

1 William A. Delgado (SBN 222666)
 2 wdelgado@dtolaw.com
 3 T. Jean Mooney (SBN 211747)
 4 jmooney@dtolaw.com
 5 DTO LAW
 6 601 South Figueroa Street, Ste. 2130
 7 Los Angeles, CA 90017
 8 Telephone: (213) 335-6999
 9 Facsimile: (213) 335-7802

10 Attorneys for Defendants
 11 INNO FOODS, INC. and COSTCO
 12 WHOLESALE CORPORATION

13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 CAROL WALCOFF on behalf of
 16 herself and all others similarly
 17 situated,

18 Plaintiff,

19 v.

20 INNOFOODS USA, INC.,
 21 COSTCO WHOLESALE
 22 CORPORATION, a Washington
 23 corporation and DOES 1 through
 24 20, inclusive,

25 Defendants.

Case No.: '22CV1485 MMAAHG

**DEFENDANT INNO FOODS,
 INC. AND COSTCO
 WHOLESALE CORPORATION'S
 NOTICE OF REMOVAL OF
 CLASS ACTION**

[Removal from the Superior
 Court of the State of California in
 and for the County of San Diego,
 Case No. 37-2022-00034301-CU-
 FR-CTL]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO
2 PLAINTIFF AND HER ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332,
4 1441, 1446 and 1453, Defendants Inno Foods, Inc. (“Inno Foods,”
5 erroneously sued as Innofoods USA, Inc.) and Costco Wholesale
6 Corporation (“Costco”) (together, “Defendants”) remove the above-
7 captioned action from the Superior Court of the State of California for
8 the County of San Diego to the United States District Court for the
9 Southern District of California on the basis of diversity jurisdiction
10 under the Class Action Fairness Act. In support of their Notice of
11 Removal, Defendants state:

12 **Procedural History**

13 1. On August 25, 2022, plaintiff Carol Walcoff (“Plaintiff”) filed
14 a Complaint in the Superior Court of the State of California for the
15 County of San Diego, captioned *Walcoff v. Innofoods USA, Inc., et al.*,
16 Case No. 37-2022-00034301-CU-FR-CTL.

17 2. On September 2, 2022, Plaintiff served the Summons and
18 Complaint on Costco. Plaintiff has not yet served the Summons and
19 Complaint on Inno Foods. Defendants’ Notice of Removal is therefore
20 timely filed within 30 days of September 2, 2022.

21 3. True and correct copies of the Summons, Class Action
22 Complaint, and Notice of Case Assignment and Case Management
23 Conference (Civil), in addition to all other “process, pleadings, and
24 orders served upon” Defendants, 28 U.S.C. § 1446(a), are attached as
25 Exhibits A–H, respectively.

26 4. A copy of this Notice of Removal is being filed with the Clerk
27 of the Superior Court of the State of California for the County of San
28

1 Diego and is being served on counsel of record under 28 U.S.C.
2 § 1446(d).

3 Venue

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

7 Nature of the Removed Action

8 6. Plaintiff alleges that Inno Foods markets, advertises, and
9 sells its Keto snack product line, including Keto Coconut Clusters and
10 Dark Chocolate Keto Nuggets (the “Products”), with false and
11 misleading labeling representations that the snacks are “keto friendly.”
12 *See Class Action Complaint (“CAC”) ¶¶ 1, 3-6.*

13 7. Plaintiff has asserted seven causes of action: (1) false and
14 misleading advertising in violation of the Unfair Competition Law
15 (“UCL”), Cal. Bus. & Prof. Code §17200 et seq.; (2) false and misleading
16 advertising in violation of the False Advertising Law (“FAL”), Cal. Bus.
17 & Prof. Code §17500 et seq.; (3) violation of the Consumer Legal
18 Remedies Act (“CLRA”), Cal. Civ. Code §1750 et seq.; (4) unjust
19 enrichment; (5) breach of express warranty; (6) violation of consumer
20 fraud laws; and (7) negligent misrepresentation. *See CAC ¶¶ 55-125.*

21 8. Plaintiff seeks to litigate her claims on behalf of herself and
22 three putative classes:

23 California Class: “All persons in California who purchased the
24 Products for personal or household use, and not for resale or
25 distribution purposes at any time between August 25, 2018 until
26 the date of judgment in this action.”

1 National Class: “All persons in the United States who purchased
2 the Products for personal or household use, and not for resale or
3 distribution purposes from August 25, 2018, until the date of
4 judgment in this action”

5 Consumer Protection Class: “All persons who reside in states in
6 the United States with similar consumer protection laws, breach
7 of express warranty laws and breach of implied warranty law, who
8 purchased the Products from August 25, 2018, until the date of
9 judgment in this action, for personal or household use, and not for
10 resale or distribution purposes [].”

11 CAC ¶ 43.

12 9. Plaintiff alleges that each of the putative classes consists of
13 “thousands of persons who have purchased the Product.” CAC ¶ 45.

14 10. Plaintiff has demanded relief that includes, but is not
15 limited to, an order requiring Defendants to: (a) “pay restitution to
16 restore to all affected persons all funds acquired by means of any act or
17 practice declared by this Court to be an unlawful, unfair, or a
18 fraudulent business act or practice, untrue or misleading labeling,
19 advertising, and marketing, plus pre- and post-judgment interest
20 thereon”; and (b) “disgorge all monies wrongfully obtained and all
21 revenues and profits derived by Defendants as a result of [their] acts or
22 practices as alleged in [the] Complaint.” CAC, Prayer for Relief ¶¶ G,
23 H.

24 11. As demonstrated below, this Court has jurisdiction over
25 Plaintiff’s action, and it is properly removed to this Court.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BASIS OF FEDERAL JURISDICTION UNDER
CLASS ACTION FAIRNESS ACT**

12. This action is removable to this Court because federal diversity jurisdiction under 28 U.S.C. § 1332 exists over Plaintiff’s claims under the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (2005) (“CAFA”), codified in various sections of Title 28 of the United States Code, including 28 U.S.C. §§ 1332(d) & 1453.

13. Congress enacted CAFA to enlarge federal jurisdiction over proposed class actions. CAFA provides that a class action against a non-governmental entity may be removed to federal court if: (1) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs; (2) any member of the proposed plaintiff class is a citizen of a state different from any defendant; and (3) the number of proposed class members is not less than 100. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5), (d)(6) & 1453(b). As set forth below, all the requirements for removal are met here.

Amount-in-Controversy Requirement

14. CAFA’s first requirement, that the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs, 28 U.S.C. § 1332(d)(2), is met here.¹

15. Plaintiff alleges Defendants “have been unjustly enriched in retaining the revenues derived from purchases of the Products by Plaintiff and members of the Classes” and seeks restitution for this unjust enrichment. CAC ¶¶ 91-92. Plaintiff also seeks restitution on behalf of all putative class members “of the money wrongfully acquired

¹ Nothing herein shall be construed as an admission by Defendants that Plaintiff and the class are entitled to any relief requested.

1 by Defendants” from their alleged false and misleading
2 misrepresentations. CAC ¶¶ 64, 72. Plaintiff further seeks an order
3 requiring Defendants to “disgorge all monies wrongfully obtained and
4 all revenues and profits derived by Defendants as a result of [their] acts
5 or practices as alleged in [the] Complaint.” CAC, Prayer for Relief ¶ H.

6 16. Plaintiff alleges that Defendant Inno Foods is “in the
7 business of distributing, marketing, promoting, and selling the Products
8 . . . throughout the United States and in this District.” CAC ¶ 15.

9 Plaintiff also alleges she purchased the Products at Costco stores in
10 Carlsbad, Burbank, and Los Angeles. CAC ¶ 11. It is Costco’s regular
11 practice to maintain, in the ordinary course of its business, records of
12 sales of its various products to distributors, retailers, and consumers
13 where applicable. Declaration of Kamyar Shabaniani in Support of
14 Notice of Removal of Class Action (“Shabaniani Decl.”) ¶ 2.

15 17. Costco’s business records reflect that, from January 1, 2022
16 to August 31, 2022, Costco’s sales of Inno Foods Keto Coconut
17 Clusters—just one of the products challenged—to customers at
18 Defendant Costco’s California stores alone exceeded \$7 million.² *Id.* ¶ 3.
19 Plaintiff seeks disgorgement of these revenues, which represent just a
20 fraction of the total sales made by Inno Foods within the putative class
21 period. *See* CAC, Prayer for Relief ¶ H.

22 18. Plaintiff also seeks both prohibitory and mandatory
23 injunctive relief: (a) an order “enjoin[ing] Defendants from conducting
24

25 ² Defendants consider the exact amount of revenue generated to be
26 confidential. As this is a public filing, Defendants are using
27 conservative round numbers. If the Court has a question regarding
28 Defendants’ filing, Defendants are willing to submit precise numbers
under seal.

