise Cleveland and Lanna Rainwater	CASE NUMBER: RG21101115
DEFENDANT/RESPONDENT: Campbell Soup Company and Pepperidge Farm, Inc	

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): 6/16/2021 (2) from (city): Pittsburgh, PA
- (3) with two copies of the Notice and Acknowledgment of Receipt and a 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):

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Marcia Z. Carney
- b. Address: 429 Fourth Avenue, Law & Finance Building, Suite 1300, Pittsburgh, PA 15219
- c. Telephone number: (412) 281-8400
- d. The fee for service was: \$
- 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.

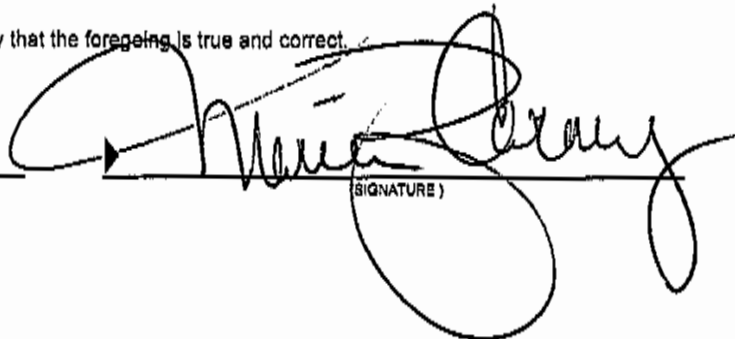
or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

Marcia Z. Carney

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



(SIGNATURE)

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: SBN - 316775 NAME: Wyatt A. Lison FIRM NAME: Feinstein Doyle Payne & Kravec, LLC STREET ADDRESS: 429 Fourth Avenue, Law & Finance Building, Suite 1300 CITY: Pittsburgh STATE: PA ZIP CODE: 15219 TELEPHONE NO.: (412) 281-8400 FAX NO.: (412) 281-1007 E-MAIL ADDRESS: wlison@fdpklaw.com ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice MAILING ADDRESS: 2233 Shoreline Drive/George E. McDonald Hall of Justice CITY AND ZIP CODE: Alameda 94501 BRANCH NAME: Alameda	
Plaintiff/Petitioner: Denise Cleveland and Lanna Rainwater Defendant/Respondent: Campbell Soup Company and Pepperidge Farm, Inc.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: RG21101115

TO (Insert name of party being served): Defendants Campbell Soup Company and Pepperidge Farm, Inc.

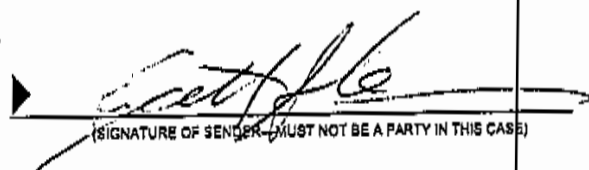
NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: June 15, 2021

Wyatt A. Lison
(TYPE OR PRINT NAME)


(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

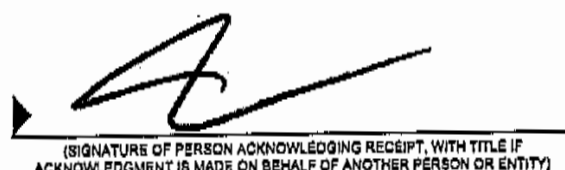
This acknowledges receipt of (to be completed by sender before mailing):

- 1. A copy of the summons and of the complaint.
- 2. Other (specify):
 Notice of Case Management Conference and Order
 Notice of Assignment of Judge for All Purposes
 Civil Cover Sheet with Attachment
 Civil Case Cover Sheet Addendum

(To be completed by recipient):

Date this form is signed: July 6, 2021

Date J. Giall for Defendants Campbell Soup Company and Pepperidge Farm, Inc.
(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)


(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

1 **PROOF OF SERVICE**

2 I, Theresa Struwe, declare:

3 I am employed in Los Angeles County, California. I am over the age of eighteen years
4 and not a party to the within-entitled action. My business address is Mayer Brown LLP, 350
5 South Grand Avenue, 25th Floor, Los Angeles, California 90071-1503. On July 6, 2021 served a
6 copy of the within document(s):

7 **NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL**

8 by transmitting electronically in portable document format (PDF) the document(s)
9 listed above to the e-mail addresses set forth below on this date. The transmission
of the document was reported as complete and without error.

10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at Los Angeles, California addressed as set
12 forth below. I am readily familiar with the firm's practice of collection and
13 processing correspondence for mailing. Under that practice it would be deposited
with the U.S. Postal Service on that same day with postage thereon fully prepaid in
the ordinary course of business. I am aware that on motion of the party served,
service is presumed invalid if postal cancellation date or postage meter date is more
than one day after date of deposit for mailing in affidavit.

14
15 Wyatt A. Lison
16 Joseph N. Kravec, Jr.
17 Feinstein Doyle Payne & Kravec, LLC
429 Fourth Avenue, Suite 1300
18 Pittsburgh, PA 15219
Tel: (412) 281-8400
wlison@fdpklaw.com
19 jkravec@fdpklaw.com

Attorneys for Plaintiffs and the Proposed Class

20 Daniel L. Warshaw
21 Pearson, Simon & Warshaw, LLP
15165 Ventura Blvd., Suite 400
22 Sherman Oaks, CA 91403
Tel: (818) 788-8300
23 Fax: (818) 788-8104
dwarshaw@pswlaw.com

Attorneys for Plaintiffs and the Proposed Class

24 Melissa S. Weiner
25 Pearson, Simon & Warshaw, LLP
800 LaSalle Avenue, Suite 2150
26 Minneapolis, MN 55402
Tel: (612) 389-0600
27 Fax: (612) 389-0610
mweiner@pswlaw.com

Attorneys for Plaintiffs and the Proposed Class

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PROOF OF SERVICE

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 6, 2021 at Los Angeles, California.

Theresa P. Struwe
Theresa Struwe

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

DENISE CLEVELAND AND LANNA RAINWATER, on behalf of themselves and all others similarly situated,

(b) County of Residence of First Listed Plaintiff: San Bernardino County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

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

Wyatt A. Lison, Joseph N. Kravec, Jr., 429 Fourth Avenue, Suite 1300 Pittsburgh, PA 15219 Telephone: (412) 281-8400 [See attachment]

DEFENDANTS

CAMPBELL SOUP COMPANY AND PEPPERIDGE FARM, INC.

County of Residence of First Listed Defendant: Camden County, NJ (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Dale J. Giali, Keri E. Borders, Rebecca G. Johns MAYER BROWN LLP, 350 South Grand Avenue, 25th Floor Los Angeles, CA 90071 Telephone: (213) 229-9500

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

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

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

- Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business In This State 4 4 Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

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

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 7 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 1332, 1441, 1446, 1453 Brief description of cause: Mislabeling of product

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE August 3, 2021

SIGNATURE OF ATTORNEY OF RECORD /s/ Dale J. Giali

ATTACHMENT TO CIVIL COVER SHEET

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

DANIEL L. WARSHAW
dwarshaw@pswlaw.com
PEARSON, SIMON & WARSHAW, LLP
15165 Ventura Blvd., Suite 400
Sherman Oaks, CA 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

MELISSA S. WEINER (Pro Hac to be filed)
mweiner@pswlaw.com
PEARSON, SIMON & WARSHAW, LLP
800 LaSalle Avenue, Suite 2150
Minneapolis, MN 55402
Telephone: (612) 389-0600
Facsimile: (612) 389-0610

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Goldfish Misleadingly Labeled as Containing '0g Sugars'](#)
