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Attorneys for Defendant Popcorn, Indiana LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NATASHA ARENS, on behalf of herself, and on behalf of all others similarly situated,

Plaintiff,

vs.

POPCORN, INDIANA, LLC, AND DOES 1 THROUGH 100, inclusive,

Defendants.

Case No.

POPCORN, INDIANA LLC'S NOTICE OF REMOVAL

DEMAND FOR TRIAL BY JURY

[Filed concurrently with the Declarations of Paul Schenfeld and Matthew R. Orr]

Complaint Filed: February 3, 2014
Trial Date: None Set

TO THE CLERK OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Popcorn, Indiana LLC ("Defendant" or "Popcorn Indiana") hereby removes this action from the Superior Court of the State of California for the County of

Alameda to the United States District Court for the Northern District of California, on the following grounds:

STATEMENT OF THE CASE AND TIMELINESS OF REMOVAL

1. On February 3, 2014, Plaintiff Natasha Arens ("Plaintiff") commenced an action against Defendant in the Superior Court of the State of California for the County of Alameda, Case Number RG 14712371, by filing a Complaint entitled "*Natasha Arens, on behalf of herself, and on behalf of all others similarly situated v. Popcorn, Indiana LLC.*"

2. On February 20, 2014, Defendant received a copy of the Complaint, Civil Case Cover Sheet, and Summons. True and correct copies of these documents are attached hereto as Exhibit 1.

3. In her Complaint, Plaintiff seeks, among other things, to certify a putative class that purports to include "[a]ll residents of California who, within the last four years, purchased a FIT Popcorn [sic] an unlawfully labeled product (the "Class") in California." (*See* Complaint ("Compl."), ¶ 68; *see also* ¶ 1.)

4. The Complaint purports to allege causes of action against Defendant for supposed violations of California Business and Professions Code §§ 17200 and 17500 *et seq*., and the Consumer Legal Remedies Act § 1750 *et seq*. based on Defendant's alleged improper labeling of the FIT products.

5. On March 19, 2014, Defendant filed an Answer denying the allegations in the Complaint and reserving a number of affirmative defenses. A true and correct copy of the Answer is attached hereto as Exhibit 2.

6. On March 11, 2014 the Hon. Wynne Carvill of the Superior Court of California, County of Alameda ordered this action be designated as Complex. Notice of a Case Management Conference reflects a conference date of April 14, 2014. True and correct copies of the Notice and Order are attached hereto as Exhibit 3.

7. This removal is timely filed as required by 28 U.S.C. § 1446(b) as it is brought within 30 days of service of the Complaint on February 20, 2014.

SUBJECT MATTER JURISDICTION

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1453. This Court specifically has jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"), codified in part at 28 U.S.C. §§ 1332(d)(2) and 1453(b), because it is a civil action styled as a class action in which: (1) the number of members of the proposed plaintiff class is not less than one hundred, in the aggregate; (2) the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs; and (3) any member of the class of plaintiffs is a citizen of a State different from any defendant. 28 U.S.C. §§ 1332(d)(2) and (d)(5).

PLAINTIFF'S CASE IS STYLED AS A PUTATIVE CLASS ACTION WITH A PROPOSED CLASS OF NOT LESS THAN 100 MEMBERS

9. The Court has CAFA jurisdiction because this lawsuit is a putative class action, and the proposed class comprises more than 100 individuals.

10. CAFA jurisdiction exists over any "class action" brought under any "State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This case constitutes a "class action" for purposes of removal because Plaintiff styles her complaint as a "Class Action," and the Complaint seeks certification of a class pursuant to California Code of Civil Procedure § 382, a state statute that authorizes class actions if the representative plaintiff can prove that the "parties are numerous, and it is impracticable to bring them all before the court . . . ." (Compl., ¶¶ 67-74.) Thus, this action qualifies as a class action under CAFA.

11. CAFA jurisdiction exists unless "the number of members of all proposed plaintiff classes in the aggregate is less than 100." 28 U.S.C. § 1332(d)(5)(A). CAFA

defines class members as "the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action." 28 U.S.C. § 1332(d)(1)(D). This requirement is met here because Plaintiff seeks to represent a class defined as "[a]ll residents of California who, within the last four years, purchased a FIT Popcorn [sic] an unlawfully labeled product (the "Class") in California." (*See* Compl., ¶ 68; *see also* ¶ 1.) Plaintiff further alleges that the purported Class "numbers in the thousands." (*See* Compl., ¶ 70.) Thus, on the face of the pleadings there are more than 100 members in Plaintiff's proposed class.

THE AMOUNT IN CONTROVERSY EXCEEDS $5 MILLION

12. Under CAFA, "the claims of individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interests and costs." 28 U.S.C. § 1332(d)(6). In determining the amount in controversy, "a court must assume that the allegations in the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint." *Fong v. Regis Corp.*, No. C 13-04497 RS, 2014 WL 26996, *2 (N.D. Cal. Jan. 2, 2014).

13. Where, as here, a complaint does not specify the amount in controversy, the defendant must show "by a preponderance of the evidence, that the amount in controversy exceeds the statutory amount." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010).

14. As discussed above, Plaintiff brings this action on behalf of a purported class of consumers consisting of everyone in California who, within the last four years, purchased FIT popcorn products. (*See* Compl., ¶¶ 1, 68.) Plaintiff also alleges, "Plaintiff and Class . . . are entitled to an order . . . to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the misbranded food products." (Compl., ¶ 80, 82, 86, 93, 101, 102, 109, and 110.) Plaintiff seeks "compensatory damages and restitution, with interest, for the amounts paid by

consumers for FIT Popcorn products . . .. Plaintiff also seeks an order enjoining Defendants from further unlawful or deceptive conduct, as to FIT and other snack food products as to which FIT is violating the law, as well as attorneys' fees and costs." (*Id.* ¶ 5; *see also*, Prayer for Relief.) Thus, although Defendant denies Plaintiff's allegations of liability, injury, and damages and will oppose certification of the putative class, taking Plaintiff's allegations to be true, this is a "civil action in which the matter in controversy exceeds the sum or value of $5,000,000." 28 U.S.C. § 1332(d)(2).

15. In addition, the Declarations of Matthew R. Orr ("Orr Declaration") and Paul Schenfeld ("Schenfeld Declaration") concurrently filed herewith, establish the amount in controversy exceeds the jurisdictional limit. *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (courts may consider "summary-judgment-type evidence relevant to the amount in controversy at the time of removal"). (*Id.* ¶¶ 2–3.)

16. The relief, damages, restitution and attorneys' fees claimed by Plaintiff for treatment on a class basis for all consumers in California for the four-year period beginning February 2010 through February 2014 would easily exceed $5,000,000, provided such remedies were granted in full as demanded in the Complaint.

a. The costs of revising its product labeling and destroying old labels and product as demanded in the Complaint, as further detailed in the Schenfeld Declaration filed under seal with the Court;

b. Refunding the full purchase price to all putative class members during the claimed class period from February 2010 to February 2014, as further detailed in the Schenfeld Declaration filed under seal with the Court;

c. Plaintiffs' attorneys' fees, which they will demand are no less than $2.0 million following trial and costs will likely exceed $150,000. (Orr Declaration, ¶ 5.)

17. Based on the foregoing, the amount in controversy requirement is clearly met.

CLASS MEMBERS ARE CITIZENS OF DIFFERENT STATES

18. CAFA jurisdiction is met where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). That requirement is met here because Defendant is a California-based corporation, and at least some members of the putative class are outside California. (*See* Compl., ¶¶ 36, 75.)

19. Plaintiff alleges that Defendant "is a Delaware corporation with its principal place of business in Englewood, New Jersey." (Compl., ¶ 7.) As such, Defendant is a citizen of New Jersey. *See* 28 U.S.C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.") Plaintiff alleges that she is a citizen of California. (*See* Compl., ¶ 6.) Thus, at least one plaintiff is diverse from at least one defendant, and there is minimal diversity under 28 U.S.C. § 1332(d)(2)(A).

EXCEPTIONS TO REMOVAL DO NOT APPLY

20. This action does not fall within any exclusions to removal jurisdiction recognized by 28 U.S.C. § 1332(d)(3), (4), and (9) or 28 U.S.C. § 1453(d). Under § 1332(d)(3), a court may decline to exercise jurisdiction over a class action where "greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed . . . ." Here, because Plaintiffs allege a California-only class, greater than two-thirds of the members of the proposed class are citizens of California. Therefore, this exclusion does not apply.

21. 28 U.S.C. § 1332(d)(4)(A) requires a district court to decline jurisdiction where, among other things, "greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed…and at least 1 defendant is a defendant…who is a citizen of the State

in which the action was originally filed…" Similarly, § 1332(d)(4)(B) requires a district court to decline jurisdiction where "two-thirds or more of the members of all proposed classes in the aggregate, and the primary defendants, are citizens of the state in which the action was originally filed." Here, no defendant is a citizen of California, and therefore neither of these exceptions applies.

22. In addition, this action does not fall within any of the other categorical exceptions under CAFA. *See* 28 U.S.C. § 1332(d)(9)(A), (B), and (C) (making exception for an action (1) "concerning a covered security"; (2) "that relates to the internal affairs or governance of a corporation or other form of business enterprise"; (3) "that relates to the rights, duties (including fiduciary duties), and obligations related to or created by or pursuant to any security . . . .").

ALL PROCEDURAL REQUISITES ARE SATISFIED

23. 28 U.S.C. § 1441(a) allows civil actions brought in state court to be removed to the district court "embracing the place where such action is pending." The Complaint was filed and currently is pending in the California Superior Court for the County of Alameda. This District is the proper venue for this action upon removal pursuant to 28 U.S.C. § 1441(a) because it is the District that embraces the county where the state court action was pending.

24. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders are attached hereto as Exhibits 1, 2 and 3.

25. Defendant will promptly serve a notice of filing of removal, with a copy of the notice of removal annexed thereto, on Plaintiff's attorneys and will file such notice with the Clerk of the Superior Court of the State of California for the County of Alameda.

/ / /

/ / /

/ / /

CONCLUSION

26. For the foregoing reasons, Defendant Popcorn, Indiana LLC hereby removes this case from the California Superior Court for the County of Alameda to this Federal District Court.

Dated: March 21, 2014

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Scott R. Hatch

By: */s/ Matthew R. Orr*
Matthew R. Orr

Attorneys for Defendant Popcorn, Indiana LLC

DEMAND FOR JURY

Defendant Popcorn, Indiana LLC hereby demands a jury pursuant to FRCP 38(b) on all issues subject to a jury trial raised in the Complaint of Plaintiff.