1 their business through the unlawful, unfair, or fraudulent business acts
2 or practices, untrue, and misleading labeling and marketing and other
3 violations of law described in this Complaint,” (b) an order compelling
4 Defendants “to conduct a corrective advertising and information
5 campaign,” and (c) an order compelling Defendants “to implement
6 whatever measures are necessary to remedy the unlawful, unfair, or
7 fraudulent” conduct alleged. CAC, Prayer for Relief ¶¶ C-E. “The cost
8 of . . . the injunction against defendant must be included when
9 determining the amount in controversy.” *Lyon v. W.W. Grainger Inc.*,
10 2010 WL 1753194, at *2 (N.D. Cal. Apr. 29, 2010).

11 19. Including the cost of injunctive relief to Defendants raises
12 the amount in controversy even higher. The value of an injunction in
13 this case includes the cost of revising labels, pulling challenged products
14 from California shelves (or nationwide, if such a class is certified), and
15 destroying old packaging. *See Arens v. Popcorn, Indiana, LLC*, 2014
16 WL 2737412, at *2 (N.D. Cal. June 16, 2014). And it includes the cost
17 to Defendants of either developing new labels and advertising for the
18 Products or changing the product formulation and reproducing the
19 Products. The cost of conducting a corrective advertising campaign also
20 must be counted when establishing the amount in controversy. *See*
21 *Tompkins v. Basic Research LL*, 2008 WL 1808316, at *5 (E.D. Cal.
22 Apr. 22, 2008) (finding amount in controversy exceeded \$5 million
23 through valuation of injunction, buy back of products currently on
24 shelves, and corrective advertising).

25 20. Plaintiff also seeks attorneys’ fees. CAC, Prayer for Relief
26 ¶ J (including “common fund doctrine” in relief sought). Attorneys’ fees
27 are counted in determining the amount in controversy for the purposes
28

1 of determining removal jurisdiction. *See Galt G/S v. JSS Scandinavia*,
2 142 F.3d 1150, 1156 (9th Cir. 1998); *Guglielmino v. McKee Foods Corp.*,
3 506 F.3d 696, 700 (9th Cir. 2007).

4 21. In the Ninth Circuit, a common estimate of attorneys’ fees in
5 a class action is 25% of compensatory damages. *Molnar v. 1-800-*
6 *Flowers.com, Inc.*, 2009 WL 481618, at *5 (C.D. Cal. Feb. 23, 2009)
7 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003)).

8 Calculating attorneys’ fees as 25% of the restitution Plaintiff seeks with
9 regard to sales of Inno Foods Keto Coconut Clusters from January 1,
10 2022 to August 31, 2022 to customers at Defendant Costco’s California
11 stores alone yields \$1.75 million in fees. But the amount of attorneys’
12 fees put in controversy by Plaintiff’s allegations significantly exceeds
13 this figure, as Plaintiff proposes a class period between August 25, 2018
14 until the date of judgment and alleges another product—Inno Foods
15 Dark Chocolate Keto Nuggets—also contained false labeling. *See, e.g.*,
16 CAC ¶¶ 1, 43.

17 22. Taken together, the amount in controversy in this action far
18 exceeds \$5 million.

19 **Minimal Diversity of Citizenship**

20 23. CAFA’s second requirement, that any one member of the
21 proposed class be a citizen of a state different from any defendant, 28
22 U.S.C. § 1332(d)(2), is also met here.

23 24. Plaintiff alleges that she is a citizen of California. CAC ¶ 11.

24 25. Both of the defendants are citizens of states other than
25 California:

26 (a) While Plaintiff alleges that Defendant Inno Foods is “a
27 Pennsylvania corporation” (CAC ¶ 15), Inno Foods is actually a
28

1 Canadian company. Declaration of David Chung in Support of Notice of
2 Removal of Class Action ¶ 2.

3 (b) Plaintiff alleges that Defendant Costco is “a
4 Washington corporation.” CAC ¶ 16.

5 26. Accordingly, there is minimal diversity between at least one
6 defendant (e.g., Costco, a citizen of Washington) and Plaintiff Walcoff, a
7 citizen of California. *See* 28 U.S.C. § 1332(d)(2)(A).

8 **Proposed Class Size**

9 27. CAFA’s third requirement, that the proposed class contain at
10 least 100 members, 28 U.S.C. § 1332(d)(5), is met here as well. Plaintiff
11 alleges that each of the three putative classes consists of “thousands of
12 persons who have purchased the Product.” CAC ¶ 45. Plaintiff thus
13 alleges a potential class with at least 100 members.

14 **Conclusion**

15 28. For all the foregoing reasons, this action is properly removed
16 to this Court under CAFA.

17
18 Respectfully submitted,

19
20 Dated: September 30, 2022

21
22 DTO LAW

23 By: /s/ William A. Delgado
24 WILLIAM A. DELGADO
25 Attorneys for Defendants
26 INNO FOODS, INC. and COSTCO
27 WHOLESALE CORPORATION
28

CIVIL COVER SHEET

22CV1485 MMAAHG

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

I. (a) PLAINTIFFS
CAROL WALCOFF
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number) Marcus J. Bradley BRADLEY/GROMBACHER, LLP Tel: 805-270-7100 31365 Oak Crest Drive, Suite 240 Westlake Village, CA 91361

DEFENDANTS
INNOFOODS USA, INC., COSTCO WHOLESALE CORPORATION
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) William A. Delgado wdelgado@dtolaw.com DTO LAW Tel: 213-335-6999 601 S. Figueroa Street, Ste 2130 Los Angeles, CA 90017

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [X] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding []
2 Removed from State Court [X]
3 Remanded from Appellate Court []
4 Reinstated or Reopened []
5 Transferred from Another District (specify) []
6 Multidistrict Litigation - Transfer []
8 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): Cal. Bus. & Prof. Code §§ 17200, 17500
Brief description of cause: False and misleading advertising

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Restitution, prelim/permanent injunction CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 9/30/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ William A. Delgado

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/25/2022 at 03:35:48 PM
Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

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

INNOFOODS USA, INC., COSTCO WHOLESALE CORPORATION, a Washington corporation and DOES 1 through 20, inclusive

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

CAROL WALCOFF on behalf of herself and all others similarly situated

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: Superior Court for the State of California
(El nombre y dirección de la corte es): County of San Diego
330 West Broadway
San Diego, California 92101

CASE NUMBER:
37-2022-00034301-CU-FR-CTL

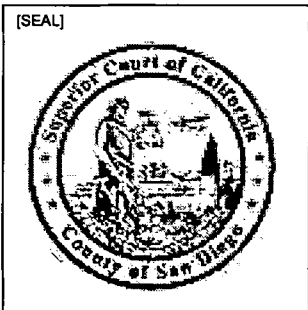
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Marcus J Bradley, Bradley/Grombacher LLP, 31365 Oak Crest Dr. Suite 240, Westlake Village, CA 91361 Tel: (805) 270-7100

DATE: 08/26/2022
(Fecha)

Clerk, by *M. Valdez*, Deputy
(Secretario) M. Valdez (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)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): *COSTCO WHOLESALE CORPORATION*
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):
- by personal delivery on (date):

EXHIBIT B

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/25/2022 at 03:35:48 PM
Clerk of the Superior Court
By: Melissa Valdez, Deputy Clerk

1 **BRADLEY/GROMBACHER, LLP**
2 Marcus J. Bradley, Esq. (SBN 174156)
3 Kiley Lynn Grombacher, Esq. (SBN 245960)
4 31365 Oak Crest Drive, Suite 240
5 Westlake Village, California, 91361
6 Telephone: (805) 270-7100
7 Facsimile: (805) 270-7589
8 mbradley@bradleygrombacher.com
9 kgrombacher@bradleygrombacher.com

10 Attorneys for Plaintiff

11 **SUPERIOR COURT FOR THE STATE OF CA** 37-2022-00034301-CU-FR-CTL
12 **COUNTY OF SAN DIEGO**

13 CAROL WALCOFF on behalf of herself and all
14 others similarly situated,
15
16 Plaintiff,
17
18 v.
19 INNOFOODS USA, INC., COSTCO
20 WHOLESALE CORPORATION,
21 a Washington corporation and DOES 1 through
22 20, inclusive,
23
24 Defendants.

- 25 **CASE NO.:**
26 **CLASS ACTION COMPLAINT FOR:**
27
28 **1. FALSE AND MISLEADING
ADVERTISING IN VIOLATION OF
BUSINESS AND PROFESSIONS CODE
§17200, et seq.**
**2. FALSE AND MISLEADING
ADVERTISING IN VIOLATION OF
BUSINESS AND PROFESSIONS CODE
§17500, et seq.**
**3. VIOLATION OF CALIFORNIA CIVIL
CODE § 1750. et seq.**
4. UNJUST ENRICHMENT;
5. BREACH OF EXPRESS WARRANTY;
**6. VIOLATION OF CONSUMER FRAUD
LAWS;**
7. NEGLIGENT MISREPRESENTATION

DEMAND FOR JURY TRIAL

1 Plaintiff Carol Walcoff (“Plaintiff”) alleges the following based upon personal knowledge as
2 to herself and her own acts, and upon information and belief and the investigation by Plaintiff’s
3 counsel, which included, among other things, a review of public documents, marketing materials, and
4 announcements made by Innofoods Usa, Inc. (“Defendant” or “Innofoods”) and Costco Wholesale
5 Corporation, (“Costco”) as to all other matters. Plaintiff believes that substantial additional evidentiary
6 support exists for the allegations set forth herein and will be available after a reasonable opportunity
7 for discovery.

