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ATTORNEYS FOR DEFENDANT
SKINNYPOP POPCORN LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated, Plaintiffs, v. SKINNYPOP POPCORN LLC, AND DOES 1-100, inclusive, Defendants.	Case No. **SKINNYPOP POPCORN LLC'S NOTICE OF REMOVAL** [Declarations of Andrew Friedman and J. Noah Hagey filed concurrently]

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

PLEASE TAKE NOTICE that Defendant SkinnyPop Popcorn LLC ("SkinnyPop") hereby removes this action from the Superior Court of the State of California for the County of San Mateo to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. In accordance with 28 U.S.C. § 1446(a), set forth below is a statement of the grounds for removal.

INTRODUCTION

1. By no later than October 2013, Plaintiffs' lawyers began soliciting clients to sue SkinnyPop through trolling social media and mailing letters to purchasers of SkinnyPop popcorn asking them if they would like participate in a lawsuit.

2. On February 3, 2014, Plaintiffs Rachel Dossey and Louise Tang (collectively, "Plaintiffs") filed this action against SkinnyPop, entitled *Rachel Dossey and Louise Tang, on behalf of themselves, and on behalf of all others similarly situated v. SkinnyPop Popcorn LLC, and Does 1-100, inclusive*, Case No. CIV 526548, in the Superior Court of the State of California for the County of San Mateo.

3. On February 3, 2014 SkinnyPop received a copy of the Complaint, Civil Case Cover Sheet, Summons, and Notice of Case Management Conference. True and correct copies of these documents and attached hereto as Exhibit 1.

4. The Complaint purports to allege causes of action against SkinnyPop for violation of California Business and Professions Code §§ 17200 and 17500 *et seq*., and the Consumer Legal Remedies Act § 1770 *et seq*., based on SkinnyPop's alleged improper labeling of its packaged popcorn products.

5. On February 6, 2014 SkinnyPop filed an Answer denying the allegations in the Complaint and reserving a number of affirmative defenses, including its right to remove this action to federal Court. A true and correct copy of the Answer is attached hereto as Exhibit 2.

6. On February 18, 2014, Plaintiffs filed a demurrer to SkinnyPop's affirmative defenses. A true and correct copy of the Demurrer is attached hereto as Exhibit 3.

7. On February 20, 2014 the Clerk of the Superior Court of the State of California for the County of San Mateo designated this action as complex and set a Complex Case Status Conference for April 22, 2014. A true and correct copy of this Notice is attached hereto as Exhibit 4.

FEDERAL JURISIDICTION EXISTS UNDER THE CLASS ACTION FAIRNESS ACT

8. This action is removable to this Court because federal diversity jurisdiction exists over Plaintiffs' claims under the Class Action Fairness Act of 2005 ("CAFA"), codified at 28 U.S.C. § 1332(d) and 1453. CAFA was passed to facilitate the removal of extortive "class action" claims to the Federal Courts. In explaining why CAFA was a necessary reform, the Senate Report stated:

> The current rules governing federal jurisdiction have the unintended consequence of keeping most class actions out of federal court, even though most class actions are precisely the type of case for which diversity jurisdiction was created. In addition, current law enables plaintiffs' lawyers who prefer to litigate in state courts to easily "game the system" and avoid removal of large interstate class actions to federal court.

S. REP. 109-14, 10, 2005 U.S.C.C.A.N. 3, 11.

9. CAFA provides for removal if: (1) the proposed class consists of 100 or more members; (2) the aggregate amount in controversy exceeds $5,000,000, exclusive of interests and costs; and (3) any member of the proposed plaintiff class is a citizen of a different state than any defendant. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5), (d)(6), and § 1453(b). Each of these elements is present here.

A. This Case is a Putative Class Action with Over 100 Proposed Class Members

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

11. 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 as "class action" because 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, one or more may sue or defend for the benefit of all." Thus, this action qualifies as a class action under CAFA.

12. 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 Plaintiffs seek to represent a class of "all residents of California who, within the last four years, purchased a Defendant brand … in California" (Ex. 1 ¶ 57) and allege that "it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable." (*Id.* ¶ 59.) Thus, on the face of the pleadings there are more than 100 members in Plaintiffs' proposed class.

13. Further, as demonstrated in the Declaration of Andrew Friedman ("Friedman Decl."), filed concurrently with this Notice, Defendant's sales records indicate that the purported class comprises more than 100 individuals. (Friedman Decl. ¶ 3.)

B. The Aggregate Amount in Controversy Exceeds $5,000,000

14. 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).

15. 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). The Friedman Declaration establishes 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").

16. Plaintiffs bring this action on behalf of a purported California class of consumers consisting of "all residents of California who, within the last four years, purchased a Defendant

brand…in California" (Ex. 1 ¶ 57), and seek "an order enjoining Defendant from further unlawful or deceptive conduct." (*Id.* ¶ 4.) Plaintiffs further seek "compensatory damages and restitution, with interest, for the amounts paid by consumers for SkinnyPop popcorn products" from February 2010 to February 2014, because each Plaintiff "would not have purchased the product has she known the truth about its misleading labeling." (*Id.*, ¶¶ 4-6 [mis-numbered as ¶¶ 1-2].)

17. SkinnyPop denies Plaintiffs' false allegations of liability, injury, and damages and will oppose certification of the putative class. However, taking Plaintiffs' 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).

18. The relief, damages, restitution and attorneys' fees claimed by the class representatives for treatment on a class basis for all California consumer 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 products labeling, and destroying old labeling as demanded in the Complaint, as further detailed in the Declaration of Andrew Friedman 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 Declaration of Andrew Friedman filed under seal with the Court;

c. Plaintiffs' attorneys' fees, which they will demand are no less than $2.5 million following trial. (Declaration of J. Noah Hagey ("Hagey Decl.") ¶ 5.)

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

C. All Class Members are Citizens of a Different State than Defendant

20. CAFA jurisdiction is present 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 Chicago-based corporation, and Plaintiffs (and the putative class) are all citizens of California. (Compl. ¶¶ 1, 5-7 [mis-numbered ¶¶ 1-3].)

21. "[A] corporation shall be deemed to be a citizen of every State and foreign state by which is has been incorporated and of the State or foreign state where it has its principal place of business." 28 U.S.C. § 1332(c)(1). Plaintiffs allege, "SkinnyPop Popcorn LLC is an Illinois Limited Liability Company with its principal place of business in Skokie, Illinois." (Ex. 1, ¶ 7 [mis-numbered as ¶ 3].)

22. Plaintiffs also allege Plaintiff Dossey "is a California citizen who resides in San Francisco County" and that Plaintiff Tang "is a California citizen who resides in San Mateo County." (Ex. 1, ¶¶ 5,6 [mis-numbered as ¶¶ 1,2].)

23. As such, 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).

D. None of the CAFA Exceptions Apply

24. 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).

25. 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-third of the members of the proposed class are citizens of California. Therefore, this section does not apply.

26. 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 in 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-third 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 sections applies.

27. Under 28 U.S.C. § 1332(d)(9)(A), (B), and (C), CAFA does not apply to the following categories of actions: (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…". This action does not fall within any of these categories, therefore this exception does not apply.

E. The Procedural Requirements Are Satisfied

28. 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 San Mateo. 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.

29. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders are attached hereto as Exhibits 1-4. A copy of the state court docket is attached hereto as Exhibit 5.

30. SkinnyPop will serve written notice of the removal of this action upon all parties promptly and will file such notice with the Clerk of the Superior Court of the State of California for the County of San Mateo.

CONCLUSION

31. WHEREFORE, Defendant SkinnyPop Popcorn LLC hereby removes this case from the California Superior Court for the County of San Mateo, to this federal district court.

Dated: March 4, 2014

BRAUNHAGEY & BORDEN LLP

By: /s
J. Noah Hagey

Attorneys for SKINNYPOP POPCORN LLC

EXHIBIT 1

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Attorneys for Plaintiffs and the Proposed Class

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

UNLIMITED JURISDICTION

CIV 526548

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

CASE NO.

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

DROP BOX

FEB 03 2014

510 PM

Time

INTRODUCTION

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

2. Defendant labels, advertises and promotes its products as being lower in calories and fat than competing snack and "junk" foods. Skinny Pop popcorn is advertised and promoted by Defendant as a healthy snack that can help consumers lose weight. Despite Defendant's claims that its snack products are "low-fat" and "low-calorie," a serving of Skinny Pop is not lower in fat or calories than Defendant's full calorie products. Further, Skinny Pop 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 Skinny Pop popcorn. Nonetheless, to exploit and profit from the fact that health claims increase product sales, Defendant has continued to falsely label and market Skinny Pop popcorn.

4. This action seeks compensatory damages and restitution, with interest, for the amounts paid by consumers for Skinny Pop 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 Defendant from further unlawful or deceptive conduct, as to Skinny Pop popcorn and other snack food products as to which SkinnyPop is violating the law, as well as attorneys' fees and costs.

THE PARTIES

1. Plaintiff Rachel Dossey ("Ms. Dossey" or "Plaintiff") is a California citizen who resides in San Francisco County. Plaintiff read some of Defendant's misrepresentations which were on the label prior to purchasing Skinny Pop popcorn, and relied on, and was deceived by, those misrepresentations and deceptive communications in purchasing Skinny Pop popcorn

products in California. Plaintiff would not have purchased the product had she known the truth about its misleading labeling.

2. Plaintiff Louise Tang ("Ms. Tang" or "Plaintiff") is a California citizen who resides in San Mateo County. Plaintiff read some of Defendant's misrepresentations which were on the label prior to purchasing Skinny Pop popcorn, and relied on, and was deceived by, those misrepresentations and deceptive communications in purchasing Skinny Pop popcorn products in San Mateo County, California, and elsewhere. Plaintiff would not have purchased the product had she known the truth about its misleading labeling.

3. Defendant SkinnyPop Popcorn, LLC is an Illinois Limited Liability Company with its principal place of business in Chicago, Illinois.

4. 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.

5. 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.

6. 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

1. This Court has jurisdiction over Plaintiffs' and the Class claims because Defendant regularly conducts business in California through the sale of Skinny Pop popcorn in California to California consumers, and because the violations of law alleged herein occurred throughout the State of California.

2. Venue is appropriate in the County of San Mateo because Ms.Tang resides in San Mateo County, and purchased products within that county.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

13. Defendant labels, advertises, and promotes that its Skinny Pop 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 Skinny Pop popcorn products instead of the healthy, alternative snack they are actually seeking. In reality, the Skinny Pop popcorn products are no lower in fat or calories than most market-leading, full calorie snacks.

14. Defendant has knowledge that health and fitness claims increase product sales; that was its motive in creating its Skinny Pop popcorn products. Defendant sponsors CHAARG (Changing Health, Attitudes, and Actions to Recreate Girls), an organization dedicated to promoting health and fitness for girls and women, and sponsors beauty pageants for girls and women.

15. Defendant's marketing, advertising, and promotional strategies focus on providing female bloggers with free product samples in exchange for writing product reviews that make representations that Defendant cannot lawfully state on its own product labeling. Rather than correcting erroneous and misleading "low fat" and "low calorie" representations, Defendant adopts these misleading representations as its own in social media so it can profit from them. Invariably, these reviews express or imply that Skinny Pop popcorn is healthy, low in fat, and/or low in calories, even though it is none of these.

16. For example, Defendant adopted, promoted, and profited from a product reviewer's representation that it was a good idea for parents to feed an entire 700-calorie bag of Skinny Pop (containing 45 grams of fat, about 70% of an entire Daily Value) to their young children, saying:

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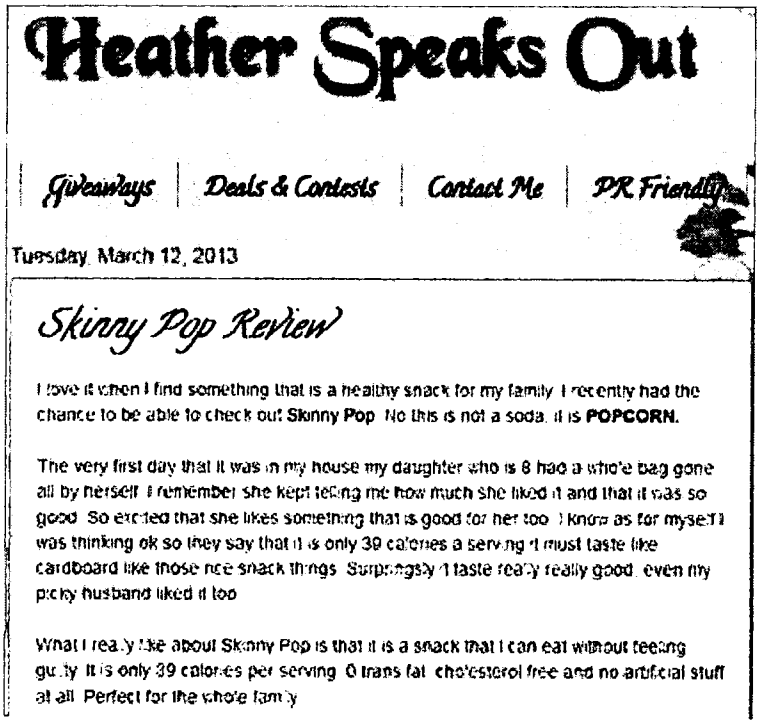


Heather Speaks Out

Giveaways | Deals & Contests | Contact Me | PR Friendly

Tuesday, March 12, 2013

Skinny Pop Review

I love it when I find something that is a healthy snack for my family. I recently had the chance to be able to check out Skinny Pop. No this is not a soda, it is **POPCORN.**

The very first day that it was in my house my daughter who is 8 had a whole bag gone all by herself. I remember she kept telling me how much she liked it and that it was so good. So excited that she likes something that is good for her too. I know as for myself I was thinking ok so they say that it is only 39 calories a serving it must taste like cardboard like those rice snack things. Surprisingly it taste really really good, even my picky husband liked it too.