Dated: March 21, 2014

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Scott R. Hatch
Joshua G. Simon

By: */s/ Matthew R. Orr*
Matthew R. Orr

Attorneys for Defendant Popcorn, Indiana LLC

EXHIBIT 1

SUM-100

SUMMONS
(CITACION JUDICIAL)

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

ENDORSED
FILED
ALAMEDA COUNTY

FEB 03 2014

CLERK OF THE SUPERIOR COURT
By [signature] Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
POPCORN, INDIANA, LLC, AND DOES 1 THROUGH 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
NATHASHA ARENS, on behalf of herself and all others similiarly 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:
(El nombre y dirección de la corte es):
Alameda County Superior Court
1225 Fallon Street
Oakland, California 94612

CASE NUMBER: *(Número del Caso):* RG14712371

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):
Jonathan E. Gertler (SBN 111531)
Dan Gildor (SBN 223027)
42 Miller Avenue, Mill Valley, California 94941
CHAVEZ & GERTLER LLP
Tel: (415) 381-5599 Fax: (415) 381-5572

DATE: *(Fecha)* FEB 03 2014 Leah T. Wilson Clerk, by *(Secretario)* [signature] , Deputy *(Adjunto)*

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☒ on behalf of *(specify):* Popcorn, Indiana, LLC
   under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Page 1 of 1

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

Martin Dean's ESSENTIAL FORMS™

SUMMONS

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

Arens v. Popcorn

Chavez & Gertler LLP
Attn: Gertler, Jonathan E.
42 Miller Avenue
Mill Valley, CA 94941

RECEIVED FEB 10 2014
Popcorn Indiana, LLC

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Arens Plaintiff/Petitioner(s) VS. Popcorn Indiana, LLC Defendant/Respondent(s) (Abbreviated Title)	No. RG14712371 NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 03/11/2014 TIME: 08:45 AM DEPARTMENT: 21
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:
DATE: 04/14/2014 TIME: 08:30 AM DEPARTMENT: 21
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 21 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6937. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 21.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by emailing them to the following address:
EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information,

go to **Direct Calendar Departments** at **http://apps.alameda.courts.ca.gov/domainweb.**

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 21.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 21 by e-mail at Dept.21@alameda.courts.ca.gov or by phone at (510) 267-6937.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 02/06/2014

Executive Officer / Clerk of the Superior Court

By Cheryl Clark

Digital

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

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

Executed on 02/06/2014.

By Cheryl Clark

Digital

Deputy Clerk

Superior Court of California, County of Alameda
Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at http://www.alameda.courts.ca.gov/adr

What Are The Advantages Of Using ADR?

- ***Faster*** – Litigation can take years to complete but ADR usually takes weeks or months.
- ***Cheaper*** – Parties can save on attorneys' fees and litigation costs.
- ***More control and flexibility*** – Parties choose the ADR process appropriate for their case.
- ***Cooperative and less stressful*** – In mediation, parties cooperate to find a mutually agreeable resolution.
- ***Preserve Relationships*** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- ***You may go to court anyway*** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- ***Mediation*** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.

- ***Arbitration*** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.

  - **Judicial Arbitration Program** (non-binding): The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.

  - **Private Arbitration** (binding and non-binding) occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center
1968 San Pablo Avenue, Berkeley, CA 94702-1612
Telephone: (510) 548-2377 Website: www.seedscrc.org
Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement
291 McLeod Street, Livermore, CA 94550
Telephone: (925) 373-1035 Website: www.trivalleymediation.com
CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services
Catholic Charities of the East Bay: Oakland
433 Jefferson Street, Oakland, CA 94607
Telephone: (510) 768-3100 Website: www.cceb.org
Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar number, and address*) TELEPHONE NO.: FAX NO. (*Optional*): E-MAIL ADDRESS (*Optional*): ATTORNEY FOR (*Name*):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: ______________________. An **Initial Case Management Conference** is scheduled for:

   Date: Time: Department:

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (*check one*):

   ☐ Court mediation ☐ Judicial arbitration
   ☐ Private mediation ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

   a. No party to the case has requested a complex civil litigation determination hearing;
   b. All parties have been served and intend to submit to the jurisdiction of the court;
   c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
   d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
   e. Case management statements are submitted with this stipulation;
   f. All parties will attend ADR conferences; and,
   g. The court will not allow more than 90 days to complete ADR.

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

Date:

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF)

Date:

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:

Date:

(TYPE OR PRINT NAME)	▶ (SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)	▶ (SIGNATURE OF ATTORNEY FOR DEFENDANT)

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Attorneys for Plaintiff and the Proposed Class

ENDORSED
FILED
ALAMEDA COUNTY

FEB 03 2014

CLERK OF THE SUPERIOR COURT
By [signature] Deputy

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

NATASHA ARENS, on behalf of herself, and on behalf of all others similarly situated, Plaintiffs, v. POPCORN, INDIANA, LLC, AND DOES 1 THROUGH 100, inclusive, Defendants.	CASE NO. RG14712371 **CLASS ACTION** **COMPLAINT FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *ET. SEQ.;* CIVIL CODE SECTION 1750 *ET. SEQ.*; THE CONSUMERS LEGAL REMEDIES ACT CIVIL CODE SECTION 1770 SEEKING DAMAGES, RESITUTION AND INJUNCTIVE RELIEF** **JURY TRIAL DEMANDED** BY FAX

INTRODUCTION

1. This is a class action brought on behalf of California consumers who have purchased snack food products marketed and sold by Defendant Popcorn, Indiana LLC, a limited liability corporation ("Defendant") since February 3, 2011 (the "Class"). This action challenges the unlawful, unfair and fraudulent business practices of Defendant in connection with its marketing and sale of products under the "FIT" brand.

2. Defendant is a snack food maker that markets itself as being "fanatical about healthier, whole grain snacking." Most egregiously, Defendant has a line of "FIT" popcorn ("FIT") products that it labels, advertises and promotes as being lower in calories and fat than competing snack and "junk" foods. FIT popcorn is advertised and promoted by Defendant as a snack that can help consumers lose weight. Despite Defendant's claims that its FIT popcorn products are "low-fat" and "low-calorie," a serving of FIT popcorn is not lower in fat or calories than Defendant's full calorie products. Further, the FIT popcorn products are not lower in fat or calories than most market-leading, full-calorie snack and "junk" foods.

3. Defendant has knowledge of the false and misleading nature of its labeling, advertising and promotion of FIT popcorn. Nonetheless, to exploit and profit from the fact that health claims increase product sales, Defendant has continued to falsely label and market FIT popcorn.

4. Defendants other products also violate branding/labeling laws in various respects.

5. This action seeks compensatory damages and restitution, with interest, for the amounts paid by consumers for FIT Popcorn products fraudulently and deceptively represented and labeled as low in fat and calories, in contrast to the product they purchased. Plaintiff also seeks an order enjoining Defendants from further unlawful or deceptive conduct, as to FIT and other snack food products as to which FIT is violating the law, as well as attorneys' fees and costs.

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THE PARTIES

6. Plaintiff Natasha Arens ("Ms. Arens" or "Plaintiff") is a California citizen who resides in Contra Costa County. Plaintiff read some of Defendant's misrepresentations which were on the label prior to purchasing FIT products, and relied on, and was deceived by, those misrepresentations and deceptive communications in purchasing FIT popcorn in Alameda County, California, and else-where. Plaintiff would not have purchased the product had she known the truth about its misleading labeling. As such, Plaintiff has suffered a loss of money and has standing to sue under the Unfair Competition Law, Business & Professions §§ 17200 *et. seq.*

7. Defendant Popcorn, Indiana is a Delaware corporation with its principal place of business in Englewood, New Jersey. Defendant manufactures, packages, advertises and promotes FIT popcorn products.

8. Plaintiff does not know the true names and capacities of Defendants sued herein as DOES 1-100 and therefore sues these Defendants by fictitious names. Plaintiff will amend this complaint to state the true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously-named Defendants is responsible in some manner for the occurrences alleged herein, and thereby proximately caused Plaintiff's injuries alleged herein.

9. Plaintiff is informed and believes and on that basis alleges that each of the Defendants acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices and courses of conduct alleged herein, and proximately caused damage and injury thereby to Plaintiff and members of the Class as alleged herein.

10. At all times herein mentioned, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiff's and the Class claims because Defendant regularly conducts business in California through the sale of FIT popcorn in California to

California consumers, and because the violations of law alleged herein occurred throughout the State of California.

12. Venue is appropriate in the County of Alameda because Plaintiff resides in Alameda County, and because, pursuant to Civil Code section 1780, subdivision (d), some of the transactions between Plaintiff and Defendant occurred in Alameda County.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

13. Defendant labels, advertises, and promotes that its FIT popcorn products are lower in calories and fat than other snack and "junk" foods and can help consumers lose weight. This deceptive marketing scheme leads health-conscious adults and children into purchasing FIT popcorn products instead of the healthy, alternative snack they are actually seeking. In reality, the FIT popcorn products are no lower in fat or calories than most market-leading, full calories snacks.

14. Defendant has knowledge that health and fitness claims increase product sales; that was its motive in creating its FIT popcorn line of products. Defendant's January 3, 2013 product launch promoted FIT as a "tasty new low-fat and low-calorie ready-to-eat popcorn" that is "better-for-you." Defendant falsely, deceptively and unlawfully represents that FIT popcorn is a "guilt free," "post-workout snack" that can help prevent childhood obesity. It has hired weight loss celebrities and athletic young spokespersons to hand out free samples at national fitness events. To encourage parents to buy Defendant's products for their children, Defendant falsely, deceptively, and unlawfully represents that its products are "school approved," "mom approved," and USDA approved.

15. On February 5, 2013, Defendant announced a promotional partnership with The Biggest Loser, the highly popular, primetime, network television weight loss competition. Defendant's CEO, Mr. Hajarnavis, represented that getting physically fit no longer required "eating tasteless diet food – it's time for Americans to enjoy getting fit and have a delicious, guilt-free snacking experience [like FIT popcorn] at the same time." Accordingly, "The Biggest Loser" and Popcorn, Indiana were "The Perfect FIT:" The Biggest Loser "approved" "all flavors of FIT popcorn," because they are "snacks that can be part of a healthy lifestyle."

16. Popcorn, Indiana further advertises that overweight consumers can eat FIT "as a way of life" to lose weight and keep it off "forever":

17. On May 31, 2013, Defendant announced the FIT "Road Tour," where representatives of Defendant would visit 15 cities to "inspire healthy summer snacking." Former contestants from The Biggest Loser joined the FIT Road Tour as weight loss "Ambassadors" to share "tips" and "their personal mission of 'getting fit'" and "staying fit."