8 **NATURE OF THE ACTION**

9 1. This action seeks to remedy the unfair, deceptive, and unlawful business practices of
10 Innofoods with respect to the marketing, advertising, labeling, and sales of its Keto snack product line
11 including Keto Coconut Cluster and Dark Chocolate Keto Nuggets (the “Products”).

12 2. Innofoods recognizes consumers are increasingly health conscious.¹ Indeed, “keto”
13 was the most Googled food-related term in 2020². Within the bars, cereals, baking mixes, cookies and
14 snacks category, dollar sales for “keto” products have grown over 21% in the past year³. Yet at the
15 same time that interest in keto expands, consumers also are increasingly choosing plant-based or vegan
16 diets⁴. This can prevent keto dieters with a conundrum: How to eat a high-protein diet without tons of
17 meat.

18 3. To capitalize on these market trends, Innofoods developed, marketed and distributed a
19 purportedly “keto” snack product based on plant-based ingredients with packaging that highlights keto
20 friendly ingredients such as almonds, pecans and pumpkin seeds.

21 4. As part of a scheme to make the Products more attractive to consumers, boost its sales,
22 and ultimately increase its profits, Innofoods uses terms such as “keto-friendly” and “4 net carbs.”

23
24 _____
25 ¹ “We specialize in compiling concepts based on country or origin, marketing of healthy and trendy
26 food products and we are specialists in the field of the organic glutenfree/lactosefree range and the
27 vegan range.” <https://www.innofoodcompany.com/?lang=en> (last viewed 8/15/2022).

28 ² <https://www.forbes.com/sites/meimeifox/2021/09/23/3-food-companies-targeting-the-growing-keto-diet-market/?sh=616474cb6390> (last viewed 8/15/2022)

³ <https://www.forbes.com/sites/meimeifox/2021/09/23/3-food-companies-targeting-the-growing-keto-diet-market/?sh=616474cb6390> (last viewed 8/15/2022)

⁴ <https://www.forbes.com/sites/meimeifox/2021/09/23/3-food-companies-targeting-the-growing-keto-diet-market/?sh=616474cb6390> (last viewed 8/15/2022.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 traditional notions of fair play and substantial justice.

2 10. Venue is proper in this Court because Defendant does business in San Diego County
3 and because the conduct alleged herein which gives rise to the claims asserted occurred within San
4 Diego County. Specifically, Plaintiff purchased the subject product at stores including Costco in
5 Carlsbad.

6 **PARTIES**

7 **Plaintiff**

8 11. Plaintiff is a citizen of California and an individual consumer. During the Class Period,
9 Plaintiff purchased the Products at Costco stores in Carlsbad, Burbank, and Los Angeles. In the last
10 two years, Plaintiff spent approximately three-hundred dollars (\$300) purchasing the Product for her
11 personal consumption.

12 12. Prior to purchasing the Products, Plaintiff read and relied upon false and misleading
13 statements that were prepared by and/or approved by Defendants and their agents and disseminated
14 through the Products' packaging. For each purchase, she understood that she was paying for a keto
15 snack and was deceived when she received a product that contained sugar and high carbohydrates.

16 13. Plaintiff suffered injury in fact and lost money and property as a result of the unfair,
17 deceptive, untrue, and misleading advertising described here. Had Plaintiff known of the defective
18 nature of the Products, she would not have purchased them.

19 14. If Plaintiff were to encounter product information and advertisements for Defendants'
20 Products, she could not rely on them. However, Plaintiff would be willing to purchase products from
21 Defendants in the future so long as Defendants produced a product that was actually "keto friendly".

22 **Defendants**

23 15. Defendant Innofoods is a Pennsylvania corporation. At all times relevant hereto,
24 Innofoods was in the business of distributing, marketing, promoting, and selling the Products
25 described herein throughout the United States and in this District. Thus, Innofoods purposely directed
26 its conduct toward this District and at all times relevant engaged in a continuous course of business in
27 this District by selling thousands of its washing machines and other consumer goods in this District
28 every year.

1 by the diet, called beta hydroxybutyrate, may help minimize seizures⁶.

2 23. The Keto Diet essentially aims to force your body into ketosis and is high in fat,
3 moderate in protein, and low in carbs.

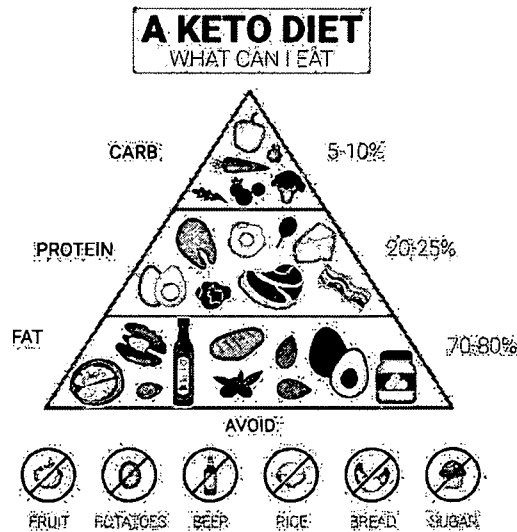
4 24. The Keto Diet aims to force your body into using a different type of fuel. Instead of
5 relying on sugar (glucose) that comes from carbohydrates (such as grains, legumes, vegetables, and
6 fruits), the Keto Diet relies on ketone bodies, a type of fuel that the liver produces from stored fat⁷.

7 25. When this happens, your body becomes incredibly efficient at burning fat for energy.
8 It also turns fat into ketones in the liver, which can supply energy for the brain.⁸

9 26. While everyone's body and needs are slightly different, that typically translates to:

- 10 • 60 to 75 percent of your calories from fat;
- 11 • 15 to 30 percent of your calories from protein;
- 12 • 5 percent or less of your calories from carbs

13 27. "When you are on the Keto Diet, you drastically cut your carbs to only 20 per day.
14 That's less than one apple!" said nutritionist Lisa Drayer⁹.



25 ⁶ <https://www.womenshealthmag.com/weight-loss/a19434332/what-is-the-keto-diet/> (last viewed
26 8/24/2022)

27 ⁷ <https://www.health.harvard.edu/staying-healthy/should-you-try-the-keto-diet> (last viewed
28 8/24/2022)

⁸ <https://www.healthline.com/nutrition/ketogenic-diet-101#what-it-is>, (last viewed 8/24/2022)

⁹ <https://www.cnn.com/2019/12/12/health/health-questions-trending-google-2019-trnd/index.html>
(last viewed 8/24/2022)

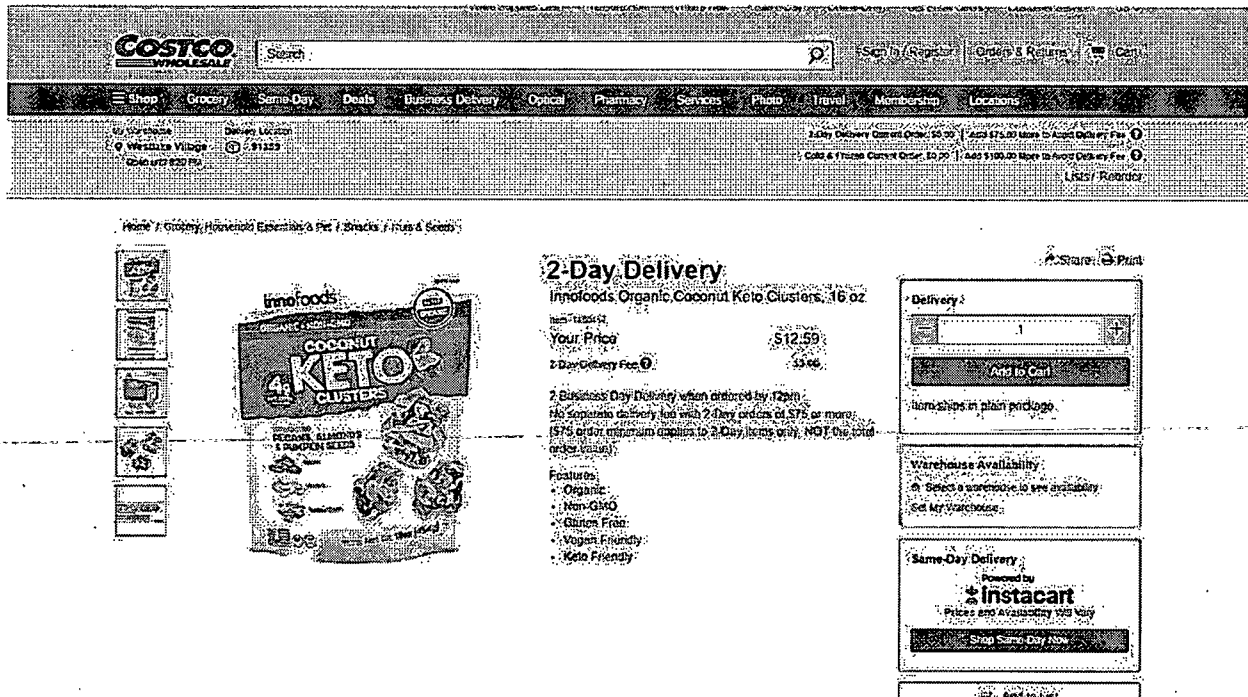
B. The Products are Marketed Deceptively

28. American consumers are health conscious and look for foods to keep a healthy diet and promote weight loss. Product package labels are vehicles that convey food quality and nutrition information to consumers that they can and do use to make purchasing decisions.