What I really like about Skinny Pop is that it is a snack that I can eat without feeling guilty. It is only 39 calories per serving. 0 trans fat, cholesterol free and no artificial stuff at all. Perfect for the whole family.

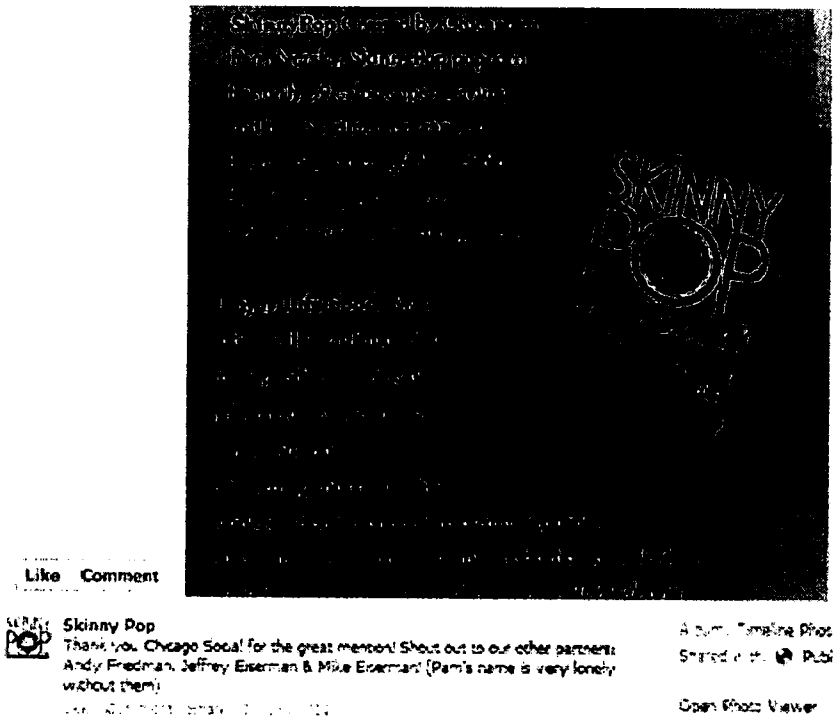
Skinny Pop is "a healthy snack for my family . . . . [My] daughter who is 8 had a whole bag . . . all by herself . . . . What I really like about Skinny Pop is that it is a snack that I can eat without feeling guilty. It is only 39 calories per serving . . . . Perfect for the whole family."

http://heatherspeaksout.blogspot.com/2013/03/skinny-pop-review.html

17. The day after Heather posted her review, Defendant simply thanked the reviewer for writing about "a really good healthy snack" and linked to the review Defendant adopted the reviewer's representations as its own and chose not to correct the reviewer's multiple erroneous representations, including but not limited to: that Skinny Pop popcorn contains 39 calories per serving, even though a serving contains 155 calories. Defendant made this decision because its business model depends on deceiving consumers into purchasing its high-calorie, fat-filled product.

18. The review discussed above is one of many examples where Defendant has misled consumers about the calories per cup vs. per multiple-cup serving. Defendant's Facebook page adopted and chose not to correct erroneous representations about the calories per serving listed in other publications and other generally misleading promotions, such as falsely representing that it

is okay to eat an entire bag, because the product purportedly is low in calories: "[Oh my God]!!! I accidentally ate the whole thing!!! Luckily it's "SKINNY!!!"



Skinny Pop
OMG!! I accidentally ate the whole thing!! Luckily it's SKINNY!!

https://www.facebook.com/photo.php?fbid=454263285338&set=a.430124680338.225249.377584220338&type=1&permPage=1

19. Pursuant to the Sherman Law, California has expressly adopted the federal labeling requirements as its own and indicated that "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food regulations of this state." California Health & Safety Code § 110100.

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.

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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).

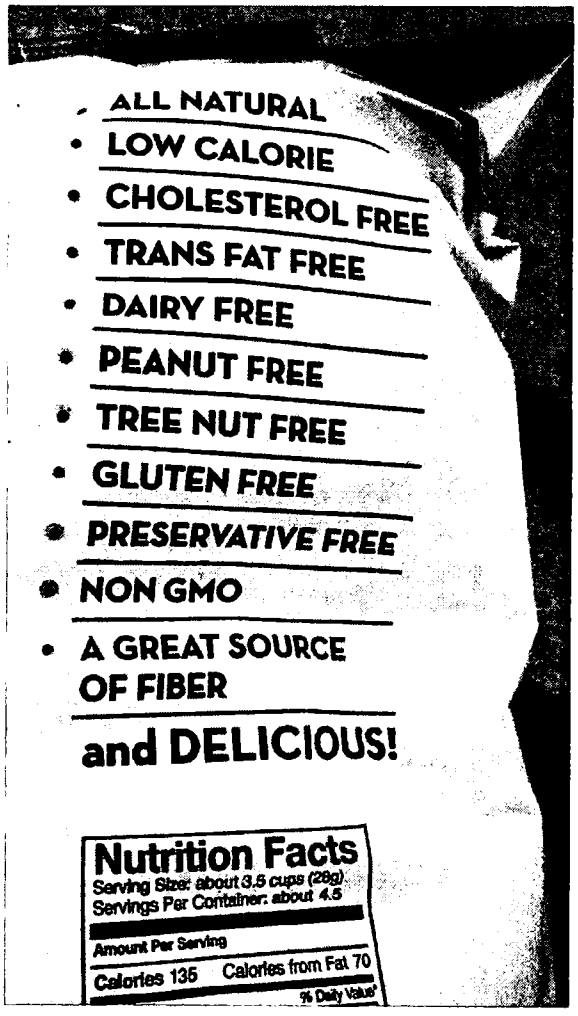
26. FDA regulations authorize use of a limited number of defined nutrient content claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on food labels, FDA's regulations authorize the use of only certain synonyms for these defined terms. If a nutrient content 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.

29. During the statutory period, Defendant's labeling represented that its popcorn was "low calorie":

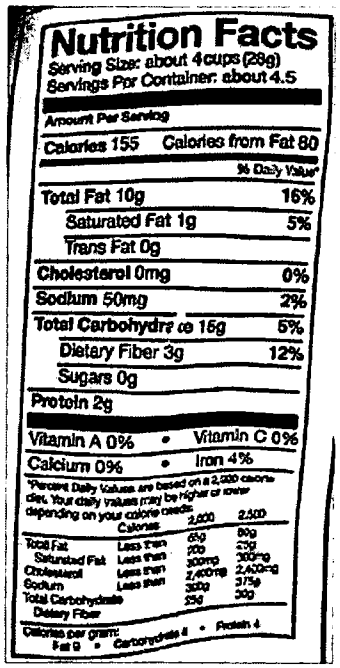


http://runeatplayblog.com/wp-content/uploads/2012/04/0302.jpg

30. Under 21 C.F.R. § 101.60(b)(2)(i)(A), the label of a food with a serving size of 30 grams or less can state that it is "low calorie" only if it "does not provide more than 40 calories per reference amount customarily consumed ["RACC"], and . . . .per 50 [grams]." *See* 21 C.F.R.

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

31. Defendant does not meet these "low calorie" criteria. The Nutrition Facts for Defendant's former label (above) provide that a 28-gram serving of Skinny Pop popcorn contained 135 calories (about 145 calories per RACC and 241 calories per 50 grams), which is far more than the 40 calories per RACC limitation for a "low calorie" food. Defendant's current Nutrition Facts panel represents that it provides 155 calories per 28-gram serving (166 calories per RACC and 277 calories per 50 grams):



Nutrition Facts

Serving Size: about 4 cups (28g)
Servings Per Container: about 4.5

Amount Per Serving

Calories 155 Calories from Fat 80

% Daily Value*

Total Fat 10g	16%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 50mg	2%
Total Carbohydrate 15g	5%
Dietary Fiber 3g	12%
Sugars 0g	
Protein 2g	

Vitamin A 0% • Vitamin C 0%

Calcium 0% • Iron 4%

*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
Saturated 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

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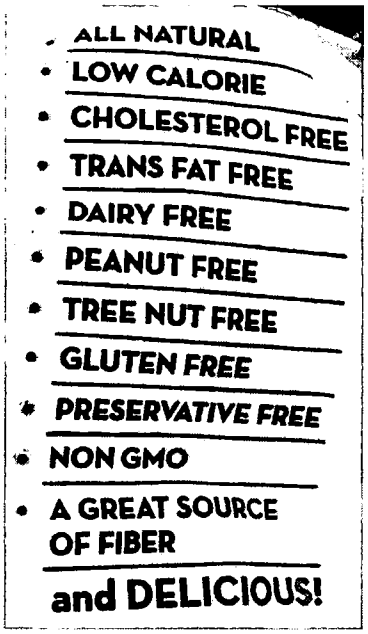
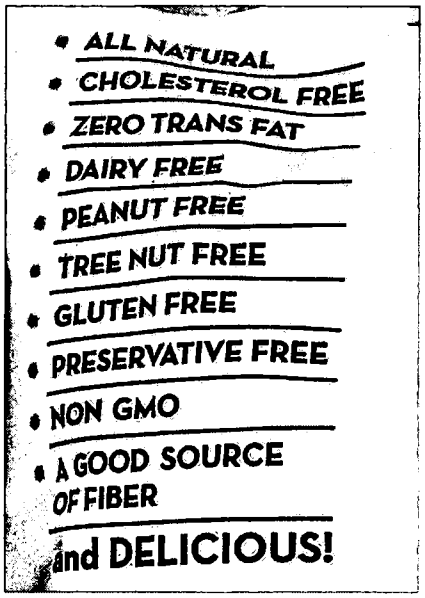
32. Defendant understood that its product labeling violated 21 C.F.R. § 101.60(b)(2)(i)(A), which is why it recently deleted the express "LOW CALORIE" claim:





http://runeatplayblog.com/wp-content/uploads/2012/04/0302.jpg

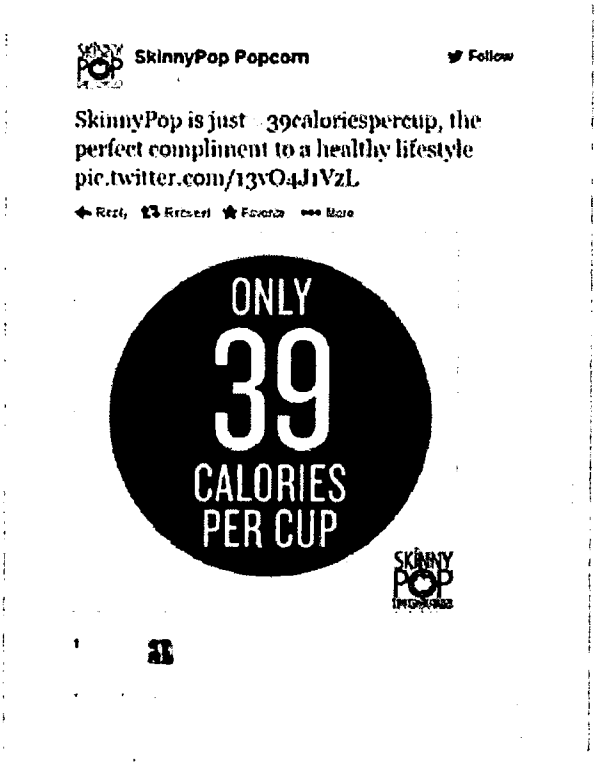
http://2.bp.blogspot.com/-t8lQOOGZsyw/UT_lNnVNN0I/AAAAAAAABG4/M1urF_rNNOw/s1600/13+-+5.jpg

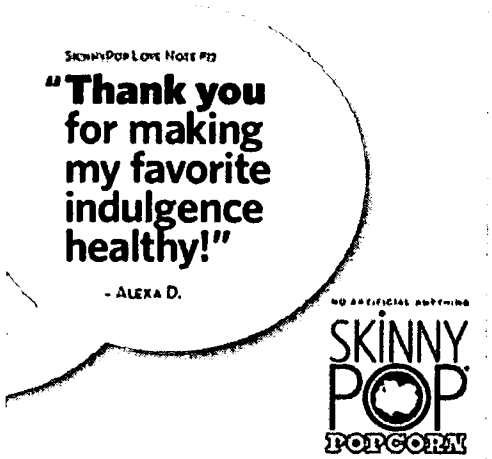
33. However, Defendant's Facebook page continues to make the false, misleading, and unlawful claim that Skinny Pop popcorn is a "LOW CALORIE" food:

ALL NATURAL • LOW CALORIE • CHOLESTEROL FREE • TRANS FAT FREE • DAIRY FREE • PEANUT FREE • TREE NUT FREE • GLUTEN FREE •

https://www.facebook.com/SkinnyPopPopcorn

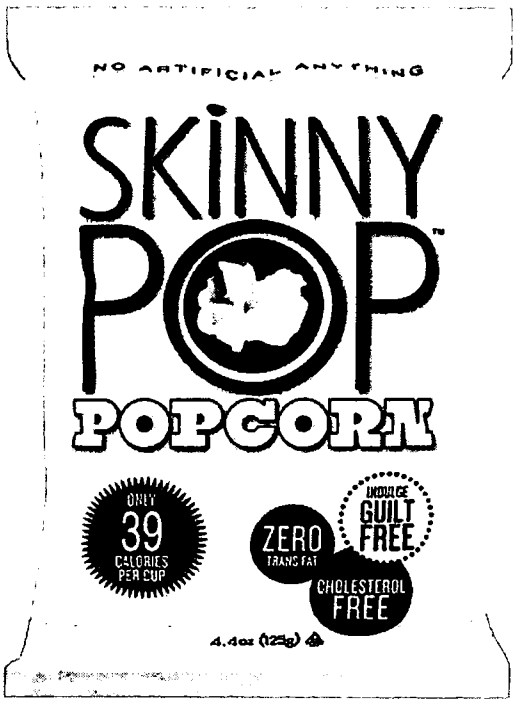
34. The "LOW CALORIE" representation on Defendant's Facebook page is just one example of its pattern and practice of making false and misleading health claims through social media to attempt to circumvent proscriptions against stating these claims directly on product labels. Defendant understands that its popcorn contains far too much fat to qualify for a "healthy" labeling claim under 21 CFR § 101.65(d)(2). Defendant also understands that most consumers do not distinguish among health claims based on whether they are made in labeling, advertising, or promotions, so Defendant simply posts on Twitter and Facebook that Skinny Pop popcorn is a "perfect compliment [sic] to a healthy lifestyle", and "healthy"





35. Defendant's labeling falsely, misleadingly, and deliberately continues to *imply* that its products are low in calories and fails to disclose that Skinny Pop products are *not* low calorie or low fat foods. 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, products that (a) are not low in calories and (b) make an implied low calorie claim must prominently disclaim that the product is "not a low calorie food." 21 C.F.R. § 101.13(i)(2). Defendant fails to provide this disclaimer; its PDP still misleadingly represents that Skinny Pop popcorn contains "ONLY 39 CALORIES PER CUP" without disclaiming that the product is "not a low calorie food":

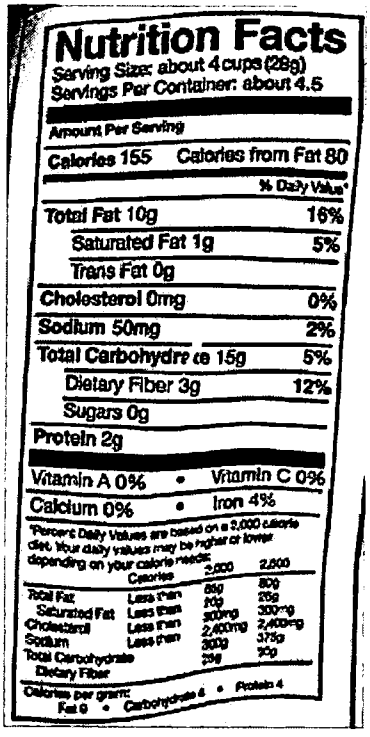


36. On April 2, 2012, the FDA published a Warning Letter that products failing to print the proper disclaimer were misbranded:

> **[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 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** within the meaning of section 403(r)(1)(A) of the Act.

37. The adjacent disclaimer required under 21 C.F.R. § 101.13(i)(2) prevents manufacturers from misrepresenting that their products contain fewer calories than competing products. It also helps consumers avoid overeating, a particular concern of weight-conscious individuals buying and eating a product to help them become or stay "skinny." Tellingly, a serving of Skinny Pop popcorn contains amounts of fat and calories comparable to or greater than many market-leading full-calorie junk foods.

38. Although the Skinny Pop PDP states that the popcorn contains "ONLY 39 CALORIES PER CUP," a serving of Skinny Pop popcorn is four times this volume. The stated serving size is 28 grams, which is "about 4 cups":



39. Defendant reinforces the false, misleading, and unlawful implied low calorie claim with other representations in its labeling, advertising, and promotional practices. The product name is "Skinny" Pop. Defendant's company name is "SkinnyPop Popcorn, LLC." The product label states it is "Popped Skinny":

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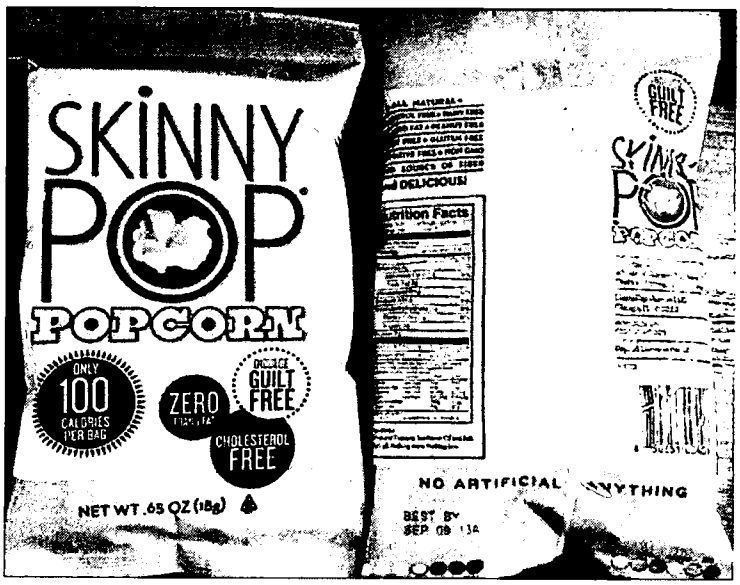
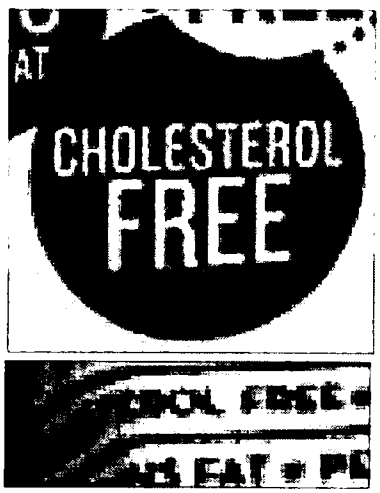
SkinnyPop Popcorn LLC
Chicago, IL 60652

skinnypop.com
888 5-POPCORN

Popped Skinny in the USA

40. Defendant's labeling misleadingly and repeatedly represents it is "cholesterol free":





While it may be technically true that Skinny Pop is "cholesterol free," this claim is misleading, because popcorn is an inherently cholesterol free food. Defendant's representation misleadingly implies that (a) Skinny Pop popcorn has been processed or modified to remove cholesterol that was never there in the first instance, and/or (b) other popcorn contains cholesterol. Defendant's representation violates 21 C.F.R. § 101.61(b)(1)(iii) that requires it to qualify the "cholesterol free" claim by stating that popcorn is "a cholesterol free food."

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41. During the statutory period, Defendant's labeling asserted that its popcorn was a "great" source of fiber:

The FDA does not authorize manufacturers to represent that a product is a "great" source of any nutrient. A product that contains 20% or more of the RDI (recommended daily intake) or DRV (daily recommended value) may only claim that it is "high," "rich in," or an "excellent source of" a nutrient. 21 CFR §§ 101.54(a)(1), (b).

42. Even if one deemed "great" to be synonymous with the approved terms "high," "rich in," or an "excellent source of," fiber, Skinny Pop popcorn has never provided 20% or more of the Daily Value for fiber. 21 CFR § 101.54(b). Defendant's labeling concedes that a serving of its popcorn provides only 12% of the Daily Value for fiber. Defendant understood that its products violated 21 CFR § 101.54(b), which is why it recently changed its label to note that the product was only a "good" source of fiber without disclosing to consumers that it previously misled them:

43. However, even if Skinny Pop popcorn meets the 10% Daily Value requirement for a "good" source of fiber claim under 21 CFR § 101.54(c), Defendant's product labeling fails to disclose its excessive fat content next to the fiber claim, in violation of 21 CFR § 101.54(d). Under that regulation, a product that claims it is a good source of fiber that also is not "low" in total fat as defined by 21 CFR § 101.62(b)(2)(i)(B) (*i.e.*, containing three grams of fat or less per RACC and per 50 grams), must disclose the level of total fat per labeled serving, *e.g.*, "contains 10 grams of total fat per serving. See nutrition information for fat content." That disclosure must "appear in immediate proximity to" the fiber claim and be "in a type size no less than one-half the size of the claim." 21 CFR § 101.54(c)(2). As Skinny Pop popcorn contains 10 grams of fat per serving (and almost 18 grams of fat per 50 grams), it is not a "low" fat food under 21 CFR 101.62(b)(2)(i)(B). Defendant's claim that its popcorn is a good source of fiber based on a four-

cup serving is also misleading and inconsistent with the PDP's representation of "ONLY 39 CALORIES PER CUP."

44. Defendant intentionally misleads consumers about the amount of fiber in a serving of its popcorn. Although Defendant revised the product packaging to acknowledge that it was only a "good" source of fiber, its Facebook page recently added the false representation that its product was a "great" source of fiber:

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https://www.facebook.com/SkinnyPopPopcorn (visited 9/29/13).

ALL NATURAL • LOW CALORIE • CHOLESTEROL FREE • TRANS FAT FREE • DAIRY FREE • PEANUT FREE • TREE NUT FREE • GLUTEN FREE •
NON GMO • PRESERVATIVE FREE • A GREAT SOURCE OF FIBER

https://www.facebook.com/SkinnyPopPopcorn (visited 11/12/13).

45. The amounts of calories and fat in a serving of Skinny Pop popcorn are greater than many full-calorie popcorn and non-popcorn snack foods:

a. A single cup of Skinny Pop popcorn has "ONLY 39 CALORIES," while one cup of Orville Redenbacher's ® Movie Theater Butter flavor microwave popcorn has 30 calories. A serving of Skinny Pop popcorn has comparable calories and fat to Orville Redenbacher's ® Movie Theater Butter flavor microwave popcorn:

Nutrition Facts
Serving Size 2 tbsp (35g) unpopped
(makes about 4 cups popped)
Servings Per Bag: about 2.5
Servings Per Carton: about 15

Amount Per Serving	2 Tbsp Unpopped	1 Cup Popped
Calories	160	30
Calories from Fat	80	20
		% Daily Value**
Total Fat 9g*	14%	3%
Saturated Fat 4g	20%	5%

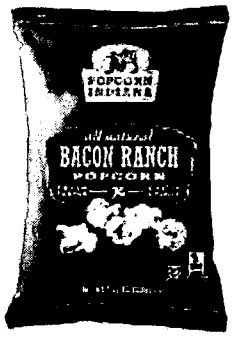
Orville Redenbacher's ® is the "#1 name in popcorn."

http://www.conagrafoodservice.com/products_and_brands/popcorn.do

b. A serving of Skinny Pop popcorn has more calories and amounts of fat and saturated fat that are comparable to the full-calorie Bacon Ranch flavor of Popcorn, Indiana ® popcorn, and more calories and fat, and the same amount of saturated fat as a serving of Tostitos ®, the top-selling full-calorie corn tortilla chips:

Nutrition Facts
Serving Size: about 4 cups (28g)
Servings Per Container: about 4.5

Amount Per Serving	
Calories 155	Calories from Fat 80
	% Daily Value*
Total Fat 10g	16%
Saturated Fat 1g	5%



BACON RANCH POPCORN

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

Calories 150
Fat Cal. 90

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

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 10g	15%	Total Carb. 13g	4%
Saturated Fat 1g	5%	Dietary Fiber 2g	9%
Trans. Fat 0g		Sugars 0g	
Cholesterol 5mg	1%	Protein 3g	
Sodium 270mg	11%		

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

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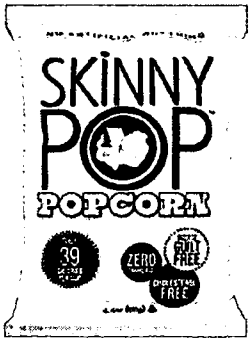
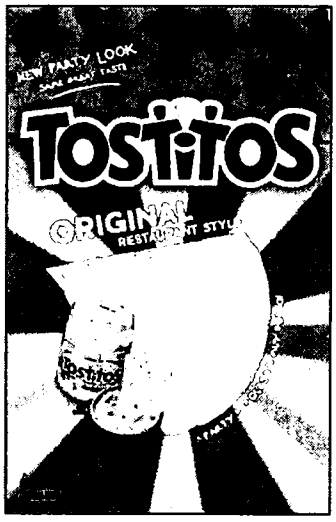


Nutrition Facts
Serving Size: about 4 cups (28g)
Servings Per Container: about 4.5

Amount Per Serving	
Calories 155	Calories from Fat 80
	% Daily Value*
Total Fat 10g	16%
Saturated Fat 1g	5%



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

Amount Per Serving	
Calories 140	Calories from Fat 80
	% 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%

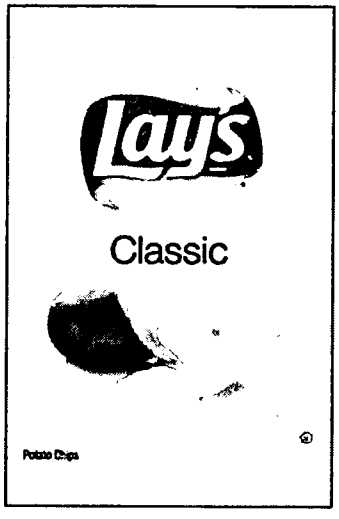
* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	2,000	2,500
Calories:		