18. The FIT Road Tour visited national fitness events, including the Boston AIDS Walk/Run, the Illinois Biggest Loser Walk/Run (with an appearance at the largest Planet Fitness health club in the U.S.); the Philadelphia Half Marathon, the San Francisco Giants Race Fitness Expo; and numerous appearances with Biggest Loser "Ambassadors" like contestant Tara Costa in New York. Defendant offered "free workout accessories and post workout snacks" at these events.

19. Defendant advertises and promotes FIT to parents as a product that can help reduce childhood obesity. "Our goal on this year's 'The Biggest Loser' was to raise awareness of childhood obesity and the epidemic families are facing. Popcorn, Indiana supports our mission and provides delicious and healthy snacks that the whole family can enjoy," said Kerry O'Donnell, Director, Global Licensing, NBC Television Consumer Products, on May 31, 2013. "With this tour, 'The Biggest Loser' Ambassadors and Popcorn, Indiana will help showcase that it's simple to live a healthy and active lifestyle." There are numerous other instances of Defendant's fraudulent, deceptive and unlawful marketing and promotion of FIT products.

20. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a nutrient in a food is a "nutrient content claim" that must be made in accordance with the regulations that authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly adopted the requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

21. Nutrient content claims are claims about specific nutrients contained in a product. They are typically made on food packaging in a font large enough to be read by the average consumer. Because consumers rely upon these claims when making purchasing decisions, the regulations govern what claims can be made in order to prevent misleading claims.

22. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied nutrient content claims on labels of food products that are intended for sale for human consumption. See 21 C.F.R. § 101.13.

23. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims, which California has expressly adopted. California Health & Safety Code § 110100.

24. An "expressed nutrient content claim" is defined as any direct statement about the level (or range) of a nutrient in the food (e.g., "low sodium" or "contains 100 calories"). See 21 C.F.R. § 101.13(b)(1).

25. An "implied nutrient content claim" is defined as any claim that: (i) describes the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (e.g., "high in oat bran"); or (ii) suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (e.g., "healthy, contains 3 grams (g) of fat"). 21 C.F.R. § 101.13(b)(2)(i-ii).

26. FDA regulations authorize use of a limited number of defined nutrient content claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on food labels, FDA's regulations authorize the use of only certain synonyms for these defined terms. If a nutrient content claim or its synonym is not included in the food labeling regulations it cannot be used on a label. Only those claims, or their synonyms, that are specifically defined in the regulations may be used. All other claims are prohibited. 21 C.F.R. § 101.13(b).

27. Only approved nutrient content claims will be permitted on the food label, and all other nutrient content claims will institute misbranding of a food. It is clear which claims are prohibited and which are permitted. Manufacturers are on notice that the use of an unapproved nutrient content claim is prohibited conduct. 58 FR 2302. In addition, 21 USC 343(r)(2) prohibits using unauthorized undefined terms and declares foods that do so to be misbranded.

28. Defendant has violated these referenced regulations. Accordingly, Defendant's misbranded food products are unlawful.

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29. The FIT principal display panel (PDP) asserts that the products contain 40 or fewer calories per cup, as in the example of Fit Sea Salt popcorn that states it contains "only" 37 calories per cup. However, the products' serving size is much more than a single cup. The Nutrition Facts confirm that the serving size is 28 grams, which is stated as more than three cups by volume:

FIT – SEA SALT

Nutrition Facts	Amount Per Serving	%DV*	Amount Per Serving	%DV*
Serving Size: 28g (About 3⅓ cups) Serv. Per Cont. Varies	Total Fat 6g	9%	Total Carb. 18g	6%
	Saturated Fat 0g	0%	Dietary Fiber 3g	14%
	Trans. Fat 0g		Sugars 0g	
Calories 130 Fat Cal. 50	Cholesterol 0mg	0%	Protein 3g	
	Sodium 220mg	9%		
*Percent Daily Values (DV) are Based on a 2,000 calorie diet	Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%			

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/NutInfo_FIT_SS.gif

The reference amount customarily consumed (RACC) for popcorn is 30 grams. 21 C.F.R. § 101.12(b).

30. A statement on the PDP that the product contains 40 or fewer calories per cup is an implied low calorie claim. 21 C.F.R. § 101.13(i)(2). An "implied" nutrient content claim is, inter alia, a claim that suggests that a nutrient is absent or present in a certain amount. 21 C.F.R. § 101.13(b)(2)(i-ii). To prevent misleading consumers, such a claim must also prominently disclaim that the product is "not a low calorie food." 21 C.F.R. § 101.13(i)(2). FIT products fail to provide this disclaimer.

31. On April 2, 2012 (i.e., nine months before Defendant launched FIT), the FDA published a Warning Letter that products failing to print the proper disclaimer were misbranded:

> **[Y]our 25 count labels for your Lucky Taco Mexican Fortune Cookie and Lucky Cruncher Cookie products bear the implied nutrient content claims "Only 30 Calories per Cookie" and "Only 19 Calories per Cookie," respectively. Your claims implicitly characterize your products as a low calorie food.** A "low calorie" claim may be made if a food with a reference amount customarily consumed (RACC) of 30g or less does not provide more than 40 calories per RACC and, except for sugar substitutes, per 50g. The RACC for cookies is 30g (see 21 CFR 101.12(b), Table 2). Based on your Lucky Taco Mexican Fortune Cookie and Lucky Cruncher Cookie product labels, a 5g serving of these products contain 30 and 19 calories, respectively; this equals about 180 and 114 calories per RACC, and about 300 and 190 calories per 50g, respectively. **Therefore, under 21 CFR 101.13(i)(2), the products are required to carry a disclaimer adjacent to the**

> **<u>claim, e.g., "Only 30 calories per serving, not a low calorie food." Because your products fail to bear the required disclaimer, they are misbranded</u>** within the meaning of section 403(r)(1)(A) of the Act. (Emphasis added.)_

32. The adjacent disclaimer required under 21 C.F.R. § 101.13(i)(2) prevents companies from misrepresenting that their products contain fewer calories than competing products, and it helps consumers avoid overeating.

33. Defendant falsely advertises and promotes that the U.S. Department of Agriculture (USDA) officially approved its products for their whole grain content, earning the "official USDA whole grain icon." There is no "USDA whole grain icon," official or otherwise. A private organization, the Whole Grains Council, uses this stamp. The USDA does not certify or endorse products for their whole grain content with the stamp below or any other:

34. Defendant's web page also recommends that consumers eat "just two servings" daily of Sea Salt Popcorn to fulfill the "USDA recommended allowance of 48 grams of whole grain." However, the USDA has stated that "there is currently not enough evidence to support a specific recommendation for "snacking" to help manage body weight. USDA Dietary Guidelines for Americans, (2010) at 19. "Just two" servings of Defendant's Sea Salt Popcorn also contain 260 calories (13% of a 2,000 calorie daily diet and 1,820 calories per week), 12 grams of fat (18% Daily Value), and 360 mg of sodium (16% Daily Value). Two servings of Defendant's FIT Sea Salt Popcorn contain even more sodium (440 mg, 18% Daily Value).

35. The foregoing web page that recommends consumers eat "just two servings" (i.e., seven cups of FIT popcorn) is inconsistent with FIT products' implied low calorie claim of 40 or fewer calories per cup on the PDP. While Defendant labels, advertises, and promotes that FIT should be eaten in one cup quantities as a part of living a FIT lifestyle, it also recommends that consumers eat seven times this amount to "reduce the incidence of cancer, digestive system maladies, gum and coronary disease, obesity, and diabetes." The only whole grain health claim that the FDA has approved for whole grain foods with moderate fat content (between 3 and 6.5 grams of fat and 1 gram or less of saturated fat per RACC) is that "diets rich in whole grain foods and other plant foods, and low in saturated fat and cholesterol, may help reduce the risk of heart disease." The unspecified "cancer, digestive system maladies," gum disease, obesity, and

diabetes health claims that Defendant makes about its products are unapproved, unfounded, false, misleading, and unlawful. Additionally, all whole grain health claims are proscribed for products that contain more than 6.5 grams of fat and/or 1 gram of saturated fat per serving, including but not limited to Defendant's Aged White Cheddar, Move Theater, American Cheese, Bacon Ranch, Black & White Drizzlecorn ™, Cinnamon Sugar Drizzlecorn ™, Dark Fudge Chocolate Chip Drizzlecorn ™, Dark Fudge Peppermint Drizzlecorn ™, and Chocolate Peanut Butter Drizzlecorn ™. Nonetheless, Defendant continues to promote its Drizzlecorn ™ products as "guiltless pleasures."

36. Defendant's false advertising is not limited to FIT. Defendant also falsely advertises and promotes its full-calorie products. A Defendant spokesperson in Los Angeles, California represented that their full-calorie products were "school approved," "mom approved," and "low in calories." These claims are false, misleading, and unlawful. A popcorn product labeled as being "low in calories" cannot contain more than 40 calories per serving and per 50 grams. 21 C.F.R. § 101.60(b)(2)(i)(B); see 21 C.F.R. § 101.12(b). None of Defendant's products meet these standards. Similarly, there is no known independent "school" or "mom" certification organization that has "approved" Defendant's products.

37. Popcorn, Indiana's website for its full-calorie Cinnamon and Sugar Kettlecorn includes a "School Approved Healthy Snack" certification stamp.

38. As with the false representations discussed above, no known independent "school" organization has "approved" Defendant's product as a "Healthy Snack." A food labeled as "healthy" under FDA regulations food must be "low fat," i.e., contain no more than 3 grams of fat per serving. 21 C.F.R. § 101.65(d)(2)(i)(F); see 21 C.F.R. § 101.62(b)(iii)(B). It must also contain at least 10% of the Daily Value for protein, fiber, Vitamin A, Vitamin C, Calcium, or

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Iron. 21 C.F.R. § 101.65(d)(2)(i). Defendant's product contains too much fat and too little of these nutrients to meet this requirement:

CINNAMON SUGAR KETTLECORN

Nutrition Facts	Amount Per Serving	%DV*	Amount Per Serving	%DV*
Serv. Size 2.5 cups (28g) Serv. Per Cont. Varies	Total Fat 4.5g	7%	Total Carb. 21g	7%
	Saturated Fat 0g	0%	Dietary Fiber 2g	8%
	Trans. Fat 0g		Sugars 7g	
Calories 130 Fat Cal. 40	Cholesterol 0mg	0%	Protein 1g	
	Sodium 115mg	5%		
*Percent Daily Values (DV) are Based on a 2,000 calorie diet	Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 2%			

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/NutInfo_CinnSug.gif

39. Defendant also falsely represented that its full-calorie Original Kettlecorn was "healthy" in a 2011 National Popcorn Day direct-to-consumer promotion.