29. Defendants realize that consumers are increasingly aware of the relationship between health and diet and, thus, understand the importance and value of descriptors and labels that convey to consumers certain “buzzwords” when considering whether to buy foods.

30. Throughout the Class Period, Defendants engaged in, and Plaintiff and members of the Classes were exposed to, a long-term advertising campaign in which Defendants utilized various forms of media including, but not limited to, website, social media advertising, and print advertising on the Product’s label. Defendants have consistently made certain representations in its labeling, advertising, and marketing that are false and misleading. To accomplish this, Defendants use an integrated, nationwide messaging campaign to consistently convey the deceptive and misleading message that the Products are:

- “keto”;
- “keto-friendly”



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

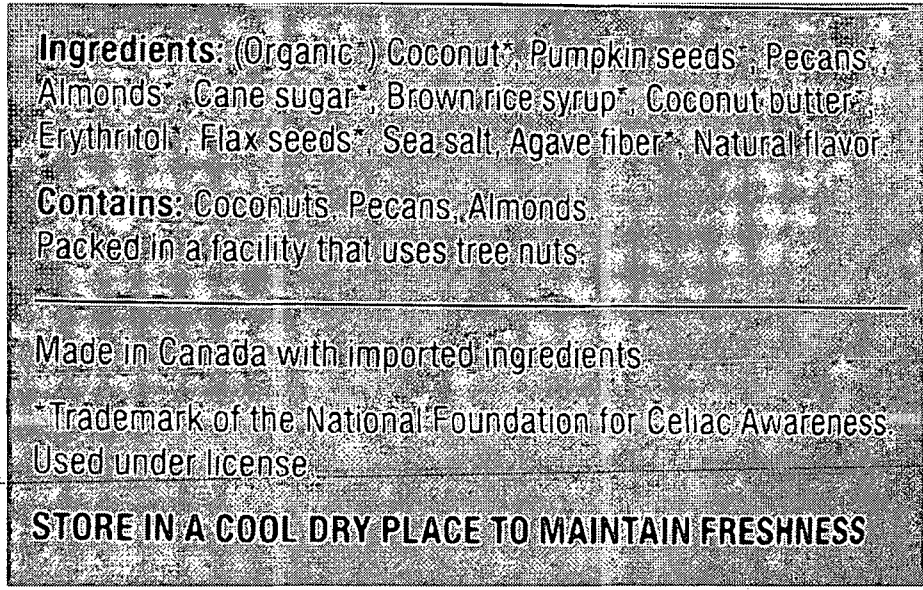


1 32. Consumers lack the meaningful ability to test or independently ascertain the truthfulness
 2 of food and beverage labeling claims especially at the point of sale. Consumers would not know the true
 3 nature of the ingredients or the details of the manufacturing process merely by reading the ingredient label;
 4 their discovery requires investigation beyond the grocery store and knowledge of food chemistry as well
 5 as internal manufacturing habits beyond that of the average consumer. Thus, reasonable consumers must,
 6 and do, rely on food companies such as Defendants to honestly report the nature of a beverage's qualities
 7 and ingredients, and beverage companies such as Defendants intend and know that consumers rely upon
 8 food labeling statements in making their purchasing decisions. Such reliance by consumers is also
 9 eminently reasonable, since food companies are prohibited from making false or misleading statements on
 10 their products under federal law.

11 33. Defendants unscrupulously capitalize on consumers' heightened demand for natural
 12 products by deceptively labeling, advertising, and marketing the Products.

13 **C. The Products Are Not Compatible with Ketogenic Diets**

14 34. Innofoods Coconut Keto Clusters actually contain both cane sugar and brown rice syrup.
 15 According to calculations, this product is 14% sugar by weight and contains 1 teaspoons of added and
 16 natural sugar per serving¹⁰.



17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27 ¹⁰<https://www.ewg.org/foodscores/products/677210091366>
 28 InnofoodsCoconutKetoClustersWithOrganicPecansAlmondsPumpkinSeedsPecansAlmondsPumpkin
 Seeds/ (last viewed 8/24/2022)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action individually and on behalf of all other persons similarly situated. The Classes that Plaintiff seeks to represent comprise:

California Class

All persons in California who purchased the Products for personal or household use, and not for resale or distribution purposes at any time between August 25, 2018 until the date of judgment in this action. Specifically excluded from this Class are Defendants; the officers, directors, or employees of Defendants; any entity in which Defendants have a controlling interest; and any affiliate, legal representative, heir, or assign of Defendants (California Class). Also excluded are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “California Class”).

National Class

All persons in the United States who purchased the Products for personal or household use, and not for resale or distribution purposes from August 25, 2018, until the date of judgment in this action for personal or household use, and not for resale or distribution purposes. Specifically excluded from this Class are Defendants; the officers, directors, or employees of Defendants; any entity in which Defendants have a controlling interest; and any affiliate, legal representative, heir, or assign of Defendants (“National Class”). Also excluded are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

Consumer Protection Class

All persons who reside in states in the United States with similar consumer protection laws, breach of express warranty laws and breach of implied warranty law, who purchased the Products from August 25, 2018, until the date of judgment in this action, for personal or household use, and not for resale or distribution purposes (“Consumer Protection Class”). Specifically excluded from this Class are Defendants; the officers, directors, or employees of Defendants; any entity in which Defendants has a controlling interest; and any affiliate, legal representative, heir, or assign of Defendants. Also excluded are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

44. Plaintiff reserves the right to redefine the Classes and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

45. The Classes are sufficiently numerous, as each includes thousands of persons who have

1 purchased the Product. Thus, joinder of such persons in a single action or bringing all members of the
2 Classes before the Court is impracticable for purposes of California Civil Code Section 382. The
3 question is one of a general or common interest of many persons and it is impractical to bring them
4 all before the Court. The disposition of the claims of the members of the Classes in this class action
5 will substantially benefit both the parties and the Court.

6 46. There are questions of law and fact common to each Class for purposes of California
7 Civil Code Section 382, including whether Defendants' labels and packaging include uniform
8 misrepresentations and omissions that misled Plaintiff and the other members of the Classes to believe
9 the Products were "keto" and/or "keto-friendly". The members of each Class were and are similarly
10 affected by having purchased the Product for its intended and foreseeable purpose as promoted,
11 marketed, advertised, packaged, and labeled by Defendants as set forth in detail herein, and the relief
12 sought herein is for the benefit of Plaintiff and other members of the Classes. Thus, there is a well-
13 defined community of interest in the questions of law and fact involved in this action and affecting
14 the parties.

15 47. Plaintiff asserts claims that are typical of the claims of each respective Class for
16 purposes of California Civil Code Section 382. Plaintiff and all members of each respective Class
17 have been subjected to the same wrongful conduct because they have purchased that Product, which
18 is not natural as represented. Plaintiff paid a premium for the Product, on the belief it was "keto",
19 over similar alternatives that did not make such representations. Plaintiff and the members of each
20 Class have thus all overpaid for the Product.

21 48. Plaintiff will fairly and adequately represent and protect the interests of the other
22 members of each respective Class for purposes of California Civil Code Section 382. Plaintiff has no
23 interests antagonistic to those of other members of each respective Class. Plaintiff is committed to
24 the vigorous prosecution of this action and has retained counsel experienced in litigation of this nature
25 to represent her. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

26 49. Class certification is appropriate under California Civil Code Section 382 because
27 Defendants have acted on grounds that apply generally to each Class, so that final injunctive relief or
28 corresponding declaratory relief is appropriate respecting each Class as a whole. Defendants utilize

1 an integrated, nationwide messaging campaign that includes uniform misrepresentations that misled
2 Plaintiff and the other members of each Class.