The calories and fat in a serving of Skinny Pop popcorn are comparable to Lays ®, the top-selling potato chips, and are greater than in a serving of Corn Nuts ®, the market-leading corn kernel snack:

Nutrition Facts
Serving Size: about 4 cups (28g)
Servings Per Container: about 4.5

Amount Per Serving	
Calories 155	Calories from Fat 80
	% Daily Value*
Total Fat 10g	16%
Saturated Fat 1g	5%



Nutrition Facts
Serving Size 1 oz (28g/About 15 chips)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	16%
Saturated Fat 1.5g	8%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 170mg	7%
Potassium 350mg	10%
Total Carbohydrate 15g	5%
Dietary Fiber 1g	6%
Sugars less than 1g	
Protein 2g	

Vitamin A 0% •	Vitamin C 10%
Calcium 0% •	Iron 2%
Vitamin E 6% •	Thiamin 4%
Niacin 6% •	Vitamin B6 10%

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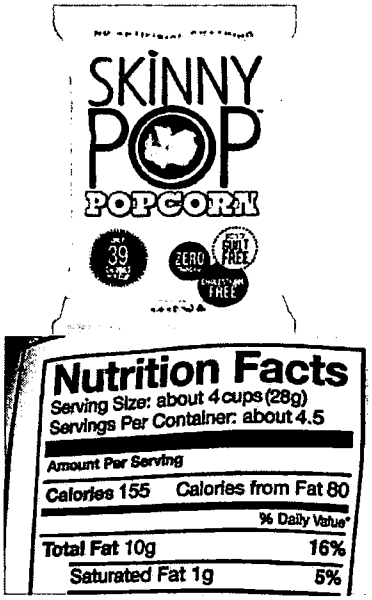

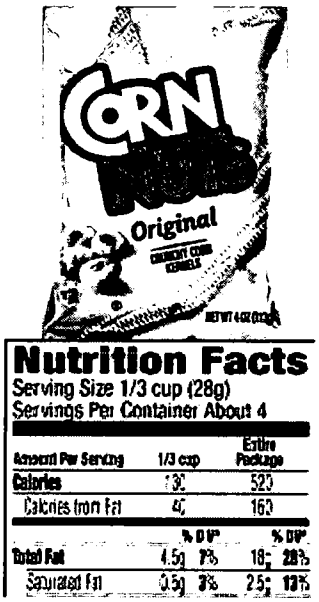

46. Defendant has manufactured, advertised, distributed and sold products that are misbranded under California law. Misbranded products cannot be legally manufactured, advertised, distributed, or sold or held and are legally worthless as a matter of law.

47. 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.

48. Defendant has violated California Health & Safety Code § 110395 that makes it unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

49. Defendant has violated California Health & Safety Code § 110398 that makes it unlawful to advertise any food that has been misbranded.

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

a. 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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b. 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

c. 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.

51. 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.

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

53. 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.

54. 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.

55. Defendant has violated the standards set by 21 C.F.R. §§ 101.12, 101.13, 101.54, 101.56, 101.60, 101.61, 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

56. Plaintiffs bring this action as a class action on behalf of themselves and all other persons similarly situated pursuant to California Code of Civil Procedure § 382. Plaintiffs bring 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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57. This proposed Class is comprised of all residents of California who, within the last four years, purchased a Defendant brand, 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 Plaintiffs 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.

58. 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.

59. 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.

60. 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 their 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 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 the Sherman Law; and

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

61. Plaintiffs' claims are typical of the Class, because Plaintiffs bought Defendant's Skinny Pop popcorn products 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. Plaintiffs 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.

62. Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs 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.

63. 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)

64. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

66. Defendant sold Misbranded Food Products in California during the Class Period.

67. Defendant is a Limited Liability Company and, therefore, is a "person" within the meaning of the Sherman Law.

68. 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).

69. Defendant's business practices are unlawful under § 17200, *et seq.*, by virtue of Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising. Defendant's business practices are unlawful under § 17200, *et seq.*, by virtue of Defendant's violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

70. Defendant sold Plaintiffs and the Class Misbranded Food Products that were not capable of being sold or held legally, and which were legally worthless.

71. As a result of Defendant's unlawful business practices, Plaintiffs 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.

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

73. 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 Skinny Pop products to Plaintiffs and the Class.

SECOND CAUSE OF ACTION

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

74. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

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

77. Plaintiffs 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.

78. Defendant's deceptive marketing, advertising, packaging and labeling 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.

79. Plaintiffs and the Class who purchased Defendant's mishandled food products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of them suffered.

80. 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 Plaintiffs and the Class.

81. As a result of Defendant's conduct, Plaintiffs 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)

82. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

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

85.

86. Defendant's fraudulent and deceptive marketing, advertising, packaging and labeling of misbranded food products was likely to deceive reasonable consumers, and in fact, Plaintiffs and members of the Class were deceived into purchasing products with no value which they would not have purchased had they known the truth. As a result of Defendant's conduct as set forth herein, Plaintiffs 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)

87. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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88. Plaintiffs assert this cause of action for violations of California Business and Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

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

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

91. 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. Plaintiffs and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

92. Defendant's conduct in disseminating misleading and deceptive statements in California to Plaintiffs 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.*

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

94. Plaintiffs 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 Plaintiffs and the Class.

FIFTH CAUSE OFACTION

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

95. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as through fully set forth herein.

96. Plaintiffs assert this cause of action against Defendant for violations of California Business and Professions Code §17500, *et seq.*, regarding false advertising.

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 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.

99. 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. Plaintiffs and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

100. Defendant's conduct in disseminating untrue advertising throughout California deceived Plaintiffs 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.

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

102. Plaintiffs 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.*)

103. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

104. 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. Plaintiffs intend 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.

105. The CLRA was designed and enacted to protect consumers from unfair and deceptive acts and practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Cal. Civ. Code § 1770.

106. At all relevant times, Plaintiffs and members of the Class were "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d), who sought or purchased a good for personal, family, or household use.

107. At all relevant times, Defendant's Skinny Pop products were a "good" under Cal. Civ. Code §1761(a), given that it was a tangible chattel bought by Plaintiffs and members of the Class for use primarily for personal, family or household purposes.

108. At all relevant times, Defendant was a "person" under Cal. Civ. Code § 1761(c).

///

///

109. At all relevant times, Plaintiffs and members of the Class engaged in "transactions" under Cal. Civ. Code § 1761(e), including purchasing and consuming Skinny Pop products.

110. Pursuant to Cal. Civ. Code § 1781, Plaintiffs bring this claim on behalf of themselves and all members of the Class as described above.

111. As alleged above, Defendant has misrepresented and is likely to continue to misrepresent the particular ingredients, characteristics, uses, benefits and quantities of the goods, in violation of Cal. Civ. Code § 1770(a)(5).

112. 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.

113. 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.

114. Plaintiffs 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 the Skinny Pop products of Defendant. Plaintiffs 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.

115. 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.

116. Defendant's violations of Cal. Civ. Code § 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 Plaintiffs and the Class.

117. Additionally, Plaintiffs seek an award of attorneys' fees and costs pursuant to Cal. Civ. Code § 1780(a), (e).

JURY DEMAND

Plaintiffs hereby demand a trial by jury of their claims.

PRAYER FOR RELIEF

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

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

B. For an order awarding, as appropriate, restitution to Plaintiffs and the Class for all causes of action other than the CLRA, as Plaintiffs do not currently seek monetary relief under the CLRA, but intend to amend their 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

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

DATED: February 3, 2014

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

By: _____
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

FILED
SAN MATEO COUNTY
FEB 03 2014
Clerk of the Superior Court
By DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo
STREET ADDRESS: 400 County Center
MAILING ADDRESS:
CITY AND ZIP CODE: Redwood City, California 94063
BRANCH NAME:

CASE NAME: Rachel Dossey and Louise Tang v. SkinnyPop Popcorn, LLC

CASE NUMBER: CIV 526548

JUDGE:

DEPT.:

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)

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
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.)* BY FAX

Date: February 3, 2014

Jonathan E. Gertler
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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

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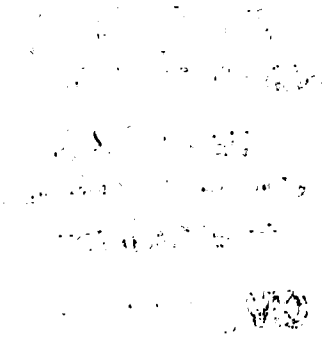
CIVIL CASE COVER SHEET

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

Dossey v. SkinnyPop



SUM-100

SUMMONS
(CITACION JUDICIAL)

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

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
RACHEL DOSSEY and LOUISE TANG, on behalf of themselves and all others similiarly situated,

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

ENDORSED FILED
SAN MATEO COUNTY
FEB 3 - 2014
Clerk of the Superior Court
By Rebecca Krill
DEPUTY CLERK

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.*

CASE NUMBER (Número del Caso): CIV 526548

The name and address of the court is:
(El nombre y dirección de la corte es):
San Mateo County Superior Court
400 County Center
Redwood City, California 94063

BY FAX

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jonathan E. Gertler (SBN 111531) CHAVEZ & GERTLER LLP
Dan Gildor (SBN 223027) Tel: (415) 381-5599; Fax: (415) 381-5572
42 Miller Avenue, Mill Valley, California 94941

DATE: FEB 3 - 2014 (Fecha) JOHN C. FITTON Clerk, by (Secretario) R. KRILL, 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):* Skinnypop Popcorn, 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):*

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

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

Dossey v. SkinnyPop

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Attorneys for Plaintiffs and the Proposed Class

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

UNLIMITED JURISDICTION

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

CASE NO. CIV 526548

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 products marketed and sold by Defendant SkinnyPop Popcorn, LLC, a limited liability corporation ("SkinnyPop" or "Defendant") since February 3, 2011 (the "Class"). This action challenges the unlawful, unfair and fraudulent business practices of Defendant in connection with marketing and sale of products under the "Skinny Pop" brand.

2. Defendant labels, advertises and promotes its products as being lower in calories and fat than competing snack and "junk" foods. Skinny Pop popcorn is advertised and promoted by Defendant as a healthy snack that can help consumers lose weight. Despite Defendant's claims that its snack products are "low-fat" and "low-calorie," a serving of Skinny Pop is not lower in fat or calories than Defendant's full calorie products. Further, Skinny Pop 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 Skinny Pop popcorn. Nonetheless, to exploit and profit from the fact that health claims increase product sales, Defendant has continued to falsely label and market Skinny Pop popcorn.

4. This action seeks compensatory damages and restitution, with interest, for the amounts paid by consumers for Skinny Pop 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 Defendant from further unlawful or deceptive conduct, as to Skinny Pop popcorn and other snack food products as to which SkinnyPop is violating the law, as well as attorneys' fees and costs.

THE PARTIES

1. Plaintiff Rachel Dossey ("Ms. Dossey" or "Plaintiff") is a California citizen who resides in San Francisco County. Plaintiff read some of Defendant's misrepresentations which were on the label prior to purchasing Skinny Pop popcorn, and relied on, and was deceived by, those misrepresentations and deceptive communications in purchasing Skinny Pop popcorn

products in California. Plaintiff would not have purchased the product had she known the truth about its misleading labeling.

2. Plaintiff Louise Tang ("Ms. Tang" or "Plaintiff") is a California citizen who resides in San Mateo County. Plaintiff read some of Defendant's misrepresentations which were on the label prior to purchasing Skinny Pop popcorn, and relied on, and was deceived by, those misrepresentations and deceptive communications in purchasing Skinny Pop popcorn products in San Mateo County, California, and elsewhere. Plaintiff would not have purchased the product had she known the truth about its misleading labeling.

3. Defendant SkinnyPop Popcorn, LLC is an Illinois Limited Liability Company with its principal place of business in Chicago, Illinois.

4. 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.

5. 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.

6. 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

1. This Court has jurisdiction over Plaintiffs' and the Class claims because Defendant regularly conducts business in California through the sale of Skinny Pop popcorn in California to California consumers, and because the violations of law alleged herein occurred throughout the State of California.

2. Venue is appropriate in the County of San Mateo because Ms.Tang resides in San Mateo County, and purchased products within that county.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

13. Defendant labels, advertises, and promotes that its Skinny Pop 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 Skinny Pop popcorn products instead of the healthy, alternative snack they are actually seeking. In reality, the Skinny Pop popcorn products are no lower in fat or calories than most market-leading, full calorie snacks.