Popcorn, Indiana's Original Kettlecorn fails to meet the requirements of 21 C.F.R. § 101.65 to qualify for a "healthy" label:

ORIGINAL KETTLECORN

Nutrition Facts	Amount Per Serving	%DV*	Amount Per Serving	%DV*
Serv. Size 2 cups (28g) Serv. Per Cont. Varies	Total Fat 5g	8%	Total Carb. 21g	7%
	Saturated Fat 0g	0%	Dietary Fiber 2g	8%
	Trans. Fat 0g		Sugars 6g	
Calories 130 Fat Cal. 45	Cholesterol 0mg	0%	Protein 1g	
	Sodium 130mg	5%		
*Percent Daily Values (DV) are Based on a 2,000 calorie diet	Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 0%			

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/NutInfo_Kettle.gif

40. Defendant recommends that consumers, especially children, eat Popcorn, Indiana products as part of their "daily diet." "Popcorn, especially Popcorn, Indiana popcorn . . . is quite the healthful little munch" that is "surprisingly low in calories, especially when compared to other snacks."

41. Defendant provides free samples to persons who will promote Defendant's products on social media websites. A "Mom TV" reviewer of FIT popcorn was clearly deceived by FIT's implied low calorie claim due to the absence of the required disclaimer on the PDP, as she represented that it was okay to eat "the whole bag."

42. Although Defendant represents that its popcorn flavors are "surprisingly low in calories, especially when compared to other snacks," FIT products' calorie, fat, and sodium levels per serving are comparable, identical, or even higher than Defendant's full-calorie products and other snack/junk foods. Defendant's full-calorie products are also comparable, identical, or even

higher in calories, fat, and sodium per serving than other snack foods. FIT and full-calorie "Sea Salt" popcorn products provide identical amounts of calories and fat per serving. Ironically, the "FIT" version contains even more sodium:

FIT - SEA SALT

Nutrition Facts
Serving Size: 28g (About 3½ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 220mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%
*Percent Daily Values (DV) are based on a 2,000 calorie diet

TOUCH OF SEA SALT

Nutrition Facts
Serv. Size 3 cups (28g)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 190mg	8%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%
*Percent Daily Values (DV) are based on a 2,000 calorie diet

43. The identical calorie and fat contents of these products (and more sodium of the FIT product) also demonstrate that Defendant exaggerates the volumetric serving size of FIT products (here, "about" 3.5 cups per 28 gram serving of FIT vs. 3 cups per 28 gram serving of Defendant's full-calorie popcorn). Defendant overstates these volumes to understate the number of calories per cup listed on the PDP, so that Defendant can falsely, misleadingly, and unlawfully label, advertise, and promote FIT as having fewer than 40 calories per cup.

44. A serving of FIT Sea Salt popcorn has more calories and fat (and comparable sodium) per serving than Defendant's Sea Salt Chip'ins popcorn chips:

FIT - SEA SALT

Nutrition Facts
Serving Size: 28g (About 3½ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 220mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%
*Percent Daily Values (DV) are based on a 2,000 calorie diet

SEA SALT

Nutrition Facts
Serving Size: 1oz. (28g/About 20 Chips)
Servings Per Container: Varies
Calories 120
Fat Cal. 25

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 2.5g	4%	Total Carb. 22g	7%
Saturated Fat 0g	0%	Dietary Fiber 1g	2%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 230mg	10%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 2%
*Percent Daily Values (DV) are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/nutrition_full_seasalt.png

http://www.popcornindiana.com/products/sea-salt-chipins

45. Defendant's FIT and full-calorie popcorns have the same calories, comparable sodium, and more fat per serving than full-calorie Stacy's Pita Crisps ®, a premium sea salt flavored snack manufactured by an industry leader:

FIT - SEA SALT

Nutrition Facts
Serving Size: 28g (About 3½ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 220mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%
*Percent Daily Values (DV) are based on a 2,000 calorie diet

TOUCH OF SEA SALT

Nutrition Facts
Serv. Size 3 cups (28g)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 190mg	8%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%
*Percent Daily Values (DV) are based on a 2,000 calorie diet

INGREDIENTS: Enriched Wheat Flour (Wheat Flour, Niacin, Reduced Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sunflower and/or Canola Oil, Whole Wheat Flour, and Less than 2% of the Following: Sea Salt, Organic Cane Sugar, Oat Fiber, Yeast, Malted Barley Flour, Rosemary Extract (Antioxidant), and Ascorbic Acid (Antioxidant).
CONTAINS WHEAT INGREDIENTS.

Nutrition Facts
Serving Size 1 oz (28g/About 13 chips)

Amount Per Serving	
Calories 130	Calories from Fat 45
	% Daily Value*
Total Fat 5g	8%
Saturated Fat 0g	0%
Trans Fat 0g	
Polyunsaturated Fat 0.5g	
Monounsaturated Fat 4g	
Cholesterol 0mg	0%
Sodium 200mg	8%
Total Carbohydrate 19g	6%
Dietary Fiber 2g	8%
Sugars 1g	
Protein 3g	
Vitamin A 0% • Vitamin C 0%	
Calcium 0% • Iron 8%	

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/PI_Fit_SS_nut_4.jpg
http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/nutrition_full_chipseasalt.jpg

46. Defendant's FIT and full-calorie popcorns have the same calories and more fat and sodium per serving than Corn Nuts ®, the market-leading corn kernel snack:

FIT - SEA SALT

Nutrition Facts
Serving Size: 28g (About 3⅔ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50
*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 220mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%

TOUCH OF SEA SALT

Nutrition Facts
Serv. Size 3 cups (28g)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50
*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 18g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 190mg	8%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%

Nutrition Facts
Serving Size 1/3 cup (28g)
Servings Per Container About 4

Amount Per Serving	1/3 cup		Entire Package	
Calories	130		520	
Calories from Fat	40		160	
		%DV*		%DV*
Total Fat	4.5g	7%	18g	28%
Saturated Fat	0.5g	3%	2.5g	13%
Trans Fat	0g		0g	
Polyunsaturated Fat	2g		8g	
Monounsaturated Fat	1.5g		5g	
Cholesterol	0mg	0%	0mg	0%
Sodium	160mg	7%	660mg	28%
Potassium	75mg	2%	300mg	9%
Total Carbohydrate	20g	7%	81g	27%
Dietary Fiber	1g	4%	6g	24%
Sugars	0g		Less than 1g	
Protein	2g		10g	
Vitamin A		0%		0%
Vitamin C		0%		2%
Calcium		0%		0%
Iron		2%		10%

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47. FIT Olive Oil has the same calories as, and more fat and sodium per serving than, Defendant's full calorie Original Kettlecorn:

FIT - EXTRA VIRGIN OLIVE OIL

Nutrition Facts
Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50
*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 17g	6%
Saturated Fat 1g	4%	Dietary Fiber 3g	12%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 210mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 10% • Iron 0%

ORIGINAL KETTLECORN

Nutrition Facts
Serv. Size 2 cups (28g)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 45
*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 5g	8%	Total Carb. 21g	7%
Saturated Fat 0g	0%	Dietary Fiber 2g	8%
Trans. Fat 0g		Sugars 6g	
Cholesterol 0mg	0%	Protein 1g	
Sodium 130mg	5%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 0%

http://www.popcornindiana.com/nutrition/cat/23/prod/279

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/nutrition_full_kettlecorn.png

48. Fit Olive Oil popcorn has more calories, fat, and sodium per serving than Defendant's own Sea Salt Chip'ins:

FIT - EXTRA VIRGIN OLIVE OIL

Nutrition Facts
Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50
*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 17g	6%
Saturated Fat 1g	4%	Dietary Fiber 3g	12%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 210mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 10% • Iron 0%

SEA SALT

Nutrition Facts
Serving Size: 1oz. (28g/About 20 Chips)
Servings Per Container: Varies
Calories 120
Fat Cal. 25

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 2.5g	4%	Total Carb. 22g	7%
Saturated Fat 0g	0%	Dietary Fiber 1g	2%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 230mg	10%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 2%

*Percent Daily Values (DV) are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

49. Per serving, FIT Olive Oil popcorn has more sodium and comparable calories and fat to Tostitos ®, the top-selling full-calorie corn tortilla chips:

FIT - EXTRA VIRGIN OLIVE OIL

Nutrition Facts
Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies
Calories 130
Fat Cal. 50
*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 17g	6%
Saturated Fat 1g	4%	Dietary Fiber 3g	12%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 210mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 10% • Iron 0%

Nutrition Facts
Serving Size 1 oz (28g/About 7 chips)

Amount Per Serving
Calories 140 Calories from Fat 60

	% Daily Value*
Total Fat 7g	10%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 115mg	5%
Total Carbohydrate 19g	6%
Dietary Fiber 1g	5%
Sugars 0g	
Protein 2g	

Vitamin A 0% • Vitamin C 0%
Calcium 2% • Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

Calories: 2,000 2,500

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50. Fit Olive Oil popcorn has more calories, fat, and sodium per serving than Triscuit ® Cracked Pepper & Olive Oil crackers.