3 50. Class certification is appropriate under California Civil Code Section 382 because
4 common questions of law and fact substantially predominate over any questions that may affect only
5 individual members of each Class. Among these common questions of law and fact are:

- 6 a. whether Defendants misrepresented or omitted material facts in connection with the
7 promotion, marketing, advertising, packaging, labeling, and sale of the Product;
- 8 b. whether Defendants' labeling of the Product is likely to deceive the members of each
9 Class;
- 10 c. whether Defendants' conduct is unethical, oppressive, unscrupulous, and/or
11 substantially injurious to consumers;
- 12 d. whether Defendants represented that the Product has characteristics, benefits, uses, or
13 qualities that it does not have;
- 14 e. whether Defendants' acts and practices in connection with the promotion, marketing,
15 advertising, packaging, labeling, distribution, and sale of the Product violated the laws
16 alleged herein;
- 17 f. whether Plaintiff and members of the Classes are entitled to injunctive and other
18 equitable relief; and
- 19 g. whether Defendants were unjustly enriched by their conduct.

20 51. Defendants engaged in a common course of conduct giving rise to the legal rights
21 sought to be enforced by the members of each respective Class. Similar or identical statutory and
22 common law violations and deceptive business practices are involved. Individual questions, if any,
23 pale by comparison to the numerous common questions that predominate.

24 52. The injuries sustained by Plaintiff and the members of each Class flow, in each
25 instance, from a common nucleus of operative facts – Defendants' misconduct.

26 53. Plaintiff and the members of each Class have been damaged by Defendants'
27 misconduct. The members of each Class have paid for a product that would not have been purchased
28

1 in the absence of Defendants’ deceptive scheme, or, alternatively, would have been purchased at a
2 lesser price.

3 54. Proceeding as a class action provides substantial benefits to both the parties and the
4 Court because this is the most efficient method for the fair and efficient adjudication of the
5 controversy. Members of each Class have suffered and will suffer irreparable harm and damages as a
6 result of Defendants’ wrongful conduct. Because of the nature of the individual claims of the members
7 of each Class, few, if any, could or would otherwise afford to seek legal redress against Defendants
8 for the wrongs complained of herein, and a representative class action is therefore the appropriate,
9 superior method of proceeding and essential to the interests of justice insofar as the resolution of
10 claims of the members of each Class is concerned. Absent a representative class action, members of
11 each Class would continue to suffer losses for which they would have no remedy, and Defendants
12 would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought
13 by individual members of each Class, the resulting multiplicity of lawsuits would cause undue
14 hardship, burden, and expense for the Court and the litigants, as well as create a risk of inconsistent
15 rulings, which might be dispositive of the interests of the other members of each Class who are not
16 parties to the adjudications and/or may substantially impede their ability to protect their interests.

17 **FIRST CAUSE OF ACTION**

18 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**
19 **PROFESSIONS CODE § 17200, *et seq.***

20 **(By Plaintiff and California Class against all Defendants and Does 1-10)**

21 55. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same
22 as if set forth herein at length.

23 56. This cause of action is brought pursuant to *Business and Professions Code § 17200, et*
24 *seq.*

25 57. In the advertising of the Product, Defendants makes false and misleading statements.
26 Specifically, as set forth above, Defendants represent that the Products are “keto” and/or “keto
27 friendly”.

28

1 58. In fact, the Products are not keto or “keto-friendly” because they are high in net
2 carbohydrates, and contain high glycemic sweeteners such as sugar and brown rice syrup.

3 59. Defendants are aware that the claims that they make about the Products are false,
4 misleading and unsubstantiated.

5 60. As alleged in the preceding paragraphs, the misrepresentations and omissions by
6 Defendants of the material facts detailed above constitute an unfair and fraudulent business practice
7 within the meaning of California *Business & Professions Code* § 17200.

8 61. In addition, Defendants’ use of various forms of advertising media to advertise, call
9 attention to or give publicity to the sale of goods or merchandise which are not as represented in any
10 manner constitute unfair competition, unfair, deceptive, untrue or misleading advertising, and an
11 unlawful business practice within the meaning of California *Business & Professions Code* §§ 17531
12 and 17200, which advertisements have deceived and are likely to deceive the consuming public, in
13 violation of California *Business & Professions Code* § 17500.

14 62. There were reasonably available alternatives to further Defendants’ legitimate business
15 interests, other than the conduct described herein.

16 63. All of the conduct alleged herein occurs and continues to occur in Defendants’
17 business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct repeated
18 on hundreds of occasions daily.

19 64. Pursuant to California *Business & Professions Code* §§ 17203 and 17535, Plaintiff and
20 the members of the Classes seek an order of this Court enjoining Defendants from continuing to
21 engage, use, or employ their practice of advertising the sale and use of the Products. Likewise,
22 Plaintiff and the members of the Classes seek an order requiring Defendants to disclose such
23 misrepresentations, and additionally request an order awarding Plaintiff restitution of the money
24 wrongfully acquired by Defendants by means of responsibility attached to Defendants’ failure to
25 disclose the existence and significance of said misrepresentations.

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17500, et seq.**

(By Plaintiff and California Class against all Defendants and Does 1-10)

1
2
3
4 65. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and
5 incorporates the same as if set forth herein at length.

6 66. This cause of action is brought pursuant to California *Business and Professions Code*
7 § 17500, et seq. (known as California’s False Advertising Law or “FAL”).

8 67. The FAL prohibits the dissemination of any advertisement which is untrue or
9 misleading, and which is known, or which by exercise of reasonable care should be known, to be
10 untrue or misleading. Cal. Bus. & Prof. Code §17500.

11 68. In its advertising of the Products, Defendants make false and misleading statements.
12 Specifically, as set forth above, Defendant; advertise, represent, and warranty that the Products are
13 “keto” and/or “keto-friendly”.

14 69. In fact, the Products are not “keto” or “keto-friendly” because they contain sugar and
15 other high glycemic sweeteners such as and are high in carbohydrates.

16 70. As alleged in the preceding paragraphs, the misrepresentations by Defendants of the
17 material facts detailed above constitute an unfair and fraudulent business practice within the meaning
18 of California *Business & Professions Code* § 17500.

19 71. In addition, Defendants’ use of various forms of advertising media to advertise, call
20 attention to or give publicity to the sale of goods or merchandise which are not as represented in any
21 manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an
22 unlawful business practice within the meaning of California *Business & Professions Code* §§ 17531
23 and 17200, which advertisements have deceived and are likely to deceive the consuming public, in
24 violation of California *Business & Professions Code* § 17500.

25 72. Pursuant to California *Business & Professions Code* §§ 17203 and 17535, Plaintiff and
26 the members of the Classes seek an order of this Court enjoining Defendants from continuing to
27 engage, use, or employ their practice of advertising the sale and use of the Products. Likewise,
28 Plaintiff and the members of the Classes seek an order requiring Defendants to disclose such

1 misrepresentations, and additionally request an order awarding Plaintiff restitution of the money
2 wrongfully acquired by Defendants by means of responsibility attached to Defendants' failure to
3 disclose the existence and significance of said misrepresentations.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.***

6 **(By Plaintiff and California Class against all Defendants and Does 1-10)**

7 73. Plaintiff repeats and realleges all the allegations of the previous paragraphs, and
8 incorporates the same as if set forth herein at length.

9 74. This cause of action is brought pursuant to California *Civil Code* § 1750, *et seq.*, the
10 Consumers Legal Remedies Act.

11 75. Plaintiff, as well as each member of the Consumer Class, constitutes a "consumer" within
12 the meaning of California *Civil Code* § 1761(d).

13 76. Defendants' sales of the Products constitute "transactions" within the meaning of
14 California *Civil Code* § 1761(e).

15 77. The Products purchased by Plaintiff and the Consumer Class constitute "goods" under
16 California *Civil Code* § 1761(a).

17 78. The Consumer Class consists of thousands of persons, the joinder of whom is
18 impracticable.

19 79. There are questions of law and fact common to the classes, which questions are
20 substantially similar and predominate over questions affecting the individual members, including but
21 not limited to:

- 22 a. whether Defendants represented that the Products have characteristics, ingredients,
23 benefits, uses or quantities which it does not have;
- 24 b. Whether Defendants advertised the Products with the intent not to sell them as advertised
- 25 c. The existence, extent and significance of the major misrepresentations, concealments and
26 omissions regarding the purported characteristics of Products violate the Act; and
- 27 d. Whether Defendants knew of the existence of these misrepresentations, concealments
28 and omissions.

1 80. The policies, acts, and practices heretofore described were intended to result in the sale
2 of the Products to the consuming public and violated and continue to violate: (1) Section 1770(a)(5)
3 of the Act which prohibits, *inter alia*, “[r]epresenting that goods or services have sponsorship,
4 approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;” and (2)
5 Section 1770(a)(9), which prohibits, “[a]dvertising goods or services with intent not to sell them as
6 advertised.”

7 81. Defendants fraudulently deceived Plaintiff and the Classes by representing that the
8 Products have certain characteristics, benefits, uses and qualities which it does not have. In doing so,
9 Defendants intentionally misrepresented and concealed material facts from Plaintiff and the Classes,
10 specifically and not limited to the defects in the Products which caused rusting and premature failure.
11 Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and the
12 Classes and depriving them of their legal rights and money.