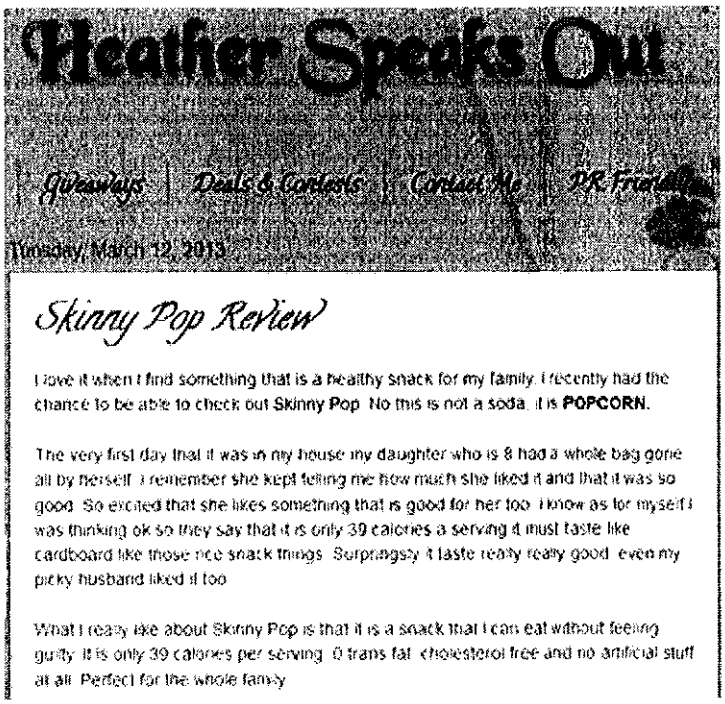
14. Defendant has knowledge that health and fitness claims increase product sales; that was its motive in creating its Skinny Pop popcorn products. Defendant sponsors CHAARG (Changing Health, Attitudes, and Actions to Recreate Girls), an organization dedicated to promoting health and fitness for girls and women, and sponsors beauty pageants for girls and women.

15. Defendant's marketing, advertising, and promotional strategies focus on providing female bloggers with free product samples in exchange for writing product reviews that make representations that Defendant cannot lawfully state on its own product labeling. Rather than correcting erroneous and misleading "low fat" and "low calorie" representations, Defendant adopts these misleading representations as its own in social media so it can profit from them. Invariably, these reviews express or imply that Skinny Pop popcorn is healthy, low in fat, and/or low in calories, even though it is none of these.

16. For example, Defendant adopted, promoted, and profited from a product reviewer's representation that it was a good idea for parents to feed an entire 700-calorie bag of Skinny Pop (containing 45 grams of fat, about 70% of an entire Daily Value) to their young children, saying:

///

///



Heather Speaks Out

Giveaways | Deals & Contests | Contact Me | PR Friendly

Tuesday, March 12, 2013

Skinny Pop Review

I love it when I find something that is a healthy snack for my family. I recently had the chance to be able to check out Skinny Pop. No this is not a soda, it is **POPCORN.**

The very first day that it was in my house my daughter who is 8 had a whole bag gone all by herself. I remember she kept telling me how much she liked it and that it was so good. So excited that she likes something that is good for her too. I know as for myself I was thinking ok so they say that it is only 39 calories a serving it must taste like cardboard like those rice snack things. Surprisingsy it taste really really good even my picky husband liked it too.

What I really like about Skinny Pop is that it is a snack that I can eat without feeling guilty. It is only 39 calories per serving. 0 trans fat, cholesterol free and no artificial stuff at all. Perfect for the whole family.

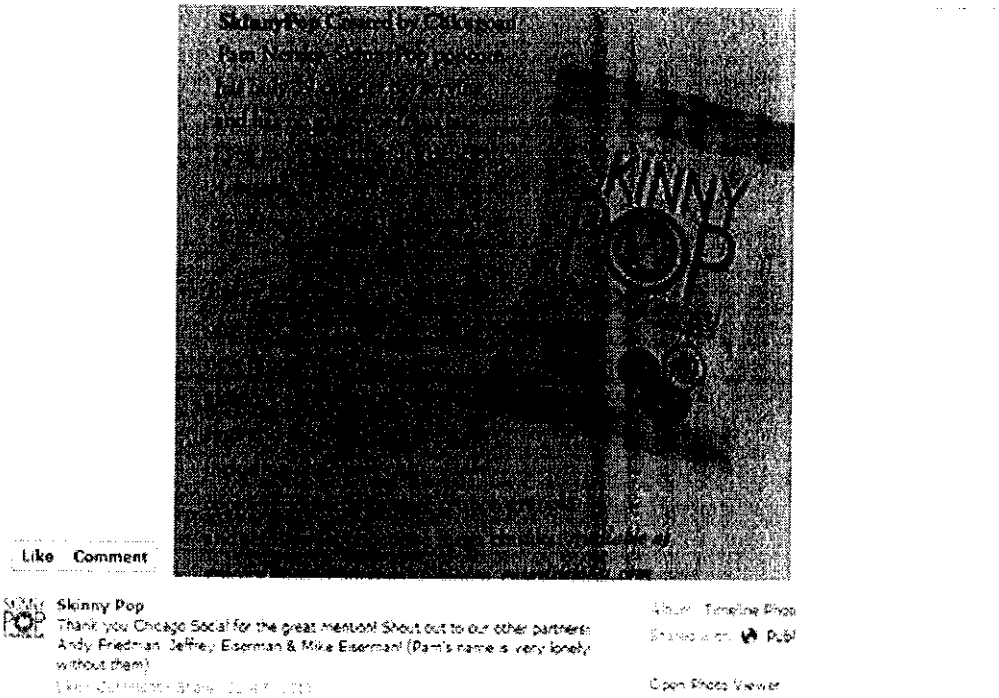
Skinny Pop is "a healthy snack for my family . . . . [My] daughter who is 8 had a whole bag . . . all by herself . . . . What I really like about Skinny Pop is that it is a snack that I can eat without feeling guilty. It is only 39 calories per serving . . . . Perfect for the whole family."

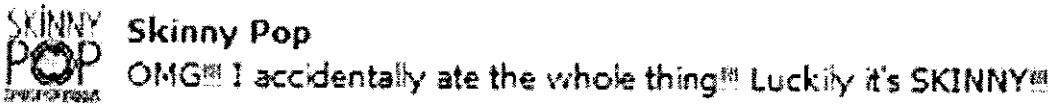
http://heatherspeaksout.blogspot.com/2013/03/skinny-pop-review.html

17. The day after Heather posted her review, Defendant simply thanked the reviewer for writing about "a really good healthy snack" and linked to the review Defendant adopted the reviewer's representations as its own and chose not to correct the reviewer's multiple erroneous representations, including but not limited to: that Skinny Pop popcorn contains 39 calories per serving, even though a serving contains 155 calories. Defendant made this decision because its business model depends on deceiving consumers into purchasing its high-calorie, fat-filled product.

18. The review discussed above is one of many examples where Defendant has misled consumers about the calories per cup vs. per multiple-cup serving. Defendant's Facebook page adopted and chose not to correct erroneous representations about the calories per serving listed in other publications and other generally misleading promotions, such as falsely representing that it

is okay to eat an entire bag, because the product purportedly is low in calories: "[Oh my God]!!! I accidentally ate the whole thing!!! Luckily it's "SKINNY!!!"





https://www.facebook.com/photo.php?fbid=454263285338&set=a.430124680338.225249.377584220338&type=1&permPage=1

19. Pursuant to the Sherman Law, California has expressly adopted the federal labeling requirements as its own and indicated that "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food regulations of this state." California Health & Safety Code § 110100.

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).

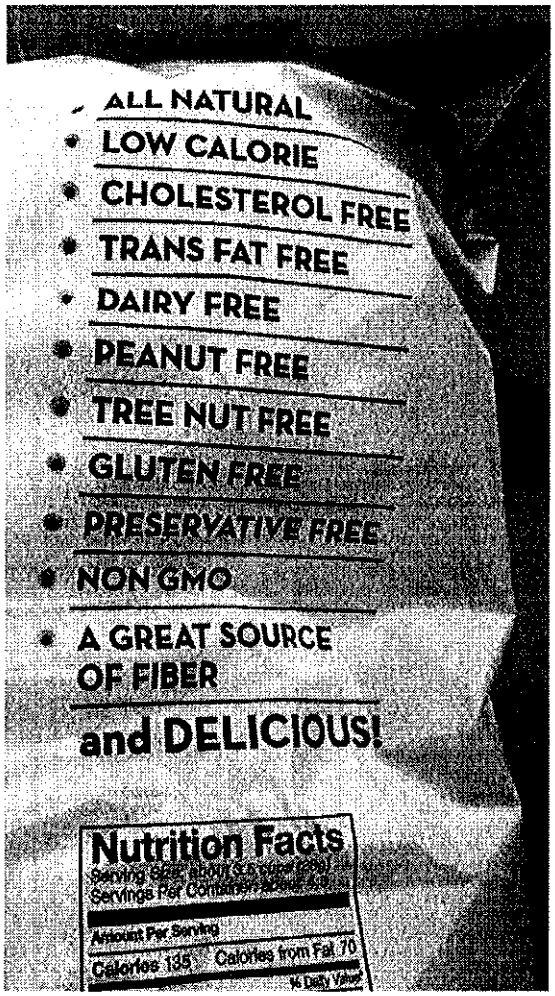
26. FDA regulations authorize use of a limited number of defined nutrient content claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on food labels, FDA's regulations authorize the use of only certain synonyms for these defined terms. If a nutrient content 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).

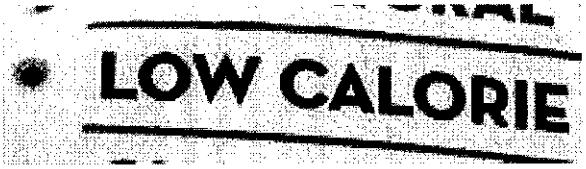
27. Only approved nutrient content claims will be permitted on the food label, and all other nutrient content claims will institute misbranding of a food. It is clear which claims are prohibited and which are permitted. Manufacturers are on notice that the use of an unapproved

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.

29. During the statutory period, Defendant's labeling represented that its popcorn was "low calorie":



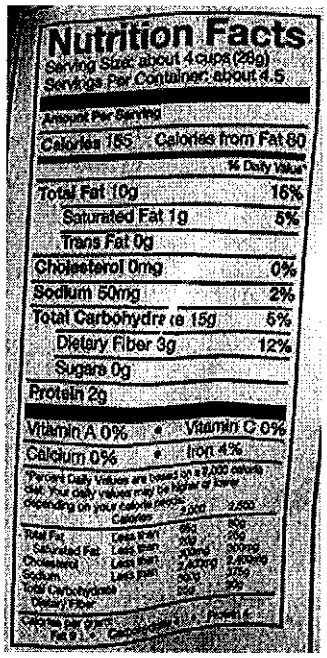


http://runeatplayblog.com/wp-content/uploads/2012/04/0302.jpg

30. Under 21 C.F.R. § 101.60(b)(2)(i)(A), the label of a food with a serving size of 30 grams or less can state that it is "low calorie" only if it "does not provide more than 40 calories per reference amount customarily consumed ["RACC"], and . . . .per 50 [grams]." *See* 21 C.F.R.

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

31. Defendant does not meet these "low calorie" criteria. The Nutrition Facts for Defendant's former label (above) provide that a 28-gram serving of Skinny Pop popcorn contained 135 calories (about 145 calories per RACC and 241 calories per 50 grams), which is far more than the 40 calories per RACC limitation for a "low calorie" food. Defendant's current Nutrition Facts panel represents that it provides 155 calories per 28-gram serving (166 calories per RACC and 277 calories per 50 grams):



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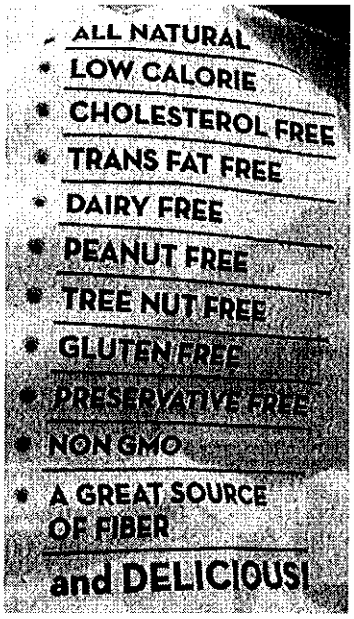
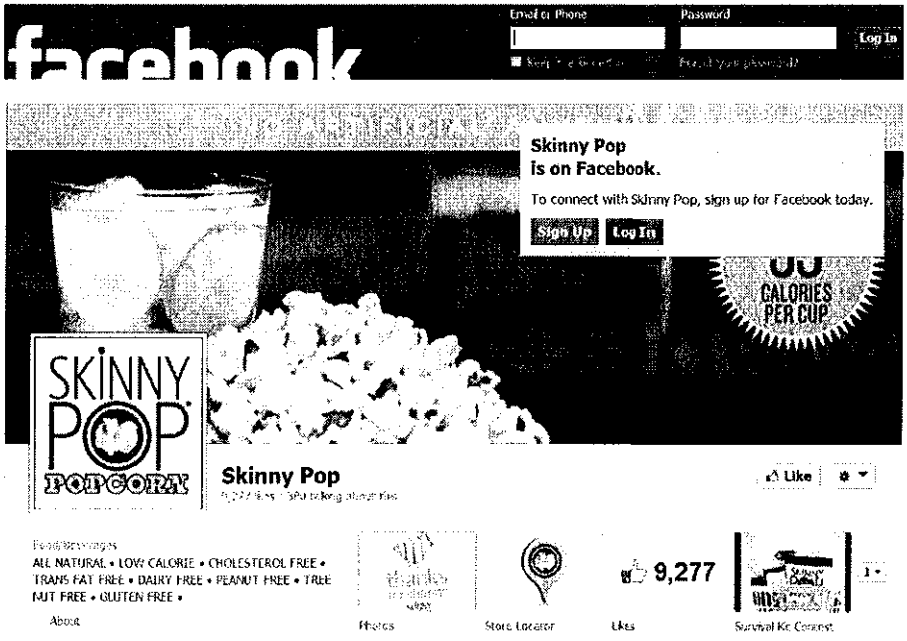
32. Defendant understood that its product labeling violated 21 C.F.R. § 101.60(b)(2)(i)(A), which is why it recently deleted the express "LOW CALORIE" claim:



http://runeatplayblog.com/wp-content/uploads/2012/04/0302.jpg

http://2.bp.blogspot.com/-t8lQOOGZsyw/UT_lNnVNN0I/AAAAAAAABG4/M1urF_rNNOw/s1600/13+-+5.jpg