FIT - EXTRA VIRGIN OLIVE OIL

Nutrition Facts

Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies

Calories 130
Fat Cal. 50

*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 17g	6%
Saturated Fat 1g	4%	Dietary Fiber 3g	12%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 210mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 10% • Iron 0%

NUTRITION FACTS

Serving Size: 28 g
Serving per container about 9

Amount Per Serving	
Calories 120	
Calories from Fat 35	
	% Daily Value*
Total Fat 4g	6%
Saturated Fat 0.5g	3%
Trans Fat 0g	0%
Monounsaturated Fat 1g	0%
Cholesterol 0mg	0%
Sodium 135mg	6%
Potassium 115mg	3%
Total Carbohydrate 20g	7%
Dietary Fiber 3g	12%
Sugars 0g	
Protein 3g	
Vitamin A NaN	0%
Calcium 0%	Vitamin C 0%
Iron 8%	Phosphorus 10%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholest	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carb		300g	375g
Fiber		25g	30g

51. FIT Parmesan and Herb has marginally lower calorie, fat, and sodium levels per serving than Defendant's full-calorie White Cheddar popcorn:

FIT – PARMESAN & HERB

Nutrition Facts

Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies

Calories 130
Fat Cal. 60

*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	10%	Total Carb. 16g	5%
Saturated Fat 1g	4%	Dietary Fiber 3g	12%
Trans. Fat 0g		Sugars 1g	
Cholesterol 5mg	1%	Protein 2g	
Sodium 250mg	10%		

Vitamin A 2% • Vitamin C 0% • Calcium 4% • Iron 4%

AGED WHITE CHEDDAR

Nutrition Facts

Serv. Size 2.5 cups (28g)
Serv. Per Cont. Varies

Calories 150
Fat Cal. 80

*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 9g	15%	Total Carb. 14g	5%
Saturated Fat 1g	5%	Dietary Fiber 2g	8%
Trans. Fat 0g		Sugars 2g	
Cholesterol 5mg	1%	Protein 3g	
Sodium 290mg	12%		

Vitamin A 0% • Vitamin C 0% • Calcium 4% • Iron 2%

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/NutInfo_FIT_Parm.gif

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/nutrition_full_chipwhitecheddar.jpg

52. FIT Parmesan and Herb does not, however, meet the requirements for a "light" product, which must have a 50% or greater reduction in fat compared to a full-calorie product that derives 50% or more of its calories from fat. 21 C.F.R. § 101.56(b)(1); 21 C.F.R. § 101.13(j)(1);

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and it also contains the same calories as, and more fat and sodium per serving than, White Cheddar Chip'ins:

FIT – PARMESAN & HERB

Nutrition Facts

Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies

Calories 130
Fat Cal. 60

*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	10%	Total Carb. 16g	5%
Saturated Fat 1g	4%	Dietary Fiber 3g	12%
Trans. Fat 0g		Sugars 1g	
Cholesterol 5mg	1%	Protein 3g	
Sodium 250mg	10%		

Vitamin A 2% • Vitamin C 0% • Calcium 4% • Iron 4%

WHITE CHEDDAR

Nutrition Facts

Serving Size: 1oz (28g/About 18 Chips)
Servings Per Container: Varies

Calories 130
Fat Cal. 35

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 4g	6%	Total Carb. 21g	7%
Saturated Fat 0g	0%	Dietary Fiber 1g	2%
Trans. Fat 0g		Sugars 1g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 240mg	10%		

Vitamin A 0% • Vitamin C 0% • Calcium 2% • Iron 2%

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/nutrition_full_chipwhitecheddar.jpg

53. FIT Onion Dijon has the same calories and more fat and sodium than full-calorie Original Kettle Corn; the same or more calories and fat (and comparable sodium) than any flavor of Defendant's Chip'ins; has comparable amounts of calories, fat, and sodium to Funyuns ®, the popular full-calorie onion-flavored snack; and the same calories and more fat and sodium per serving than Ranch Flavored, BBQ, or Chile Picante Con Limon Flavored Corn Nuts ®:

ONION DIJON

Nutrition Facts

Serving Size: 28g (About 3¼ cups)
Serv. Per Cont. Varies

Calories 130
Fat Cal. 50

*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 6g	9%	Total Carb. 17g	6%
Saturated Fat 0g	0%	Dietary Fiber 3g	13%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 230mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 4%

ORIGINAL KETTLECORN

Nutrition Facts

Serv. Size 2 cups (28g)
Serv. Per Cont. Varies

Calories 130
Fat Cal. 45

*Percent Daily Values (DV) are Based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 5g	8%	Total Carb. 21g	7%
Saturated Fat 0g	0%	Dietary Fiber 2g	8%
Trans. Fat 0g		Sugars 6g	
Cholesterol 0mg	0%	Protein 1g	
Sodium 130mg	5%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 0%

INGREDIENTS: ENRICHED CORN MEAL (CORN MEAL, FERROUS SULFATE, NIACIN, THIAMIN MONONITRATE, RIBOFLAVIN, AND FOLIC ACID), VEGETABLE OIL (CORN, CANOLA, SUNFLOWER, AND/OR SOYBEAN OIL), SALT, CORN STARCH, SOY FLOUR, SUGAR, CORN FLOUR, ONION POWDER, BUTTERMILK,

Nutrition Facts

Serving Size 1 oz (28g/About 13 pieces)

Amount Per Serving	
Calories 140	Calories from Fat 60
	% Daily Value*
Total Fat 7g	11%
Saturated Fat 1g	4%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 240mg	10%
Total Carbohydrate 18g	6%
Dietary Fiber less than 1g	3%
Sugars less than 1g	
Protein 2g	
Vitamin A 0% •	Vitamin C 0%
Calcium 0% •	Iron 6%
Vitamin E 4% •	Thiamin 4%
Riboflavin 4% •	Niacin 8%
Vitamin B6 2% •	Phosphorus 2%

Nutrition Facts

Serving Size 1/3 cup (28g)
Servings Per Container About 4

Amount Per Serving	1/3 cup	%DV*	Entire Package	%DV*
Calories	130		520	
Calories from Fat	40		170	
Total Fat	4.5g	7%	19g	29%
Saturated Fat	0.5g	3%	2.5g	13%
Trans Fat	0g		0g	
Polyunsaturated Fat	2g		9g	
Monounsaturated Fat	1.5g		6g	
Cholesterol	0mg	0%	0mg	0%
Sodium	210mg	9%	850mg	36%
Potassium	75mg	2%	310mg	9%
Total Carbohydrate	20g	7%	80g	27%
Dietary Fiber	1g	4%	6g	24%
Sugars	0g		Less than 1g	
Protein	2g		10g	
Vitamin A		0%		2%
Vitamin C		0%		0%
Calcium		0%		0%
Iron		2%		8%

Nutrition Facts
Serving Size 1/3 cup (28g)
Servings Per Container About 4

Amount Per Serving	1/3 cup		Entire Package	
Calories	130		520	
Calories from Fat	40		170	
		% DV*		% DV*
Total Fat	4.5g	7%	18g	28%
Saturated Fat	0.5g	3%	2.5g	13%
Trans Fat	0g		0g	
Polyunsaturated Fat	2g		9g	
Monounsaturated Fat	1.5g		6g	
Cholesterol	0mg	0%	0mg	0%
Sodium	180mg	8%	710mg	30%
Potassium	75mg	2%	300mg	9%
Total Carbohydrate	20g	7%	80g	27%
Dietary Fiber	1g	4%	6g	24%
Sugars	0g		2g	
Protein	2g		9g	
Vitamin A		0%		0%
Vitamin C		0%		2%
Calcium		0%		0%
Iron		2%		8%

Nutrition Facts
Serving Size 1/3 cup (28g)
Servings Per Container About 4

Amount Per Serving	1/3 cup		Entire Package	
Calories	130		530	
Calories from Fat	40		170	
		% DV*		% DV*
Total Fat	4.5g	7%	18g	28%
Saturated Fat	0.5g	3%	2.5g	13%
Trans Fat	0g		0g	
Polyunsaturated Fat	2g		9g	
Monounsaturated Fat	1.5g		6g	
Cholesterol	0mg	0%	0mg	0%
Sodium	120mg	5%	490mg	20%
Potassium	75mg	2%	290mg	8%
Total Carbohydrate	20g	7%	81g	27%
Dietary Fiber	1g	4%	5g	20%
Sugars	Less than 1g		3g	
Protein	2g		10g	
Vitamin A		0%		0%
Vitamin C		0%		0%
Calcium		0%		0%
Iron		2%		10%

http://www.popcornindiana.com/products/fit-onion-dijon-popcorn

http://www.fritolay.com/our-snacks/funyuns-onion.html

http://www.popcornindiana.com/sites/default/files/imagecache/thumb800w/nut_onion_0.jpg

54. FIT Real Butter popcorn, despite stating a relatively low 30 calories per cup, fails to include the requisite "not a low calorie food" disclaimer adjacent to the "30 Calories Per Cup" claim, as required under 21 C.F.R. § 101.13(i)(2); it provides the same amount of calories, more fat, and comparable sodium to Defendant's own Sea Salt Chip'ins; it has more calories and fat per serving than Rold Gold ®, the market leader in full-calorie pretzels; and it has amounts of calories, fat, and sodium per serving that are comparable to Corn Nuts ® Original and Triscuit ® Original crackers:

FIT - REAL BUTTER

Nutrition Facts
Serving Size: 28g (About 4 cups)
Serv. Per Cont. Varies
Calories 120
Fat Cal. 30
*Percent Daily Values (DV) are based on a 2,000 calorie diet

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 3.5g	6%	Total Carb. 20g	7%
Saturated Fat 0.5g	3%	Dietary Fiber 4g	14%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 3g	
Sodium 220mg	9%		

Vitamin A 0% • Vitamin C 0% • Calcium 10% • Iron 0%

SEA SALT

Nutrition Facts
Serving Size: 1oz (28g/About 20 Chips)
Servings Per Container: Varies
Calories 120
Fat Cal. 25

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 2.5g	4%	Total Carb. 22g	7%
Saturated Fat 0g	0%	Dietary Fiber 1g	2%
Trans. Fat 0g		Sugars 0g	
Cholesterol 0mg	0%	Protein 2g	
Sodium 230mg	10%		

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 2%

*Percent Daily Values (DV) are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

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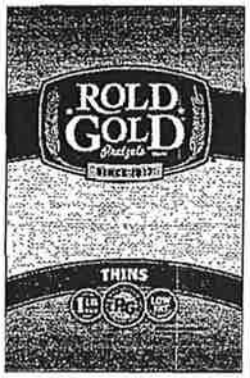

Nutrition Facts
Serving Size 1 oz (28g/About 9 pretzels)

Amount Per Serving	
Calories 110	Calories from Fat 10
	% Daily Value*
Total Fat 1g	2%
Saturated Fat 0g	0%
Trans Fat 0g	
Polyunsaturated Fat 0.5g	
Monounsaturated Fat 0g	
Cholesterol 0mg	0%
Sodium 490mg	20%
Total Carbohydrate 23g	8%
Dietary Fiber 1g	4%
Sugars less than 1g	
Protein 2g	
Vitamin A 0% •	Vitamin C 0%
Calcium 0% •	Iron 6%
Thiamin 8% •	Riboflavin 4%
Niacin 6% •	Phosphorus 2%

Nutrition Facts
Serving Size 1/3 cup (28g)
Servings Per Container About 4

Amount Per Serving	1/3 cup		Entire Package	
Calories	130		520	
Calories from Fat	40		160	
		%DV*		%DV*
Total Fat	4.5g	7%	18g	28%
Saturated Fat	0.5g	3%	2.5g	13%
Trans Fat	0g		0g	
Polyunsaturated Fat	2g		8g	
Monounsaturated Fat	1.5g		5g	
Cholesterol	0mg	0%	0mg	0%
Sodium	160mg	7%	660mg	28%
Potassium	75mg	2%	300mg	8%
Total Carbohydrate	20g	7%	81g	27%
Dietary Fiber	1g	6%	6g	24%
Sugars	0g	Less than 1g		
Protein	2g		10g	
Vitamin A		0%		0%
Vitamin C		0%		2%
Calcium		0%		0%
Iron		2%		10%

NUTRITION FACTS
Serving Size: 28g
Serving per container about 9

Amount Per Serving	
Calories 120	
Calories from Fat 35	
	% Daily Value*
Total Fat 4g	6%
Saturated Fat 0.5g	3%
Trans Fat 0g	0%
Monounsaturated Fat 1g	0%
Cholesterol 0mg	0%
Sodium 160mg	7%
Potassium 115mg	3%
Total Carbohydrate 20g	7%
Dietary Fiber 3g	12%
Sugars 0g	
Protein 3g	
Vitamin A (Nat)	0%
Calcium 0%	Vitamin C 0%
Iron 6%	Phosphorus 10%

55. Defendant has violated California Health & Safety Code §§ 109885 and 110390, which make it unlawful to disseminate false or misleading food advertisements that include statements on products and product packaging or labeling or any other medium used to directly or indirectly induce the purchase of a food product.