13 82. Defendants’ actions as described hereinabove were done with conscious disregard of
14 Plaintiff’s rights and Defendants were wanton and malicious in their concealment of the same.

15 83. Pursuant to § 1780(a) of the Act, Plaintiff seeks injunctive relief in the form of an order
16 enjoining the above-described wrongful acts and practices of Defendants including, but not limited to,
17 an order enjoining Defendants from distributing such false advertising and misrepresentations.
18 Plaintiff shall be irreparably harmed if such an order is not granted.

19 84. Pursuant to Civil Code §1782, Plaintiff gave Defendants notice by letter dated August
20 25, 2022, by certified mail, of the particular violations of Civil Code § 1770. The Notice requested
21 that Defendants rectify the problems associated with the actions alleged in this Complaint, and give
22 notice to all affected consumers of its intent to so act.

23 85. Plaintiff reserves the right to amend this Complaint to include a request for damages
24 under the CLRA after complying with California *Civil Code* 1782(a) within thirty (30) days after the
25 exhaustion of filing requirements.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION

UNJUST ENRICHMENT

(By Plaintiff, California Class and National Class

Against all Defendants and Does 1-10)

86. Plaintiff repeats and reallege the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

87. Plaintiff brings this claim individually, as well as on behalf of members of the Nationwide Class and California Class pursuant California law. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the Defendants was unjustly enriched. At the core of each state’s law are two fundamental elements – the defendant received a benefit from the Plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the Plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from which class members will be drawn, California law applies to the claims of the Class.

88. In the alternative, Plaintiff brings this claim individually as well as on behalf of the California Class.

89. At all times relevant hereto, Defendants deceptively labeled, marketed, advertised, and sold the Products to Plaintiff and the Classes.

90. Plaintiff and members of the Classes conferred upon Defendants non-gratuitous payments for the Products that they would not have due to Defendants’ deceptive labeling, advertising, and marketing. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Classes, with full knowledge and awareness that, as a result of Defendants’ deception, Plaintiff and members of the Class were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendants and reasonable consumers would have expected.

91. Defendants have been unjustly enriched in retaining the revenues derived from purchases of the Products by Plaintiff and members of the Classes, which retention under these circumstances is unjust and inequitable because the machines are prone to premature failure.

1 100. At all times relevant to this action, Defendants made false representations in breach of
2 the express warranties and in violation of state express warranty laws, including:

- 3 a. Alaska St. §45.02.313;
- 4 b. Ariz. Rev. Stat. Ann. §47-2313;
- 5 c. Ark. Code Ann. §4-2-313;
- 6 d. Cal. Com. Code §2313;
- 7 e. Colo. Rev. Stat. §4-2-313;
- 8 f. Conn. Gen. Stat. Ann. §42a-2-313;
- 9 g. D.C. Code §28:2-313;
- 10 h. Fla. Stat. §672.313;
- 11 i. Haw. Rev. Stat. §490:2-313;
- 12 j. 810 Ill. Comp. Stat. 5/2-313;
- 13 k. Ind. Code §26-1-2-313;
- 14 l. Kan. Stat. Ann. §84-2-313;
- 15 m. La. Civ. Code. Ann. art. 2520;
- 16 n. Maine Rev. Stat. Ann. 11 §2-313;
- 17 o. Mass. Gen. Laws Ann. 106 §2-313;
- 18 p. Minn. Stat. Ann. §336.2-313;
- 19 q. Miss. Code Ann. §75-2-313;
- 20 r. Mo. Rev. Stat. §400.2-313;
- 21 s. Mont. Code Ann. §30-2-313;
- 22 t. Neb. Rev. Stat. §2-313;
- 23 u. Nev. Rev. Stat. §104.2313;
- 24 v. N.H. Rev. Stat. Ann. §382-A:2-313;
- 25 w. N.J. Stat. Ann. §12A:2-313;
- 26 x. N.M. Stat. Ann. §55-2-313;
- 27 y. N.Y. U.C.C. Law §2-313;
- 28 z. N.C. Gen. Stat. Ann. §25-2-313;

- 1 aa. Okla. Stat. Ann. tit. 12A, §2-313;
- 2 bb. Or. Rev. Stat. §72.3130;
- 3 cc. Pa. Stat. Ann. tit. 13, §2313;
- 4 dd. R.I. Gen. Laws §6A-2-313;
- 5 ee. S.C. Code Ann. §36-2-313;
- 6 ff. S.D. Codified Laws. §57A-2-313;
- 7 gg. Tenn. Code Ann. §47-2-313;
- 8 hh. Tex. Bus. & Com. Code Ann. §2.313;
- 9 ii. Utah Code Ann. §70A-2-313;
- 10 jj. Vt. Stat. Ann. tit. 9A§2-313;
- 11 kk. Wash. Rev. Code §62A.2-313;
- 12 ll. W. Va. Code §46-2-313;
- 13 mm. Wyo. Stat. Ann. §34.1-2-313;

14 101. The above statutes do not require privity of contract in order to recover for breach of
15 express warranty.

16 102. Plaintiff has complied with the warranty terms, including usage instructions. Plaintiff
17 has made a demand upon Defendants to perform under the warranty terms, but Defendants have failed
18 to comply with those terms.

19 103. As a direct and proximate result of the breach of express warranties, Plaintiff has
20 suffered damages, injury in fact, and ascertainable loss in an amount to be determined at trial,
21 including repair and replacement costs and damages to other property.

22 104. Wherefore, Plaintiff and the Classes demand judgment against Defendants for
23 compensatory damages, plus interest, costs, and such additional relief as the Court may deem
24 appropriate or to which Plaintiff and the Classes may be entitled.

25 ///
26 ///
27 ///
28 ///

SIXTH CAUSE OF ACTION

VIOLATIONS OF CONSUMER FRAUD LAWS

**(By Plaintiff, on Behalf of Herself, the California Class, and Consumer Protection Class
against all Defendants and Does 1-100)**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

105. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

106. Plaintiff brings this Count individually under the laws of the state where she purchased the Product and on behalf of all other persons who purchased the Products in states having similar laws regarding consumer fraud and deceptive trade practices.

107. Plaintiff and each of the other members of the Classes are consumers, purchasers, or other persons entitled to the protection of the consumer protection laws of the state in which they purchased the Products.

108. The consumer protection laws of the State in which Plaintiff and the other members of the Classes purchased the Products declare that unfair or deceptive acts or practices, in the conduct of trade or commerce, are unlawful.

109. Forty states and the District of Columbia have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices and false advertising and that allow consumers to bring private and/or class actions. These statutes are found at:

- a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1 *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Code §45.50.471 *et seq.*;
- c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101 *et seq.*;
- d. California Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.*;
- e. Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-101 *et seq.*;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a *et seq.*;
- g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6§2511 *et seq.*;

- 1 h. District of Columbia Consumer Protection Procedures Act, D.C. Code §28 3901 *et*
- 2 *seq.*;
- 3 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §501.201 *et seq.*;
- 4 j. Georgia Fair Business Practices Act, Ga. Code Ann. §10-1-390 *et seq.*;
- 5 k. California Unfair and Deceptive Practices Act, California Revised Statues §480-1 *et*
- 6 *seq.*, and California Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. §481A-1
- 7 *et seq.*;
- 8 l. Idaho Consumer Protection Act, Idaho Code Ann. §48-601 *et seq.*;
- 9 m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat.
- 10 Ann. 505/1 *et seq.*;
- 11 n. Kansas Consumer Protection Act, Kan. Stat. Ann §50 626 *et seq.*;
- 12 o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §367.110 *et seq.*, and the
- 13 Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §365.020 *et seq.*;
- 14 p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann.
- 15 §51:1401 *et seq.*;
- 16 q. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 §205A *et seq.*, and Maine
- 17 Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. tit. 10, §1211 *et seq.*,
- 18 r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- 19 s. Michigan Consumer Protection Act, Mich. Comp. Laws §445.901 *et seq.*;
- 20 t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. Ann. §325F.68 *et seq.*, and
- 21 Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §325D.43 *et seq.*;
- 22 u. Mississippi Consumer Protection Act, Miss. Code Ann. §§75-24-1 *et seq.*;
- 23 v. Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010 *et seq.*;
- 24 w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann. §30-
- 25 14-101 *et seq.*;
- 26 x. Nebraska Consumer Protection Act, Neb. Rev. Stat. §59-1601 *et seq.*, and the Nebraska
- 27 Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §87-301 *et seq.*;
- 28 y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §598.0903 *et seq.*;

- 1 z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. §358-A:1 *et seq.*;
- 2 aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §56:8 1 *et seq.*;
- 3 bb. New Mexico Unfair Practices Act, N.M. Stat. Ann. §57 12 1 *et seq.*;
- 4 cc. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §349 *et seq.*;
- 5 dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §51 15 01 *et seq.*;
- 6 ee. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §1345.02 and 1345.03; Ohio
- 7 Admin. Code §109:4-3-02, 109:4-3-03, and 109:4-3-10;
- 8 ff. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 §751 *et seq.*;
- 9 gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat §646.608(e) & (g);
- 10 hh. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws
- 11 §6-13.1-1 *et seq.*;
- 12 ii. South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10 *et seq.*;
- 13 jj. South Dakota’s Deceptive Trade Practices and Consumer Protection Law, S.D.
- 14 Codified Laws §§37 24 1 *et seq.*;
- 15 kk. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.*;
- 16 ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §2451 *et seq.*;
- 17 mm. Washington Consumer Fraud Act, Wash. Rev. Code §19.86.010 *et seq.*;
- 18 nn. West Virginia Consumer Credit and Protection Act, West Virginia Code §46A-6-101
- 19 *et seq.*; and
- 20 oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §100.18 *et seq.*

21 110. The Products constitute a product to which these consumer protection laws apply.