33. However, Defendant's Facebook page continues to make the false, misleading, and unlawful claim that Skinny Pop popcorn is a "LOW CALORIE" food:



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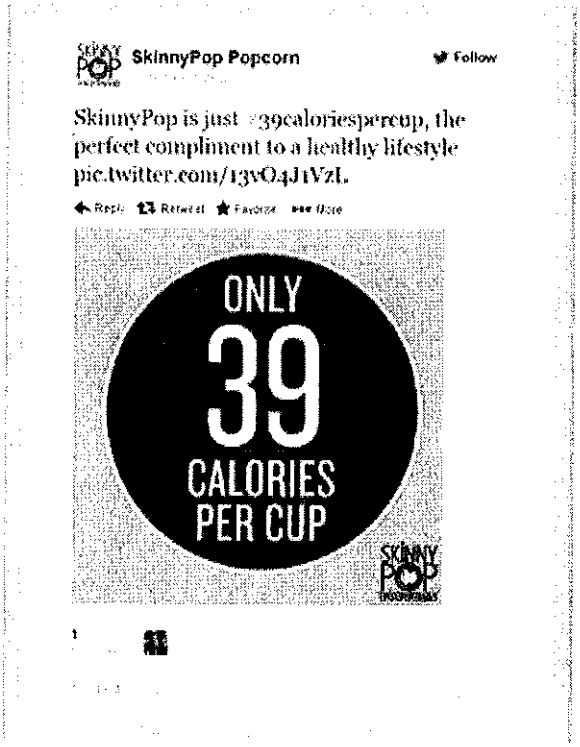
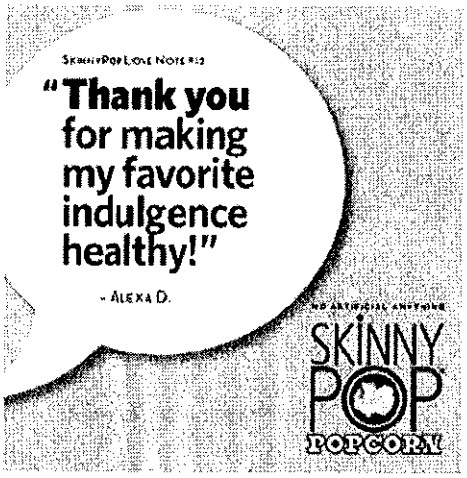
https://www.facebook.com/SkinnyPopPopcorn

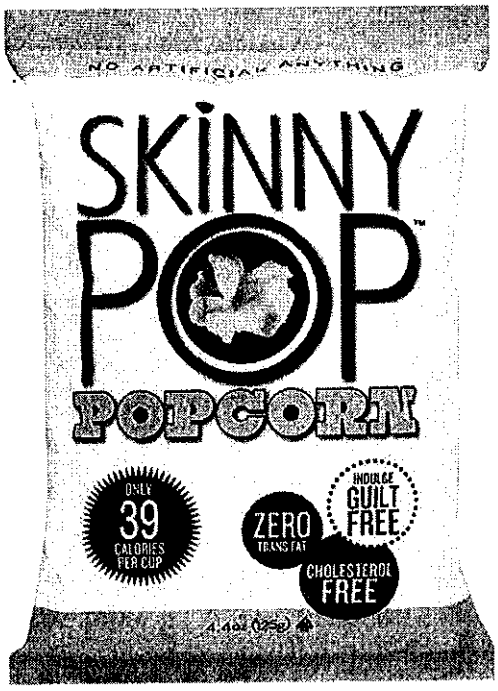
34. The "LOW CALORIE" representation on Defendant's Facebook page is just one example of its pattern and practice of making false and misleading health claims through social media to attempt to circumvent proscriptions against stating these claims directly on product labels. Defendant understands that its popcorn contains far too much fat to qualify for a "healthy" labeling claim under 21 CFR § 101.65(d)(2). Defendant also understands that most consumers do not distinguish among health claims based on whether they are made in labeling, advertising, or promotions, so Defendant simply posts on Twitter and Facebook that Skinny Pop popcorn is a "perfect compliment [sic] to a healthy lifestyle", and "healthy"





35. Defendant's labeling falsely, misleadingly, and deliberately continues to *imply* that its products are low in calories and fails to disclose that Skinny Pop products are *not* low calorie or low fat foods. 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, products that (a) are not low in calories and (b) make an implied low-calorie claim must prominently disclaim that the product is "not a low calorie food." 21 C.F.R. § 101.13(i)(2). Defendant fails to provide this disclaimer; its PDP still misleadingly represents that Skinny Pop popcorn contains "ONLY 39 CALORIES PER CUP" without disclaiming that the product is "not a low calorie food":

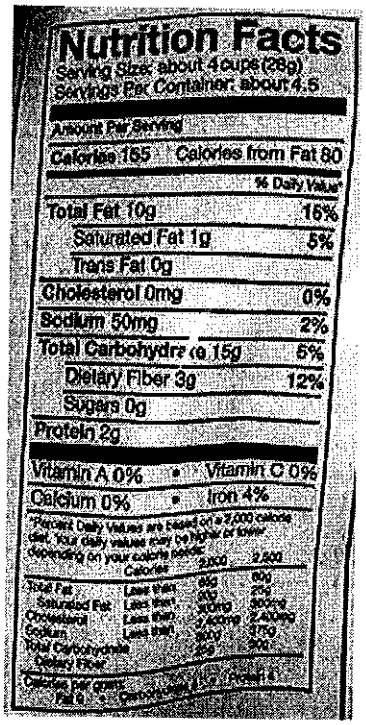


36. On April 2, 2012, the FDA published a Warning Letter that products failing to print the proper disclaimer were misbranded:

> **[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 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** within the meaning of section 403(r)(1)(A) of the Act.

37. The adjacent disclaimer required under 21 C.F.R. § 101.13(i)(2) prevents manufacturers from misrepresenting that their products contain fewer calories than competing products. It also helps consumers avoid overeating, a particular concern of weight-conscious individuals buying and eating a product to help them become or stay "skinny." Tellingly, a serving of Skinny Pop popcorn contains amounts of fat and calories comparable to or greater than many market-leading full-calorie junk foods.

38. Although the Skinny Pop PDP states that the popcorn contains "ONLY 39 CALORIES PER CUP," a serving of Skinny Pop popcorn is four times this volume. The stated serving size is 28 grams, which is "about 4 cups":



39. Defendant reinforces the false, misleading, and unlawful implied low calorie claim with other representations in its labeling, advertising, and promotional practices. The product name is "Skinny" Pop. Defendant's company name is "SkinnyPop Popcorn, LLC." The product label states it is "Popped Skinny":

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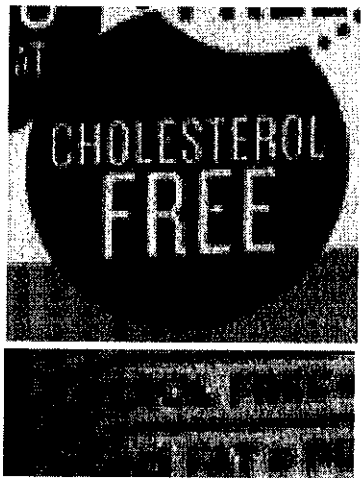
40. Defendant's labeling misleadingly and repeatedly represents it is "cholesterol free":



While it may be technically true that Skinny Pop is "cholesterol free," this claim is misleading, because popcorn is an inherently cholesterol free food. Defendant's representation misleadingly implies that (a) Skinny Pop popcorn has been processed or modified to remove cholesterol that was never there in the first instance, and/or (b) other popcorn contains cholesterol. Defendant's representation violates 21 C.F.R. § 101.61(b)(1)(iii) that requires it to qualify the "cholesterol free" claim by stating that popcorn is "a cholesterol free food."

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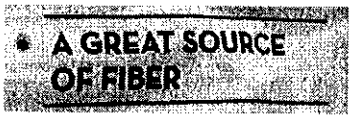
41. During the statutory period, Defendant's labeling asserted that its popcorn was a "great" source of fiber:



The FDA does not authorize manufacturers to represent that a product is a "great" source of any nutrient. A product that contains 20% or more of the RDI (recommended daily intake) or DRV (daily recommended value) may only claim that it is "high," "rich in," or an "excellent source of" a nutrient. 21 CFR §§ 101.54(a)(1), (b).

42. Even if one deemed "great" to be synonymous with the approved terms "high," "rich in," or an "excellent source of," fiber, Skinny Pop popcorn has never provided 20% or more of the Daily Value for fiber. 21 CFR § 101.54(b). Defendant's labeling concedes that a serving of its popcorn provides only 12% of the Daily Value for fiber. Defendant understood that its products violated 21 CFR § 101.54(b), which is why it recently changed its label to note that the product was only a "good" source of fiber without disclosing to consumers that it previously misled them:

43. However, even if Skinny Pop popcorn meets the 10% Daily Value requirement for a "good" source of fiber claim under 21 CFR § 101.54(c), Defendant's product labeling fails to disclose its excessive fat content next to the fiber claim, in violation of 21 CFR § 101.54(d). Under that regulation, a product that claims it is a good source of fiber that also is not "low" in total fat as defined by 21 CFR § 101.62(b)(2)(i)(B) (*i.e.*, containing three grams of fat or less per RACC and per 50 grams), must disclose the level of total fat per labeled serving, *e.g.*, "contains 10 grams of total fat per serving. See nutrition information for fat content." That disclosure must "appear in immediate proximity to" the fiber claim and be "in a type size no less than one-half the size of the claim." 21 CFR § 101.54(c)(2). As Skinny Pop popcorn contains 10 grams of fat per serving (and almost 18 grams of fat per 50 grams), it is not a "low" fat food under 21 CFR 101.62(b)(2)(i)(B). Defendant's claim that its popcorn is a good source of fiber based on a four-

cup serving is also misleading and inconsistent with the PDP's representation of "ONLY 39 CALORIES PER CUP."

44. Defendant intentionally misleads consumers about the amount of fiber in a serving of its popcorn. Although Defendant revised the product packaging to acknowledge that it was only a "good" source of fiber, its Facebook page recently added the false representation that its product was a "great" source of fiber:

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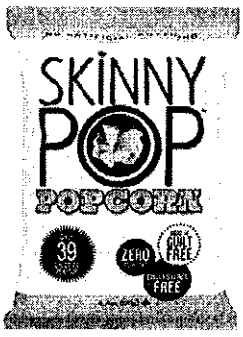
https://www.facebook.com/SkinnyPopPopcorn (visited 9/29/13).

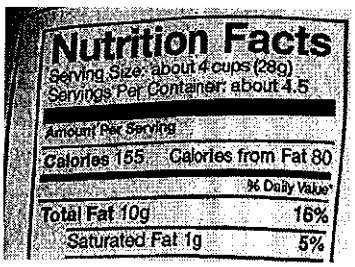
ALL NATURAL • LOW CALORIE • CHOLESTEROL FREE • TRANS FAT FREE • DAIRY FREE • PEANUT FREE • TREE NUT FREE • GLUTEN FREE •
NON GMO • PRESERVATIVE FREE • A GREAT SOURCE OF FIBER

https://www.facebook.com/SkinnyPopPopcorn (visited 11/12/13).