56. Defendant has violated California Health & Safety Code § 110395 which prohibits the manufacture, sale, delivery, or offer to sell any misbranded food.

57. Defendant has violated California Health & Safety Code § 110398 by unlawfully advertising misbranded food.

58. Defendant has violated California Health & Safety Code § 110660, because its food products are misbranded in one or more ways, as follows:

59. They are misbranded under California Health & Safety Code § 110665, because their labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto;

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60. They are misbranded under California Health & Safety Code § 110670, because their labeling fails to conform with the requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto; and

61. They are misbranded under California Health & Safety Code § 110705, because words, statements and other information required by the Sherman Law to appear on their labeling either are missing or not sufficiently conspicuous.

62. Defendant has violated California Health & Safety Code §110760 that makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

63. Defendant has violated California Health & Safety Code § 110765 that makes it unlawful for any person to misbrand any food.

64. Defendant has violated California Health & Safety Code § 110770 that makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.

65. Defendant has violated the standard set by 21 C.F.R. § 101.2 that has been incorporated by reference in the Sherman Law, by failing to include on their product labels the nutritional information required by law.

66. Defendant has violated the standards set by 21 C.F.R. §§ 101.12, 101.13, 101.56, 101.60, 101.62, and 101.65 that have been adopted by reference in the Sherman Law, by including unauthorized nutrient content claims on, and excluding required disclaimers from, their products.

CLASS ACTION ALLEGATIONS

67. Plaintiff brings this action as a class action on behalf of herself and all other persons similarly situated pursuant to California Code of Civil Procedure § 382. Plaintiff brings this action in a representative capacity to remedy and put an end to the ongoing unlawful, unfair and fraudulent business practices alleged herein, and to seek redress on behalf of all those persons who have been affected thereby.

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68. This proposed class is comprised of all residents of California who, within the last four years, purchased a FIT Popcorn an unlawfully labeled product (the "Class") in California. Excluded from the Class are: (a) officers, directors, and employees of Defendant, their subsidiaries and affiliates; (b) counsel, and the immediate families of counsel, who represent Plaintiff in this action; (c) the judge presiding over this action; and (d) jurors who are impaneled to render a verdict on the claims alleged in this action.

69. This action can be maintained as a class action, because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

70. Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

71. This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

a) Whether Defendant engaged in unfair, unlawful or deceptive business practices by failing to properly package and label snack food products sold to consumers;

b) Whether Defendant made unlawful and misleading nutrient content claims with respect to their food products sold to consumers;

c) Whether Defendant, by the virtue of the premises, violated California Bus. & Prof. Code § 17200 et seq., California Bus. & Prof. Code § 17500 et seq. and/or the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et seq.; and

d) Whether Plaintiff and the Class are entitled to restitution and/or injunctive relief;

72. Plaintiff's claims are typical of the Class, because Plaintiff bought Defendant's FIT products in Alameda County, California during the Class Period; Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where in California they occurred or were experienced. Plaintiff and the Class sustained similar harm arising out of Defendant's conduct in violation of California law. The injuries of

each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

73. Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

74. The nature of this action and California law make a class action the superior and appropriate procedure to afford relief for the wrongs alleged herein.

FIRST CAUSE OF ACTION

(For Violation of Business and Professions Code, Sec. 17200, *et seq.*, Re: Unlawful Business Acts and Practices)

75. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

76. Defendant's conduct constitutes unlawful business acts and practices.

77. Defendant sold misbranded food products in California during the Class Period.

78. Defendant's business practices are unlawful under § 17200, et seq., by virtue of Defendant's violations of the advertising provisions of the Sherman Law (Article 3) and the misbranded food provisions of the Sherman Law (Article 6).

79. Defendant sold Plaintiff and the Class misbranded food products that were not capable of being unlawfully sold or held legally, and which were legally worthless.

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80. As a result of Defendant's unlawful business practices, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the misbranded food products.

81. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to the Class.

82. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's misbranded FIT products to Plaintiff and the Class.

SECOND CAUSE OF ACTION

(For Violation of Business and Professions Code § 17200, *et seq., Re:* Unfair Business Acts and Practices)

83. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

84. Defendant's conduct as set forth herein constitutes unfair business acts and practices.

85. Defendant sold misbranded food products in California during the Class Period.

86. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendant's misbranded food products that they would not have purchased absent Defendant's illegal conduct as set forth herein.

87. Defendant's deceptive marketing, advertising, packaging and labeling, and the sale of its misbranded food products and its sale of unsalable misbranded food products that were illegal to possess was of no benefit to consumers, and the harm to consumers and competition is substantial.

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88. The harmful consequences of Defendant's conduct as set forth herein outweighs any justification, motive or reason therefor. Defendant's conduct is and continues to be illegal and contrary to public policy, and is substantially injurious to Plaintiff and the Class.

89. As a result of Defendant's conduct, Plaintiff and the Class, seek such relief as is requested herein below.

THIRD CAUSE OF ACTION

(For Violation of Business and Professions Code § 17200, *et seq.*, Re: Fraudulent Business Acts and Practices)

90. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

91. Defendant's conduct as set forth herein constitutes fraudulent business practices under California Business and Professions Code §§ 17200, et seq.

92. Defendant sold misbranded food products in California during the Class Period.

93. Defendant's fraudulent and deceptive marketing, advertising, packaging and labeling of misbranded food products was likely to deceive reasonable consumers, and in fact, Plaintiff and members of the Class were deceived into purchasing products with no value which they would not have purchased had they known the truth.

94. As a result of Defendant's conduct as set forth herein, Plaintiff and the Class, seek an order providing relief as set forth herein below.

FOURTH CAUSE OF ACTION

(For Violation of Business and Professions Code § 17500, *et seq.*, Re: Misleading and Deceptive Advertising)

95. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

96. Plaintiff asserts this cause of action for violations of California Business and Professions Code § 17500, et seq. for misleading and deceptive advertising against Defendant.

97. Defendant sold misbranded food products in California during the Class Period.

98. Defendant engaged in a scheme of offering misbranded food products for sale to

Plaintiff and members of the Class by way of, inter alia, product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of Defendant's misbranded food products. Defendant's advertisements and inducements were made within California and come within the definition of advertising as contained in Business and Professions Code §17500, et seq. in that such product packaging and labeling, and promotional materials were intended as inducements to purchase Defendant's misbranded food products and are statements disseminated by Defendant to Plaintiff and the Class that were intended to reach members of the Class. Defendant knew that these statements were misleading and deceptive as set forth herein.

99. In furtherance of its plan and scheme, Defendant prepared and distributed within California via product packaging and labeling, and other promotional materials, statements that misleadingly and deceptively represented the contents and nature of Defendant's misbranded food products. Plaintiff and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

100. Defendant's conduct in disseminating misleading and deceptive statements in California to Plaintiff and the Class was and is likely to deceive reasonable consumers by obfuscating the true ingredients and nature of Defendant's misbranded food products in violation of the "misleading prong" of California Business and Professions Code § 17500, et seq.

101. As a result of Defendant's violations of the "misleading prong" of California Business and Professions Code § 17500, et seq., Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally worthless.

102. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to restore any money paid for Defendant's misbranded food products by Plaintiff and the Class.

///

///

FIFTH CAUSE OF ACTION

(For Violation of Business and Professions Code § 17500, *et seq.*, Re: False Advertising)

103. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

104. Plaintiff asserts this cause of action against Defendant for violations of California Business and Professions Code §17500, et seq., regarding false advertising.

105. Defendant sold misbranded food products in California during the Class Period.

106. Defendant engaged in a scheme of offering misbranded food products for sale to Plaintiff and the Class by way of product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of Defendant's misbranded food products. Defendant's advertisements and inducements were made in California and come within the definition of advertising as contained in Business and Professions Code § 17500, et seq. in that the product packaging and labeling, and promotional materials, were intended as inducements to purchase Defendant's misbranded food products, and are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew these statements were untrue, false, and misleading.

107. In furtherance of their plan and scheme, Defendant prepared and distributed in California via product packaging and labeling, and other promotional materials, statements that falsely advertise the ingredients contained in Defendant's misbranded food products, and falsely misrepresented the nature of those products. Plaintiff and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

108. Defendant's conduct in disseminating untrue advertising throughout California deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of Defendant's misbranded food products in violation of the "untrue prong" of California Business and Professions Code § 17500.

109. As a result of Defendant's violations of the "untrue prong" of California Business and Professions Code §17500, et seq., Defendant has been unjustly enriched at the expense of

Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally worthless.

110. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to restore any money paid for Defendant's misbranded food products by Plaintiff and the Class.

SIXTH CAUSE OF ACTION

(For Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*)

111. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

112. This cause of action is brought pursuant to the CLRA. This cause of action does not currently seek monetary relief and is limited solely to injunctive relief. Plaintiff intends to amend this Complaint to seek monetary relief in accordance with the CLRA after the 30 day period following notice to Defendant sent pursuant to Cal. Civ. Code § 1782.

113. The CLRA was designed and enacted to protect consumers from unfair and deceptive business practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil Code section 1770.

114. At all relevant times, Plaintiff and members of the Class were "consumers" as defined in California Civil Code section 1761, subdivision (d), who sought or purchased a good for personal, family, or household use.

115. At all relevant times, Defendant's FIT popcorn products were a "good" under California Civil Code section 1761, subdivision (a), given that it was a tangible chattel bought by Plaintiff and members of the Class for use primarily for personal, family or household purposes.

116. At all relevant times, Defendant was a "person" under California Civil Code section 1761, subdivision (c).

117. At all relevant times, Plaintiff and members of the Class engaged in "transactions" under California Civil Code section 1761, subdivision (e), including purchasing and consuming FIT popcorn products.