22 111. In the conduct of trade or commerce regarding its production, marketing, and sale of

23 the Products, Defendants engaged in one or more unfair or deceptive acts or practices including, but

24 not limited to, uniformly representing to Plaintiff and each member of the Classes that the Products

25 were “keto” and/or “keto-friendly.”

26 112. Defendants’ representations and omissions were false, untrue, misleading, deceptive,

27 and/or likely to deceive.

28

1 113. Defendant Costco knew, or should have known, that its representations and omissions
2 were false, untrue, misleading, deceptive, and/or likely to deceive.

3 114. Defendant Innofoods knew, or should have known, that its representations and
4 omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

5 115. Defendant Costco used or employed such deceptive and unlawful acts or practices with
6 the intent that Plaintiff and members of the Classes rely thereon.

7 116. Defendant Innofoods used or employed such deceptive and unlawful acts or practices
8 with the intent that Plaintiff and members of the Classes rely thereon.

9 117. Plaintiff and the other members of the Classes did so rely.

10 118. Plaintiff and the other members of the Classes purchased the Products produced by
11 Defendants which misrepresented the characteristics and nature of The Products.

12 119. Plaintiff and the other members of the Classes would not have purchased the Products
13 but for Defendants' deceptive and unlawful acts.

14 120. As a result of Defendants' conduct, Plaintiff and the other members of the Classes
15 sustained damages in amounts to be proven at trial.

16 121. Defendants' conduct showed complete indifference to, or conscious disregard for, the
17 rights and safety of others such that an award of punitive and/or statutory damages is appropriate under
18 the consumer protection laws of those states that permit such damages to be sought and recovered.

19 **SEVENTH CAUSE OF ACTION**

20 **NEGLIGENT MISREPRESENTATION**

21 **(By Plaintiff, on Behalf of Herself, and the California Class**

22 **against all Defendants and Does 1-10)**

23 122. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and
24 incorporates the same as if set forth herein at length.

25 123. In making representations of fact to Plaintiff and the California Class members about
26 the Products, Defendants failed to fulfill their duty to disclose the material facts alleged above. Such
27 failure to disclose on the part of Defendants amounts to negligent misrepresentation.

28

1 Cause of Action);

2 H. That the Court order Defendants to disgorge all monies wrongfully obtained and all
3 revenues and profits derived by Defendants as a result of its acts or practices as alleged in this

4 Complaint;

5 I. That the Court award damages to Plaintiff and the Classes;

6 J. The common fund doctrine, and/or any other appropriate legal theory; and

7 K. that the Court grant such other and further relief as may be just and proper.

8 DATED: August 25, 2022

BRADLEY/GROMBACHER, LLP

9

10

By: /s/ Kiley L. Grombacher

11

Marcus J. Bradley, Esq.

12

Kiley Lynn Grombacher, Esq.

13

Attorneys for Plaintiff

14

JURY DEMAND

15

Plaintiff demands a trial by jury on all causes of action so triable.

16

DATED: August 25, 2022

BRADLEY/GROMBACHER, LLP

17

18

By: /s/ Kiley L. Grombacher

19

Marcus J. Bradley, Esq.

20

Kiley Lynn Grombacher, Esq.

21

Attorneys for Plaintiff

22

23

24

25

26

27

28

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
DIVISION: Central	
TELEPHONE NUMBER: (619) 450-7068	
PLAINTIFF(S) / PETITIONER(S):	Carol Walcoff
DEFENDANT(S) / RESPONDENT(S):	Innofoods USA Inc et.al.
WALCOFF VS INNOFOODS USA INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)	CASE NUMBER: 37-2022-00034301-CU-FR-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Richard S. Whitney

Department: C-68

COMPLAINT/PETITION FILED: 08/25/2022

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	02/03/2023	10:00 am	C-68	Richard S. Whitney

Due to the COVID-19 pandemic, all Case Management Conferences (CMCs) are being conducted virtually unless there is a court order stating otherwise. Prior to the hearing date, visit the "virtual hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

**NOTICE OF E-FILING REQUIREMENTS
AND IMAGED DOCUMENTS**

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Marcus J. Bradley (SBN 174156) Kiley L. Grombacher (SBN 245960) BRADLEY/GROMBACHER LLP 31365 Oak Crest Drive, Suite 240 Westlake Village, California 91361 TELEPHONE NO.: 805.270.7100 FAX NO.: 805.270.7589 ATTORNEY FOR (Name): Plaintiff CAROL WALCOFF	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California County of San Diego 08/25/2022 at 03:35:48 PM Clerk of the Superior Court By Melissa Valdez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central - Civil	
CASE NAME: CAROL WALCOFF v. INNOFOODS USA, INC., et al.	
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)
	CASE NUMBER: 37-2022-00034301-CU-FR-CTL JUDGE: Judge Richard S. Whitney DEPT:

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

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

Auto Tort <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 type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" 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 checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" 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 checked="" 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): Seven (7)
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: August 24, 2022
 Kiley L. Grombacher

(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.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
 - Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

EXHIBIT E

ELECTRONICALLY FILED
Superior Court of California
County of San Diego

08/25/2022 at 03:35:48 PM
Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

1 **BRADLEY/GROMBACHER, LLP**
2 Marcus J. Bradley, Esq. (SBN 174156)
3 Kiley Lynn Grombacher, Esq. (SBN 245960)
4 31365 Oak Crest Drive, Suite 240
5 Westlake Village, California, 91361
6 Telephone: (805) 270-7100
7 Facsimile: (805) 270-7589
8 mbradley@bradleygrombacher.com
9 kgrombacher@bradleygrombacher.com

10 Attorneys for Plaintiff

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 CAROL WALCOFF on behalf of herself and all
14 others similarly situated,

15 Plaintiff,

16 v.

17 INNOFOODS USA, INC., COSTCO
18 WHOLESALE CORPORATION,
19 a Washington corporation and DOES 1 through
20 20, inclusive,

21 Defendants.

CASE NO.:

**DECLARATION OF PLAINTIFF
CAROL WALCOFF REGARDING
PROPER COUNTY FOR
COMMENCEMENT AND TRIAL
OF A CLAIM UNDER THE
CONSUMERS LEGAL REMEDIES
ACT**

[California Civil Code § 1780(d)]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I, Carol Walcoff, state and declare as follows:

1. I have personal knowledge of the matters stated herein except as to those matters stated on information and belief, which I believe to be true.

2. If called and sworn as a witness, I could and would testify truthfully and competently to the matters stated herein

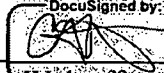
3. I am the named Plaintiff in the above-captioned action and submit this Declaration pursuant to California Civil Code section 1780(d).

4. I currently reside in Glendale, California, located in Los Angeles County, California.

5. I am informed and believe that Defendant Costco Wholesale Corporation, is a Washington corporation, has its principal place of business in Seattle, Washington and is doing business in San Diego County. San Diego County is within the jurisdiction of the California Superior Court, County San Diego. Accordingly, the California Superior Court, County of San Diego, which is located in San Diego, California, is the proper place for the trial of this action under California Civil Code section 1780(d), and this action is properly commenced in that Court.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed 8/25/2022, at Glendale, California.

DocuSigned by:


Carol Walcoff SBAA4F7G

EXHIBIT F

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Carol Walcoff	
DEFENDANT(S): Innofoods USA Inc et.al.	
SHORT TITLE: WALCOFF VS INNOFOODS USA INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2022-00034301-CU-FR-CTL

Judge: Richard S. Whitney

Department: C-68

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

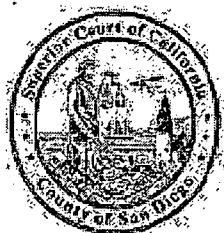
No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 08/26/2022

JUDGE OF THE SUPERIOR COURT

EXHIBIT G



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2022-00034301-CU-FR-CTL CASE TITLE: Walcoff vs Innofoods USA Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

EXHIBIT H

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NAME: _____ vs. _____
CASE NUMBER: _____

ADVANCE TRIAL REVIEW ORDER MADE BY DEPARTMENT 68 ON _____
BY THE **HONORABLE RICHARD S. WHITNEY**

Trial counsel for the parties are ordered to meet in person, over the phone, or via video, at least three (3) **court** days before the initial trial call date for the purpose of arriving at stipulations and agreements resulting in the simplification of triable issues. At the meeting, the following information shall be prepared, displayed and/or exchanged:

EVIDENCE / EXHIBITS

____ 1. Counsel shall produce and pre-mark all exhibits the parties seek leave of Court to introduce at trial. Multi-page exhibits are to be paginated. Counsel shall prepare a Joint Trial Exhibit List for submission to the trial judge (see attached exemplar for Joint Trial Exhibit list format). There shall be no subparts to an exhibit. The index shall indicate: 1) the exhibit number, 2) by whom the exhibit is being offered, 3) a brief description of the exhibit, 4) whether the parties have stipulated to admissibility, and, if not, 5) the legal ground(s) for objection that the objecting party intends in good faith to rely on at trial. The index shall be submitted in **triplicate**. Exhibits not included in the index are subject to exclusion at trial, with the exception of **true** impeachment exhibits. The brown exhibit tags must be completed and attached on the lower right corner of the front page of each exhibit. You are responsible for filling out the top two lines only (see exemplar below).