45. The amounts of calories and fat in a serving of Skinny Pop popcorn are greater than many full-calorie popcorn and non-popcorn snack foods:

a. A single cup of Skinny Pop popcorn has "ONLY 39 CALORIES," while one cup of Orville Redenbacher's ® Movie Theater Butter flavor microwave popcorn has 30 calories. A serving of Skinny Pop popcorn has comparable calories and fat to Orville Redenbacher's ® Movie Theater Butter flavor microwave popcorn:



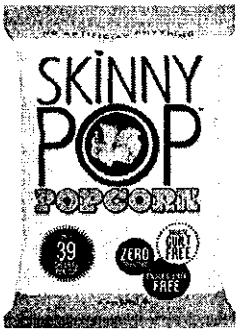


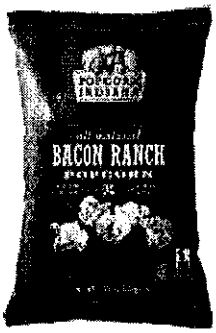
Nutrition Facts
Serving Size 2 tbsp (35g) unpopped
(makes about 4 cups popped)
Servings Per Bag: about 2.5
Servings Per Carton: about 15

Amount Per Serving	2 Tbsp Unpopped	1 Cup Popped
Calories	160	30
Calories from Fat	80	20
	% Daily Value**	
Total Fat 9g*	14%	3%
Saturated Fat 4g	20%	5%

Orville Redenbacher's ® is the "#1 name in popcorn."
http://www.conagrafoodservice.com/products_and_brands/popcorn.do

b. A serving of Skinny Pop popcorn has more calories and amounts of fat and saturated fat that are comparable to the full-calorie Bacon Ranch flavor of Popcorn, Indiana ® popcorn, and more calories and fat, and the same amount of saturated fat as a serving of Tostitos ®, the top-selling full-calorie corn tortilla chips:





Nutrition Facts
Serving Size: about 4 cups (28g)
Servings Per Container: about 4.5

Amount Per Serving	
Calories 155	Calories from Fat 80
	% Daily Value*
Total Fat 10g	16%
Saturated Fat 1g	5%

BACON RANCH POPCORN

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

Calories 150
Fat Cal. 90

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

Amount Per Serving	%DV*	Amount Per Serving	%DV*
Total Fat 10g	15%	Total Carb. 13g	4%
Saturated Fat 1g	5%	Dietary Fiber 2g	9%
Trans. Fat 0g		Sugars 0g	
Cholesterol 5mg	1%	Protein 3g	
Sodium 270mg	11%		

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

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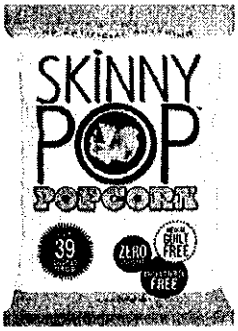
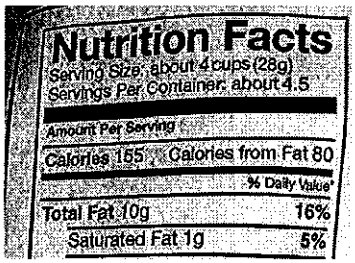
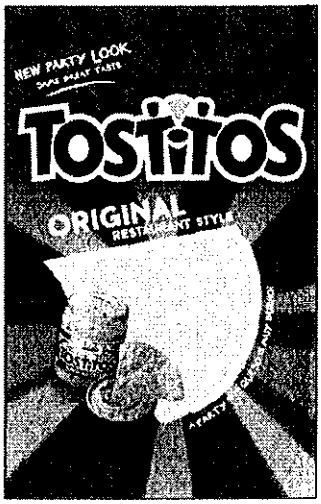
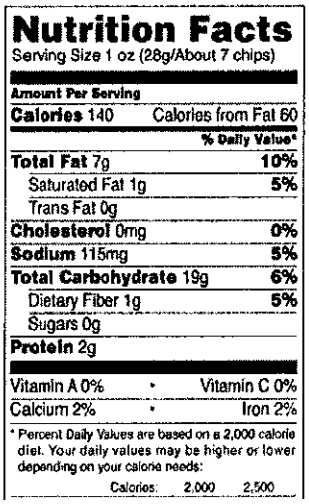
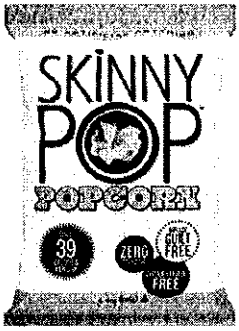


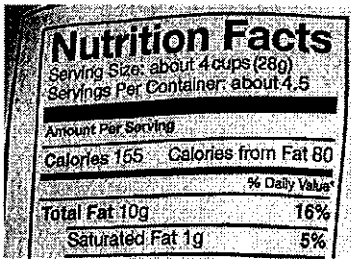


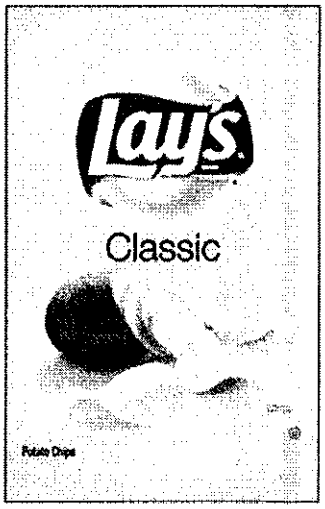


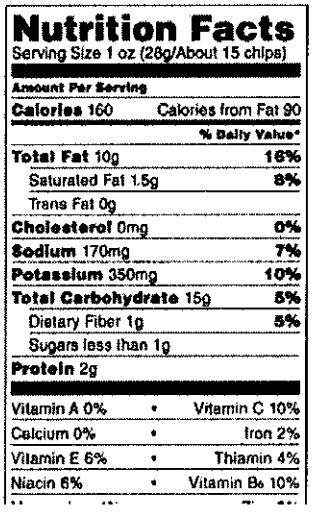


The calories and fat in a serving of Skinny Pop popcorn are comparable to Lays ®, the top-selling potato chips, and are greater than in a serving of Corn Nuts ®, the market-leading corn kernel snack:









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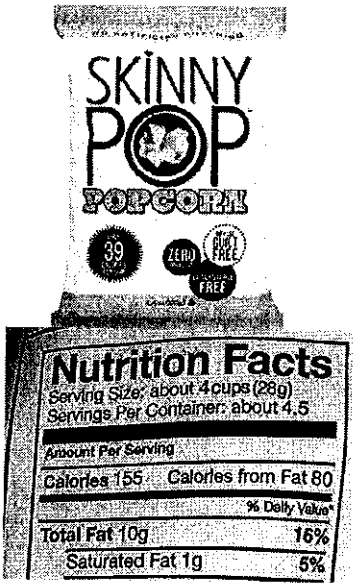

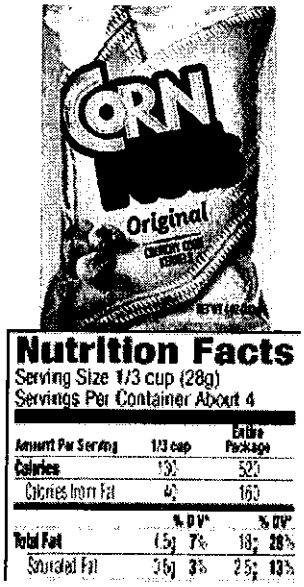

46. Defendant has manufactured, advertised, distributed and sold products that are misbranded under California law. Misbranded products cannot be legally manufactured, advertised, distributed, or sold or held and are legally worthless as a matter of law.

47. 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.

48. Defendant has violated California Health & Safety Code § 110395 that makes it unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

49. Defendant has violated California Health & Safety Code § 110398 that makes it unlawful to advertise any food that has been misbranded.

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

a. 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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b. 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

c. 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.

51. 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.

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

53. 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.

54. 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.

55. Defendant has violated the standards set by 21 C.F.R. §§ 101.12, 101.13, 101.54, 101.56, 101.60, 101.61, 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

56. Plaintiffs bring this action as a class action on behalf of themselves and all other persons similarly situated pursuant to California Code of Civil Procedure § 382. Plaintiffs bring 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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57. This proposed Class is comprised of all residents of California who, within the last four years, purchased a Defendant brand, 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 Plaintiffs 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.

58. 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.

59. 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.

60. 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 their 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 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 the Sherman Law; and

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

61. Plaintiffs' claims are typical of the Class, because Plaintiffs bought Defendant's Skinny Pop popcorn products 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. Plaintiffs 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.

62. Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs 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.

63. 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)

64. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

66. Defendant sold Misbranded Food Products in California during the Class Period.

67. Defendant is a Limited Liability Company and, therefore, is a "person" within the meaning of the Sherman Law.

68. 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).

69. Defendant's business practices are unlawful under § 17200, *et seq.*, by virtue of Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising. Defendant's business practices are unlawful under § 17200, *et seq.*, by virtue of Defendant's violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

70. Defendant sold Plaintiffs and the Class Misbranded Food Products that were not capable of being sold or held legally, and which were legally worthless.

71. As a result of Defendant's unlawful business practices, Plaintiffs 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.

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

73. 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 Skinny Pop products to Plaintiffs and the Class.

SECOND CAUSE OF ACTION

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

74. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

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

77. Plaintiffs 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.

78. Defendant's deceptive marketing, advertising, packaging and labeling 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.

79. Plaintiffs and the Class who purchased Defendant's mishandled food products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of them suffered.

80. 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 Plaintiffs and the Class.

81. As a result of Defendant's conduct, Plaintiffs 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)

82. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

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

85.

86. Defendant's fraudulent and deceptive marketing, advertising, packaging and labeling of misbranded food products was likely to deceive reasonable consumers, and in fact, Plaintiffs and members of the Class were deceived into purchasing products with no value which they would not have purchased had they known the truth. As a result of Defendant's conduct as set forth herein, Plaintiffs 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)

87. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

///

88. Plaintiffs assert this cause of action for violations of California Business and Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

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

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

91. 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. Plaintiffs and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

92. Defendant's conduct in disseminating misleading and deceptive statements in California to Plaintiffs 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.*

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

94. Plaintiffs 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 Plaintiffs and the Class.

FIFTH CAUSE OFACTION

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

95. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as through fully set forth herein.

96. Plaintiffs assert this cause of action against Defendant for violations of California Business and Professions Code §17500, *et seq.*, regarding false advertising.

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 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.

99. 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. Plaintiffs and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

100. Defendant's conduct in disseminating untrue advertising throughout California deceived Plaintiffs 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.

///

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

102. Plaintiffs 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.*)

103. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

104. 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. Plaintiffs intend 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.

105. The CLRA was designed and enacted to protect consumers from unfair and deceptive acts and practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Cal. Civ. Code § 1770.

106. At all relevant times, Plaintiffs and members of the Class were "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d), who sought or purchased a good for personal, family, or household use.

107. At all relevant times, Defendant's Skinny Pop products were a "good" under Cal. Civ. Code §1761(a), given that it was a tangible chattel bought by Plaintiffs and members of the Class for use primarily for personal, family or household purposes.

108. At all relevant times, Defendant was a "person" under Cal. Civ. Code § 1761(c).

///

///

109. At all relevant times, Plaintiffs and members of the Class engaged in "transactions" under Cal. Civ. Code § 1761(e), including purchasing and consuming Skinny Pop products.

110. Pursuant to Cal. Civ. Code § 1781, Plaintiffs bring this claim on behalf of themselves and all members of the Class as described above.

111. As alleged above, Defendant has misrepresented and is likely to continue to misrepresent the particular ingredients, characteristics, uses, benefits and quantities of the goods, in violation of Cal. Civ. Code § 1770(a)(5).

112. 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.

113. 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.

114. Plaintiffs 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 the Skinny Pop products of Defendant. Plaintiffs 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.

115. 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.

116. Defendant's violations of Cal. Civ. Code § 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 Plaintiffs and the Class.

117. Additionally, Plaintiffs seek an award of attorneys' fees and costs pursuant to Cal. Civ. Code § 1780(a), (e).

JURY DEMAND

Plaintiffs hereby demand a trial by jury of their claims.

PRAYER FOR RELIEF

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

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

B. For an order awarding, as appropriate, restitution to Plaintiffs and the Class for all causes of action other than the CLRA, as Plaintiffs do not currently seek monetary relief under the CLRA, but intend to amend their 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

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

DATED: February 3, 2014

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

By: _____
Jonathan E. Gertler
Attorneys for Plaintiffs

NOTICE OF CASE MANAGEMENT CONFERENCE

Rachel Dossey and Louise Tang

Case No: CIV 526548

vs.

SkinnyPop Popcorn

ENDORSED FILED
SAN MATEO COUNTY
FEB 3 – 2014
Clerk of the Superior Court
By Rebecca Krill
DEPUTY CLERK

Date: 4-24-14

Time 9:00 a.m.

Dept. 7 --on Tuesday & Thursday

Dept. ____ –on ~~Wednesday & Friday~~

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of the Court and local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
   a) Serve all named defendants and file proofs of service on those defendants with the court within 60-days of filing the complaint (CRC 201.7).
   b) Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
   c) File and serve a completed Case Management Statement at least 15-days before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
   d) Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than 30-days before the date set for the Case Management Conference.
2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order to Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.
3. Continuances of Case Management Conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation to ADR and Proposed Order (see attached form). If plaintiff files a Stipulation to ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) 10–days prior to the first scheduled Case Management Conference, the Case Management Conference will be continued for 90-days to allow parties time to complete their ADR session. The court will notify parties of their new Case Management Conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off Case Management Conference Calendar. If "Does", "Roes," etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.
6. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management judge will issue orders at the conclusion of the conference that may include:
   a) Referring parties to voluntary ADR and setting an ADR completion date;
   b) Dismissing or severing claims or parties;
   c) Setting a trial date.
8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court's website at: www.sanmateocourt.org

*Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least five business days prior to the scheduled conference (see attached CourtCall Information)

Attorney or Party without Attorney (Name/Address) Jonathan E. Gertler (SBN 111531) Dan Gildor (SBN 2230277) CHAVEZ & GERTLER LLP 42 Miller Avenue, Mill Valley, California 94941 Telephone: (415) 381-5599 State Bar No.: Attorney for: Plaintiffs and the Proposed Class	FOR COURT USE ONLY ENDORSED FILED SAN MATEO COUNTY FEB 04 2014 Clerk of the Superior Court By Henry Cajbon DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO 400 COUNTY CENTER REDWOOD CITY, CA 94063	
Plaintiff Rachel Dossey and Louise Tang, on behalf of themselves and all others similarly situated	
Defendant SkinnyPop Popcorn, LLC and Does 1 through 100, inclusive.	
Certificate Re Complex Case Designation	Case Number CIV 526548

This certificate must be completed and filed with your Civil Case Cover Sheet if you have checked a Complex Case designation or Counter-Designation

BY FAX

1. In the attached Civil Case Cover Sheet, this case is being designated or counter-designated as a complex case [or as not a complex case] because at least one or more of the following boxes has been checked:

   - ☒ Box 1 – Case type that is best described as being [or not being] provisionally complex civil litigation (i.e., antitrust or trade regulation claims, construction defect claims involving many parties or structures, securities claims or investment losses involving many parties, environmental or toxic tort claims involving many parties, claims involving mass torts, or insurance coverage claims arising out of any of the foregoing claims).
   - ☒ Box 2 – Complex [or not complex] due to factors requiring exceptional judicial management
   - ☒ Box 5 – Is [or is not] a class action suit.