118. Pursuant to Civil Code section 1781, Plaintiff brings this claim on behalf of herself and all members of the class as described above.

119. As alleged above, Defendant has misrepresented and are likely to continue to misrepresent the particular ingredients, characteristics, uses, benefits and quantities of the goods, in violation of Civil Code section 1770, subdivision (a)(5).

120. As alleged above, Defendant violated and continues to violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that it misrepresents the particular standard, quality or grade of the goods.

121. As alleged above, Defendant violated and continues to violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that it advertises goods with the intent not to sell the goods as advertised.

122. Plaintiff and members of the Class were subject to the same material misrepresentations contained on the labels as well as in the advertising and promotion of FIT popcorn products of Defendant. Plaintiff and members of the Class each reasonably and justifiably relied on Defendant's representations that its products contained certain health attributes when they purchased the products.

123. Plaintiff and members of the Class would not have purchased Defendant's products had they known the representations regarding the health attributes of the products were false and/or misleading.

124. Defendant's violations of Civil Code section 1770 present a continuing threat to Plaintiff and members of the Class in that, unless enjoined from doing so by this Court, Defendant is likely to continue to engage in the above-described unlawful and deceptive practices, all to the damage of Plaintiff and the Class.

125. Additionally, Plaintiff seeks an award of attorney's fees and costs pursuant to Civil Code section 1780, subdivisions (a) and (e).

///

JURY DEMAND

Plaintiff hereby demands a trial by jury of her claims.

PRAYER FOR RELIEF

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

A. For an order certifying this case as a class action and appointing Plaintiff and her counsel to represent the Class;

B. For an order awarding, as appropriate, restitution or any relief to Plaintiff and the Class for all causes of action other than the CLRA, as Plaintiff does not currently seek monetary relief under the CLRA, but rather intends to amend her Complaint to seek such relief;

C. For an order requiring Defendant to immediately cease and desist from selling its misbranded food products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

E. For an order awarding attorneys' fees and costs;

F. For an order awarding pre- and post-judgment interest; and

For an order providing such further relief as this Court deems proper.

DATED: January 31, 2014

THE VEEN FIRM, P.C.
CHAVEZ & GERTLER LLP

By: [signature]
Jonathan E. Gertler
Attorneys for Plaintiffs

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Jonanthan E. Gertler (SBN 111531)
Dan Gildor (SBN 223027)
CHAVEZ & GERTLER LLP
42 Miller Avenue, Mill Valley, California 94941
TELEPHONE NO.: (415) 381-5599 FAX NO.: (415) 381-5572
ATTORNEY FOR (Name): Plaintiff and the Proposed Class

FOR COURT USE ONLY

ENDORSED FILED ALAMEDA COUNTY
FEB 03 2014
CLERK OF THE SUPERIOR COURT
By [signature] Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
STREET ADDRESS: 1225 Fallon Street
MAILING ADDRESS:
CITY AND ZIP CODE: Oakland, California 94612
BRANCH NAME:

CASE NAME: Nathasha Arens v. Popcorn, Indiana, LLC

CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation

[ ] Counter [ ] Joinder

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

CASE NUMBER: RG14712371

JUDGE:

DEPT.:

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

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

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

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

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

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

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

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

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

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

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

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (not specified above) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (not specified above) (43)

2. This case [X] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [X] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [X] Substantial amount of documentary evidence
   d. [X] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [X] Substantial postjudgment judicial supervision

BY FAX

3. Remedies sought (check all that apply): a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action (specify): Six (6)
5. This case [X] 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: January 31, 2014

Jonathan E. Gertler
(TYPE OR PRINT NAME)

[signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

Short Title: Arens v. Popcorn

Case Number:

CIVIL CASE COVER SHEET ADDENDUM

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

[X] Oakland, Rene C. Davidson Alameda County Courthouse (446)
[ ] Hayward Hall of Justice (447)
[ ] Pleasanton, Gale-Schenone Hall of Justice (448)

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

EXHIBIT 2

ENDORSED
FILED
ALAMEDA COUNTY
MAR 1 ...
CLERK OF ...
By ...

CALL & JENSEN
A Professional Corporation
Matthew R. Orr, Bar No. 211097
Scott R. Hatch, Bar No. 241563
Joshua G. Simon, Bar No. 264714
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Attorneys for Defendant Popcorn, Indiana LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

NATASHA ARENS, on behalf of herself, and on behalf of all others similarly situated, Plaintiff, vs. POPCORN, INDIANA, LLC, AND DOES 1 THROUGH 100, inclusive, Defendants.	Case No. RG14712371 Assigned for all purposes to: Hon. Wynne Carvill, Dept. 21 **GENERAL DENIAL AND AFFIRMATIVE DEFENSES OF POPCORN, INDIANA LLC** **DEMAND FOR JURY TRIAL** Complaint Filed: February 3, 2014 Trial Date: None Set

FAXED

Popcorn, Indiana LLC ("Defendant" or "Popcorn Indiana"), in response to Plaintiff Natasha Arens's ("Plaintiff") unverified Class Action Complaint ("Complaint"), hereby answers the allegations of the Complaint as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30(d), Popcorn, Indiana LLC ("Defendant" or "Popcorn Indiana") denies, generally and specifically, conjunctively and disjunctively, each and every allegation of the Complaint, and each and every cause of action contained and asserted therein. Defendant further denies that it is or will be liable to Plaintiff to any

CALL & JENSEN EST 1981

degree and in any sum whatsoever. Defendant further denies, generally and specifically, that Plaintiff has suffered damages in the amount alleged, or in any sum, or that Plaintiff is entitled to any relief at all, by reason of any wrongful act or omission or purported act or omission of Defendant. Defendant further denies that this case is appropriate for class or representative treatment.

AFFIRMATIVE DEFENSES

Without admitting any of the facts alleged in the Complaint, Defendant further alleges the following separate and independent affirmative defenses, without prejudice to Defendant's right to argue that Plaintiff bears the burden of proof or persuasion as to any one or more of said defenses.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim and/or sufficient facts upon which relief can be granted. Plaintiff's Complaint fails to allege the time, place, manner and substance regarding her purported reliance on Popcorn Indiana's alleged representations.

SECOND AFFIRMATIVE DEFENSE

Popcorn Indiana's compliance with FDA and FTC regulations is a complete and/or partial defense to Plaintiff's claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are preempted by federal law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of primary jurisdiction.

FIFTH AFFIRMATIVE DEFENSE

Certain additional defenses to the Complaint, or to one or more of the purported causes of action contained therein, may be available to Defendant. However, these additional defenses require discovery before they can be properly alleged. Defendant will move to amend its Answer, if necessary, to allege such defenses once they have been ascertained or according to proof at that time.

Dated: March 19, 2014

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Scott R. Hatch
Joshua G. Simon

By: Matt Orr
Matthew R. Orr

Attorneys for Defendant Popcorn, Indiana LLC

DEMAND FOR JURY

Defendant Popcorn, Indiana LLC hereby demands a jury on all issues raised in the Complaint of Plaintiff.

Dated: March 19, 2014

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Scott R. Hatch
Joshua G. Simon

By: Matt Orr
Matthew R. Orr

Attorneys for Defendant Popcorn, Indiana LLC

CALL & JENSEN EST. 1981

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On March 19, 2014, I served the foregoing document described as **GENERAL DENIAL AND AFFIRMATIVE DEFENSES OF POPCORN, INDIANA LLC** on the following person(s) in the manner indicated:

SEE ATTACHED SERVICE LIST

[ ] (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

[X] (BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call & Jensen, Newport Beach, California, following ordinary business practices.

[ ] (BY FEDEX) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Call & Jensen, Newport Beach, California, following ordinary business practices.

[ ] (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, attached hereto, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

[ ] (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of ______________ the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

CALL & JENSEN

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 19, 2014, at Newport Beach, California.

Denise Reigel

SERVICE LIST

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Anthony L. Label, Esq.
Steven A. Kronenberg, Esq.
The Veen Firm, P.C.
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Plaintiff Natasha Arens, on behalf of herself, and on behalf of all others similarly situated

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Attorneys for

Plaintiff Natasha Arens, on behalf of herself, and on behalf of all others similarly situated

EXHIBIT 3

Chavez & Gertler LLP
Attn: Gertler, Jonathan E.
42 Miller Avenue
Mill Valley, CA 94941

Popcorn Indiana, LLC

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Arens Plaintiff/Petitioner(s) vs. Popcorn Indiana, LLC Defendant/Respondent(s) (Abbreviated Title)	No. RG14712371 Order Complaint Business Tort/Unfair Business Practice

The Complex Determination Hearing was set for hearing on 03/11/2014 at 08:45 AM in Department 21 before the Honorable Wynne Carvill. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. The matter is assigned for all purposes including trial to Department 21 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq.

COMPLEX CASE FEES

Pursuant to Government Code section 70616, any non-exempt party who has appeared in the action but has not paid the complex case fee is required to pay the fee within ten days of the filing of this order. The complex case fee is $1,000 for each plaintiff or group of plaintiffs appearing together and $1,000 PER PARTY for each defendant, intervenor, respondent or other adverse party, whether filing separately or jointly, up to a maximum of $18,000 for all adverse parties. All payments must identify on whose behalf the fee is submitted. Please submit payment to the attention of the Complex Litigation Clerk located in the Civil Division at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. Please make check(s) payable to the Clerk of the Superior Court. Documents may continue to be filed as allowed under Local Rule 1.9.

PROCEDURES

Calendar information, filings, and tentative rulings are available to the public at http://www.alameda.courts.ca.gov/domainweb/. All counsel are expected to be familiar and to comply with pertinent provisions of the Code of Civil Procedure, the California Rules of Court, the Alameda County Superior Court Local Rules, and the protocols set forth on the Court's website for Department 21.

All motions and ex parte applications shall be noticed for hearing in Department 21. The parties shall reserve hearing dates and times by contacting the Department 21 courtroom clerk via email at Dept.21@alameda.courts.ca.gov . The courtroom clerk can also be contacted by phone at (510) 267-6937, but phone contact should be used very sparingly. E-mail is the preferred method of communication.

Courtesy (bench) copies of all filings should be delivered directly to Dept. 21 and may be left in the drop box when court is in session. The Court may also direct that certain filings be supplemented by an electronic copy (via e-mail to Dept.21@alameda.courts.ca.gov or by CD-ROM lodged with the clerk in Dept. 21). Any such electronic copy of documents shall be in Microsoft Word readable form (Microsoft Word, Word Perfect, a TIF or JPEG file inserted into a Word file, or any other format that can be saved in a Microsoft Word document). Each separate document (notice, points and authorities, declarations, requests for judicial notice, et al) must be in a separate file in the diskette and the computer files must be identified in a fashion to permit accurate identification by Court personnel (e.g. "Notice.doc," "Points and Authorities.doc," "Li Declaration.doc," "Johnson Declaration.doc," and "Proof of Service.doc," NOT "Quashnot.doc," "briefdraft3.doc," "Defdecl.doc," "Decl2revised.doc," or "Form5.doc.") Electronic media submitted will not be returned.