____ 2. If depositions are intended to be used in lieu of live testimony, counsel shall submit the excerpts to be used to opposing counsel at the above meeting. Counsel shall make a good faith effort to resolve any objections. Any remaining objections shall be brought to the Court's attention prior to the start of trial. It shall be the responsibility of the proponent of the evidence to prepare clean copies of the excerpts, which shall include the beginning and ending page and line numbers, to be given to the trial judge and placed in the record to eliminate the need of reporting the reading of the testimony. The original transcripts of all depositions which may be used at trial for any purpose shall be made available for use by the Court before the commencement of trial, along with a list of any changes made by the deponent after the taking of the deposition. Any problems in this regard shall be brought to the Court's attention prior to the start of trial.

Court's Ex: (In Order)	_____
Case #: (Case Number)	_____
Rec'd.: (Leave Blank)	_____
Dept.: (Leave Blank) Clk.: (Leave Blank)	_____

- ____ 3. With regard to any audio or video presentations intended to be used at trial, the proponent shall prepare a written transcript and the procedure set forth in the preceding paragraph shall apply.
- ____ 4. Each party seeking monetary damages shall prepare a summary of the documentary evidence supporting the damages sought (i.e., medical bills, accounts, etc.), which shall be included in the exhibit summary and submitted at trial in lieu of the underlying documentary evidence in accordance with Evidence Code § 1521.

VOIR DIRE

- ____ 5. Counsel shall jointly prepare a brief non-argumentative summary of the factual nature of the case, **including a brief summary of Plaintiff's injuries, if applicable**, for submission to the trial judge. The purpose of the summary is to provide an overview of the case for the jury. This statement shall include a **joint** list of the complete names of all witnesses who are likely to be called, in alphabetical order. The joint witness list shall be submitted in triplicate.
- ____ 6. If counsel wish to expand the scope of the judge's initial voir dire beyond the Judicial Counsel questions found in Judicial Administration Standard 3.25(c), they shall prepare written questions for submission to the trial judge. These written questions shall be submitted to opposing counsel no later than the above meeting. Duplicate questions shall be eliminated.
- ____ 7. Counsel shall prepare a joint set of jury instructions. This set shall consist of one package of instructions for all parties. Multiple packages of instructions will not be accepted. Judicial Counsel Civil Jury Instructions (CACI) are preferred. These instructions are available on the Court's website at www.courtinfo.ca.gov/jury/civiljuryinstructions and in the CACI books. The instructions shall be in the order they are to be given. Any objections to instructions shall be identified by a post-it note, which will identify the objecting party. Counsel may propose alternative jury instructions. When alternative instructions are presented, those instructions shall be successive instructions in the joint instruction package. The submission of a list of CACI numbers is not acceptable.
- ____ 8. Jury instructions not listed in the parties' Joint Trial Readiness Conference Report and prepared in accordance with the above order are subject to exclusion at trial.
- ____ 9. _____ [name of party] waived its right to trial by jury by failing to post fees timely. Any other party seeking jury trial must post fees within five (5) **calendar** days after the Trial Readiness Conference, or jury is waived as to all parties [CCP § 631(b)].

FILING DEADLINES / READINESS

- ____ 10. Motions in Limine shall be prepared, filed and faxed (in accordance with California Rules of Court, Rule 2.306) or personally served at least five (5) **court** days in advance of the trial. The title of each Motion in Limine shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of Motions in Limine submitted by the moving party (Example: "Plaintiff Jane Doe's Motion in Limine to Exclude the Testimony of Joe Expert, [No. 1 of 6]"). Written oppositions to Motions in Limine, if any, shall be filed and faxed (in accordance with California Rules of Court, Rule 2.306) or personally served at least two (2) **court** days in advance of the trial date and shall identify both the party filing the opposition, and the specific motion which is being opposed, by name of moving party and motion number (Example: "Defendant Richard Roe's Opposition to Plaintiff Jane Doe's Motion in Limine No. 1"). Counsel is urged to file trial briefs according to the same schedule.

WITNESSES / READINESS

- ____ 11. Trial will not be delayed to accommodate witness scheduling problems. In the absence of extraordinary circumstances, the party will be deemed to have concluded the presentation of his/her/its case once the examination of available witnesses is concluded.
- ____ 12. Witnesses not listed on the parties' Joint Trial Readiness Conference Report are subject to exclusion at trial.
- ____ 13. Counsel are ordered to telephone the courtroom clerk at (619) 450-7068 prior to 12:00 noon on the day before the initial trial call, to report: 1) their readiness for trial, 2) the estimated trial length, and 3) whether a jury will be required.
- ____ 14. Counsel shall prepare a Witness Time Estimate and submit to the Court on the first day of trial (see attached exemplar for Witness Time Estimate format).
- ____ 15. If you are hiring a Court Reporter for trial, you **MUST ENSURE** that the Reporter has the capability of hooking up with the appropriate cables to connect to BRIDGE software.

ADDITIONAL ORDERS

X FAILURE OF COUNSEL FOR ANY PARTY TO COMPLY WITH THE ABOVE ORDERS MAY RESULT IN THE EXCLUSION OF EVIDENCE OR BE CONSIDERED AN ABANDONMENT OR FAILURE TO PROSECUTE OR DEFEND DILIGENTLY. ACCORDINGLY, JUDGMENT MAY BE ENTERED AGAINST THE DEFAULTING PARTY EITHER WITH RESPECT TO A SPECIFIC ISSUE OR ON THE ENTIRE CASE. IF COMPLIANCE WITH ANY PART OF THIS ORDER BECOMES UNDULY BURDENSOME, THAT FACT SHALL BE BROUGHT TO THE JUDGE'S ATTENTION IMMEDIATELY.

X WE THE UNDERSIGNED ATTORNEYS OF RECORD IN THIS CASE, HAVE READ AND UNDERSTAND THE ABOVE ADVANCE TRIAL REVIEW ORDERS:

Signature of Counsel:

Counsel For [name of client]:

IT IS SO ORDERED:

DATED: _____

RICHARD S. WHITNEY
JUDGE OF THE SUPERIOR COURT

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
DEPARTMENT 68 – HONORABLE RICHARD S. WHITNEY**

TRIAL REQUIREMENTS

Please bring the following to the Friday Trial Call:

The Court requires a **Joint Trial Notebook** be prepared, which will include the following:

1. Table of Contents
2. Copy of Joint Trial Readiness Report submitted at the Trial Readiness Conference
3. Copies of filed In Limine Motions / Oppositions, with an index of the motions
4. Copy of Joint Witness List, with a short sentence describing the witness (i.e.), "Dr. Joe Smith, an Internist from Mercy Hospital"
5. Copy of Joint Exhibit List (follow grid format – see attachment to this Advance Trial Review Order)
6. Copy of Trial Briefs
7. Joint Statement of The Case
8. Voir Dire questions that counsel wish the Court to ask
9. Jury Instructions – packet of instructions, with post-it notes on any objections, indicating who opposes the instruction, and the basis for the objection.
10. Special Verdict Form – either an agreed-upon form, or each side's proposed Special Verdict Form

Note on exhibits. Please eliminate duplicative exhibits. If exhibits are duplicative, the first exhibit used will be the official numbered exhibit for the balance of the trial. Exhibits should be individually marked. If an exhibit is multi-paged, paginate the individual pages. If you are submitting photographs, each photograph must have an individual exhibit number.

Please bring the following to the first day of trial (not the Friday Trial Call):

1. Two sets of exhibit binders. The original set (with the brown exhibit stickers) will be used by the witnesses. The 2nd copied set is for the Court's use.
2. Copies of deposition transcripts that will be used during trial
3. Three (3) copies of the Joint Witness List
4. Three (3) copies of the Joint Exhibit List

**NOTICE OF E-FILING REQUIREMENTS
AND IMAGED DOCUMENTS**

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Innofoods 'Keto' Snacks Not Actually Keto Diet-Friendly, Class Action Alleges](#)