CASE MANAGEMENT

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a just, speedy and economical determination of the litigation.

Case Management Statements may be filed by E-Delivery, by emailing them to the following address: EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information, go to Direct Calendar Departments at http://apps.alameda.courts.ca.gov/domainweb. However, courtesy copies of statements must be delivered directly to Dept. 21. The filing and delivery date is not later than five court days before the conference.

The Court strongly prefers joint CCMC statements prepared in narrative form, and not using Form CM-110, after counsel have met and conferred as required by CRC 3.724. CCMC statements must address the following issues when applicable:

A. A brief factual summary to assist the Court in understanding the background of the case, a statement of the issues presented, including each theory of liability and defense and a summary of the facts supporting each position taken, and the relief sought, including an estimate of damages.

B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;

C. Deadlines and limits on joinder of parties and amended or additional pleadings;

D. Class discovery and class certification;

E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;

F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;

G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:

(1) unserved parties and the reasons for the failure to serve;

(2) unserved and/or unfiled cross-complaints;

(3) related actions pending in any jurisdiction and the potential for coordination or consolidation;

(4) any possible jurisdictional or venue issues that may arise;

(5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;

(6) unresolved law and motion matters;

(7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation,

judicial or contractual arbitration;

(8) severance of issues for trial; and

(9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date.

H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel [for plaintiff(s) and/or defendant(s)] to streamline service of process and/or management of discovery, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

SERVICE OF THIS ORDER

Counsel for plaintiff(s) shall have a continuing obligation to serve a copy of this order on newly joined parties defendant not listed on the proof of service of this order and file proof of service. Each party defendant joining any third party cross-defendant shall have a continuing duty to serve a copy of this order on newly joined cross-defendants and to file proof of service.

Dated: 03/11/2014

Facsimile

Judge Wynne Carvill

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Arens Plaintiff/Petitioner(s) vs. **Popcorn Indiana, LLC** Defendant/Respondent(s) **(Abbreviated Title)**	**No. RG14712371** **Minutes**

Department 21 Honorable Wynne Carvill , Judge

Cause called for: Complex Determination Hearing on March 11, 2014.

There being no request for oral argument, the court affirms its tentative ruling in its entirety.

The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. The matter is assigned for all purposes including trial to Department 21 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq.

COMPLEX CASE FEES

Pursuant to Government Code section 70616, any non-exempt party who has appeared in the action but has not paid the complex case fee is required to pay the fee within ten days of the filing of this order. The complex case fee is $1,000 for each plaintiff or group of plaintiffs appearing together and $1,000 PER PARTY for each defendant, intervenor, respondent or other adverse party, whether filing separately or jointly, up to a maximum of $18,000 for all adverse parties. All payments must identify on whose behalf the fee is submitted. Please submit payment to the attention of the Complex Litigation Clerk located in the Civil Division at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. Please make check(s) payable to the Clerk of the Superior Court. Documents may continue to be filed as allowed under Local Rule 1.9.

PROCEDURES

Calendar information, filings, and tentative rulings are available to the public at http://www.alameda.courts.ca.gov/domainweb/. All counsel are expected to be familiar and to comply with pertinent provisions of the Code of Civil Procedure, the California Rules of Court, the Alameda County Superior Court Local Rules, and the protocols set forth on the Court's website for Department 21.

All motions and ex parte applications shall be noticed for hearing in Department 21. The parties shall reserve hearing dates and times by contacting the Department 21 courtroom clerk via email at Dept.21@alameda.courts.ca.gov . The courtroom clerk can also be contacted by phone at (510) 267-6937, but phone contact should be used very sparingly. E-mail is the preferred method of communication.

Courtesy (bench) copies of all filings should be delivered directly to Dept. 21 and may be left in the drop box when court is in session. The Court may also direct that certain filings be supplemented by an electronic copy (via e-mail to Dept.21@alameda.courts.ca.gov or by CD-ROM lodged with the clerk in Dept. 21). Any such electronic copy of documents shall be in Microsoft Word readable form (Microsoft Word, Word Perfect, a TIF or JPEG file inserted into a Word file, or any other format that can be saved in a Microsoft Word document). Each separate document (notice, points and authorities, declarations, requests for judicial notice, et al) must be in a separate file in the diskette and the computer files must be identified in a fashion to permit accurate identification by Court personnel (e.g. "Notice.doc," "Points and Authorities.doc," "Li Declaration.doc," "Johnson Declaration.doc," and "Proof of Service.doc," NOT "Quashnot.doc," "briefdraft3.doc," "Defdecl.doc," "Decl2revised.doc," or "Form5.doc.") Electronic media submitted will not be returned.

CASE MANAGEMENT

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a just, speedy and economical determination of the litigation.

Case Management Statements may be filed by E-Delivery, by emailing them to the following address: EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information, go to Direct Calendar Departments at http://apps.alameda.courts.ca.gov/domainweb. However, courtesy copies of statements must be delivered directly to Dept. 21. The filing and delivery date is not later than five court days before the conference.

The Court strongly prefers joint CCMC statements prepared in narrative form, and not using Form CM-110, after counsel have met and conferred as required by CRC 3.724. CCMC statements must address the following issues when applicable:

A. A brief factual summary to assist the Court in understanding the background of the case, a statement of the issues presented, including each theory of liability and defense and a summary of the facts supporting each position taken, and the relief sought, including an estimate of damages.

B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;

C. Deadlines and limits on joinder of parties and amended or additional pleadings;

D. Class discovery and class certification;

E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;

F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;

G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:

(1) unserved parties and the reasons for the failure to serve;

(2) unserved and/or unfiled cross-complaints;

(3) related actions pending in any jurisdiction and the potential for coordination or consolidation;

(4) any possible jurisdictional or venue issues that may arise;

(5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;

(6) unresolved law and motion matters;

(7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation, judicial or contractual arbitration;

(8) severance of issues for trial; and

(9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date.

H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel [for plaintiff(s) and/or defendant(s)] to streamline service of process and/or management of discovery, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

SERVICE OF THIS ORDER

Counsel for plaintiff(s) shall have a continuing obligation to serve a copy of this order on newly joined parties defendant not listed on the proof of service of this order and file proof of service. Each party defendant joining any third party cross-defendant shall have a continuing duty to serve a copy of this order on newly joined cross-defendants and to file proof of service.

Minutes of 03/11/2014
Entered on 03/11/2014

Executive Officer / Clerk of the Superior Court

By yestrada
Digital
Deputy Clerk

JS 44 (Rev. 12/12) cand rev (1/15/13)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
NATASHA ARENS, on behalf of herself, and on behalf of all others similarly situated,

DEFENDANTS
POPCORN, INDIANA, LLC, AND DOES 1 THROUGH 100, inclusive,

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

County of Residence of First Listed Defendant State of New Jersey
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
William L. Veen, Esq.
The Veen Firm, P.C.
711 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Tel: (415) 673-4800

Attorneys *(If Known)*
Matthew R. Orr, Esq.
Call & Jensen, APC
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Tel: (949) 717-3000

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

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [ ] 2 U.S. Government Defendant
- [X] 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)* *(For Diversity Cases Only)*

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

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

CONTRACT
110 Insurance; 120 Marine; 130 Miller Act; 140 Negotiable Instrument; 150 Recovery of Overpayment & Enforcement of Judgment; 151 Medicare Act; 152 Recovery of Defaulted Student Loans (Excludes Veterans); 153 Recovery of Overpayment of Veteran's Benefits; 160 Stockholders' Suits; 190 Other Contract; 195 Contract Product Liability; 196 Franchise

REAL PROPERTY
210 Land Condemnation; 220 Foreclosure; 230 Rent Lease & Ejectment; 240 Torts to Land; 245 Tort Product Liability; 290 All Other Real Property

TORTS
PERSONAL INJURY
310 Airplane; 315 Airplane Product Liability; 320 Assault, Libel & Slander; 330 Federal Employers' Liability; 340 Marine; 345 Marine Product Liability; 350 Motor Vehicle; 355 Motor Vehicle Product Liability; 360 Other Personal Injury; 362 Personal Injury - Medical Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability; 367 Health Care/ Pharmaceutical Personal Injury Product Liability; 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud; 371 Truth in Lending; 380 Other Personal Property Damage; 385 Property Damage Product Liability

CIVIL RIGHTS
440 Other Civil Rights; 441 Voting; 442 Employment; 443 Housing/ Accommodations; 445 Amer. w/Disabilities - Employment; 446 Amer. w/Disabilities - Other; 448 Education

PRISONER PETITIONS
Habeas Corpus: 463 Alien Detainee; 510 Motions to Vacate Sentence; 530 General; 535 Death Penalty
Other: 540 Mandamus & other; 550 Civil Rights; 555 Prison Condition; 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881; 690 Other

LABOR
710 Fair Labor Standards Act; 720 Labor/Management Relations; 740 Railway Labor Act; 751 Family and Medical Leave Act; 790 Other Labor Litigation; 791 Employee Retirement Income Security Act

IMMIGRATION
462 Naturalization Application; 465 Other Immigration Actions

BANKRUPTCY
422 Appeal 28 USC 158; 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
820 Copyrights; 830 Patent; 840 Trademark

SOCIAL SECURITY
861 HIA (1395ff); 862 Black Lung (923); 863 DIWC/DIWW (405(g)); 864 SSID Title XVI; 865 RSI (405(g))

FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant); 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
375 False Claims Act; 400 State Reapportionment; 410 Antitrust; 430 Banks and Banking; 450 Commerce; 460 Deportation; 470 Racketeer Influenced and Corrupt Organizations; 480 Consumer Credit; 490 Cable/Sat TV; 850 Securities/Commodities/ Exchange; [X] 890 Other Statutory Actions; 891 Agricultural Acts; 893 Environmental Matters; 895 Freedom of Information Act; 896 Arbitration; 899 Administrative Procedure Act/Review or Appeal of Agency Decision; 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. §§ 1332, 1441, and 1453
Brief description of cause:
Class Action Fairness Act of 2005

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

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

DATE March 21, 2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew R. Orr

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)
(Place an "X" in One Box Only) [ ] SAN FRANCISCO/OAKLAND [ ] SAN JOSE [ ] EUREKA