2. This case is being so designated based upon the following supporting information [including, without limitation, a brief description of the following factors as they pertain to this particular case: (1) management of a large number of separately represented parties; (2) complexity of anticipated factual and/or legal issues; (3) numerous pretrial motions that will be time-consuming to resolve; (4) management of a large number of witnesses or a substantial amount of documentary evidence; (5) coordination with related actions

pending in one or more courts in other counties, states or countries or in a federal court; (6) whether or not certification of a putative class action will in fact be pursued; and (7) substantial post-judgment judicial supervision]:

Please see attachment.

(attach additional pages if necessary)

3. Based on the above-stated supporting information, there is a reasonable basis for the complex case designation or counter-designation [or noncomplex case counter-designation] being made in the attached Civil Case Cover Sheet.

*****

I, the undersigned counsel or self-represented party, hereby certify that the above is true and correct and that I make this certification subject to the applicable provisions of California Code of Civil Procedure, Section 128.7 and/or California Rules of Professional Conduct, Rule 5-200 (B) and San Mateo County Superior Court Local Rules, Local Rule 2.30.

Dated: February 3, 2014

Jonathan E. Gertler
[Type or Print Name]

[Signature of Party or Attorney For Party]

ATTACHMENT

This case is being designated as complex because it is a class action case that will involve a substantial amount of discovery, including extensive documentary evidence related to the policies and procedures of defendant, as well as advertising and marketing decisions and materials, among other issues; will involve a complex set of legal issues relating to alleged violations of California's Food, Drug and Cosmetic law, among others; will be subject to numerous and contentious pretrial motions that will be time consuming; and will involve the management of a large number of witnesses, including class members and corporate designee witnesses.

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
SAN MATEO COUNTY
FEB 3 - 2014
Clerk of the Superior Court
By Rebecca Krill DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo
STREET ADDRESS: 400 County Center
MAILING ADDRESS:
CITY AND ZIP CODE: Redwood City, California 94063
BRANCH NAME:

CASE NAME: Rachel Dossey and Louise Tang v. SkinnyPop Popcorn, LLC

CASE NUMBER: CIV 526548

JUDGE:

DEPT.:

CIVIL CASE COVER SHEET
☒ Unlimited (Amount demanded exceeds $25,000) ☐ Limited (Amount demanded is $25,000 or less)

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

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

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

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

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

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

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

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

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

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

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

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

Enforcement of Judgment
☐ Enforcement of judgment (20)

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

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

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

Date: February 3, 2014

Jonathan E. Gertler
(TYPE OR PRINT NAME)

Jonathan E. Gertler
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]
Martin Dean's ESSENTIAL FORMS™

CIVIL CASE COVER SHEET

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

Dossey v. SkinnyPop

NOTICE OF CASE MANAGEMENT CONFERENCE

Rachel Dossey and Louise Tang

vs.

Skinnypop Popcorn

Case No: CIV 586548

FILED
SAN MATEO COUNTY
FEB 03 2014
Clerk of the Superior Court
By DEPUTY CLERK

Date: 4-24-14

Time 9:00 a.m.

Dept. 7 --on Tuesday & Thursday

Dept. _____ --on Wednesday & Friday

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of the Court and local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
   a) Serve all named defendants and file proofs of service on those defendants with the court within 60-days of filing the complaint (CRC 201.7).
   b) Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
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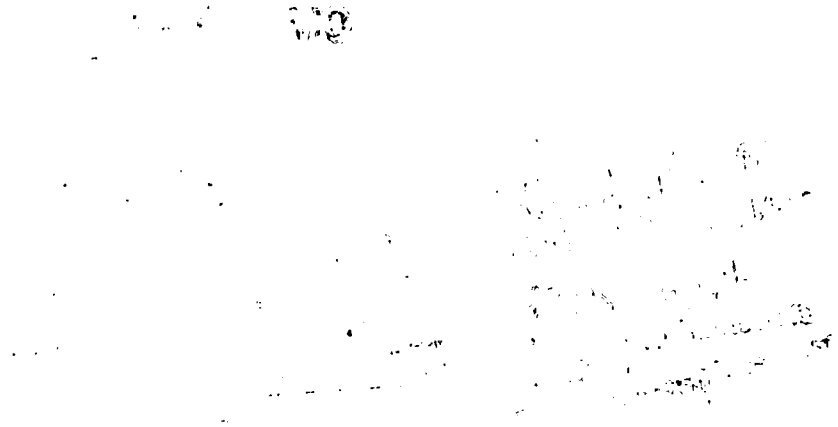

DROP BOX

FEB 03 2014

3:10PM

Time

EXHIBIT 2

J. Noah Hagey, Esq. (SBN: 262331)
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San Francisco, CA 94104
Telephone: (415) 599-0210
Facsimile: (415) 276-1808

ATTORNEYS FOR DEFENDANT
SKINNYPOP POPCORN LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated,

Plaintiffs,

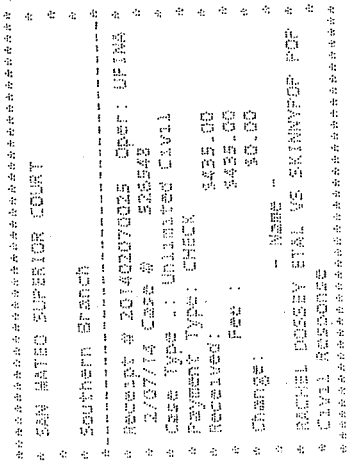
v.

SKINNYPOP POPCORN LLC, AND DOES 1 THROUGH 100, inclusive

Defendants.

Case No. CIV 526548

GENERAL DENIAL AND AFFIRMATIVE DEFENSES



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ATTORNEYS FOR DEFENDANT
SKINNYPOP POPCORN LLC

BCB MBB

FILED
SAN MATEO COUNTY
FEB 06 2014
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

FILE BY FAX

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated,

Plaintiffs,

v.

SKINNYPOP POPCORN LLC, AND DOES 1 THROUGH 100, inclusive

Defendants.

Case No. CIV 526548

GENERAL DENIAL AND AFFIRMATIVE DEFENSES

DROP BOX

FEB 06 2014

3:45PM

Time

GENERAL DENIAL

SkinnyPop Popcorn LLC ("Defendant") denies each and every allegation of Plaintiffs' complaint.

RESERVATION OF RIGHT TO REMOVE

Defendant expressly reserves the right to remove this action to U.S. Federal District Court if and when information supporting removal becomes clear and certain.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendant sets forth below its defenses and affirmative defenses. Each defense and affirmative defense is asserted as to all causes of action against it. By setting forth these defenses and affirmative defenses, Defendant does not assume the burden of proving any fact, issue or element of a claim where such burden properly belongs to Plaintiffs. Defendant reserves the right to allege additional defenses and affirmative defenses as they become known or as they evolve during litigation.

FIRST DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim and/or sufficient facts upon which relief can be granted.

SECOND DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs are not real parties in interest and lack standing to seek any relief against Defendant.

THIRD DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

FOURTH DEFENSE AND AFFIRMATIVE DEFENSE

One or more of Plaintiffs' claims is barred by the doctrine of accord and satisfaction.

FIFTH DEFENSE AND AFFIRMATIVE DEFENSE

One or more of Plaintiffs' claims is barred by the applicable statutes of limitation and/or the equitable doctrine of laches.

SIXTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' purported causes of action are barred or otherwise limited to the extent that Plaintiffs have failed to mitigate or avoid the purported damages alleged.

SEVENTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' claims are preempted by federal law.

EIGHTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of primary jurisdiction.

NINTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' claims are foreclosed by the First Amendment.

TENTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' claims are precluded by actions, determinations and regulations of the Federal Trade Commission ("FTC") and the Food and Drug Administration ("FDA"). SkinnyPop Popcorn LLC's compliance with FDA and FTC regulation is a complete and/or partial defense to Plaintiffs' claims.

ELEVENTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' claims are moot.

TWELFTH DEFENSE AND AFFIRMATIVE DEFENSE

Plaintiffs' purported class action claims are inappropriate as this action cannot be certified as a class.

Dated: February 6, 2014

Respectfully Submitted,

BRAUNHAGEY & BORDEN LLP

By: _____
J. Noah Hagey

Attorneys for DEFENDANT SKINNYPOP POPCORN, LLC

EXHIBIT 3

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ANTHONY L. LABEL, NO. 205920
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Attorneys for Plaintiffs and the Proposed Class

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

UNLIMITED JURISDICTION

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

CASE NO. CIV 526548

CLASS ACTION

PLAINTIFFS' NOTICE OF DEMURRER AND DEMURRER TO SKINNYPOP POPCORN, LLC'S ANSWER TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 25, 2014 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 7 of the above-captioned Court, located at 400 County Center, Redwood City, California, Plaintiffs Rachel Dossey and Louise Tang ("Plaintiffs") will and do hereby demur to Defendant Skinnypop Popcorn, LLC's Answer to Plaintiffs' Class Action Complaint upon the grounds that each of Defendant's twelve affirmative defenses are not supported by facts sufficient to constitute a defense and are uncertain. The affirmative defenses challenged are as follows: First (Failure to State a Claim), Second (Lack of Standing), Third (Unclean Hands), Fourth (Accord and Satisfaction), Fifth (Statute of Limitations and/or Doctrine of Laches), Sixth (Failure to Avoid or Mitigate Damages), Seventh (Preemption), Eighth (Barred by Primary Jurisdiction), Ninth (Foreclosed by First Amendment), Tenth (Preclusion by Actions, Determinations, and Regulations of Federal Trade Commission and Food and Drug Administration), Eleventh (Claims are Moot), Twelfth (Class Action – Claims Cannot be Certified).

Plaintiffs' Demurrer is brought pursuant to California Code of Civil Procedure §§ 430.30(a) and 430.50(b) and is based upon this Notice of Demurrer, the Memorandum of Points and Authorities in support thereof, all other pleadings and records on file herein, and such other arguments and other evidence as may be offered at the time of hearing.

DATE: February 18, 2014

THE VEEN FIRM, P.C.

CHAVEZ & GERTLER LLP

By: Jonathan E. Gertler

Jonathan E. Gertler

Attorneys for Plaintiffs and the Proposed Class

DEMURRER

Plaintiffs hereby submit this demurrer to Defendant Skinnypop Popcorn, LLC's General Denial and Affirmative Defenses to Plaintiffs' Class Action Complaint (the "Answer"). The Demurrer is made on the following grounds:

1. The First Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
2. The Second Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
3. The Third Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
4. The Fourth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
5. The Fifth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
6. The Sixth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
7. The Seventh Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
8. The Eighth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
9. The Ninth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
10. The Tenth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
11. The Eleventh Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.
12. The Twelfth Affirmative Defense fails to state facts sufficient to constitute a defense and is otherwise uncertain, ambiguous and unintelligible.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Skinnypop Popcorn, LLC's ("Skinnypop" or "Defendant") General Denial and Affirmative Defenses to Plaintiffs' Class Action Complaint (the "Answer") constitutes nothing more than a laundry list of 12 affirmative defenses that are not supported by *any* facts. An answer must be pleaded with particularity and must allege ultimate facts "averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) Defendant's Answer does not do this. Accordingly, Plaintiffs request that the Court sustain Plaintiffs' Demurrer as to the First through Twelfth Affirmative Defenses asserted in the Answer.

II. REVELANT PROCEDURAL HISTORY

Plaintiffs Rachel Dossey and Louise Tang filed their Class Action Complaint on February 3, 2014. Skinnypop's Answer to that Complaint was filed on February 6, 2014.

III. STATEMENT OF FACTS

The following summary of facts is taken from Plaintiffs' Complaint. Defendant Skinnypop labels, advertises, and promotes its Skinny Pop popcorn products as being 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 Skinny Pop popcorn products instead of the healthy, alternative snack they are actually seeking. In reality, the Skinny Pop popcorn products are no lower in fat or calories than many market-leading, full calorie snacks.

Plaintiffs each purchased Defendant's products. Prior to purchase, Plaintiffs read the representations that were on the purchased products' packaging. Plaintiffs each relied on those untruthful and misleading representations and would not have purchased the products had Defendants' representations been accurate. Accordingly, Plaintiffs brought this action as a class action on behalf of themselves and all other persons similarly situated pursuant to California Code of Civil Procedure § 382. The proposed class consists of all residents of California who, within the last four years, purchased a Defendant brand, 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 Plaintiffs 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.

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. 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. Furthermore, 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:

1. Whether Defendant engaged in unfair, unlawful or deceptive business practices by failing to properly label, advertise, and promote their snack food products sold to consumers;
2. Whether Defendant made unlawful and misleading nutrient content claims with respect to their food products sold to consumers;
3. Whether Defendant 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 the Sherman Law; and
4. Whether Plaintiffs and the class are entitled to restitution and/or injunctive relief;

Plaintiffs' claims are typical because Plaintiffs bought Defendant's Skinny Pop popcorn products during the class period and were subject to the same unlawful, unfair and/or fraudulent business practices as other class members. Plaintiffs and the class sustained similar harm arising out of Defendant's conduct in violation of California law. The injuries of each class member 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. Plaintiffs' 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.

Finally, Plaintiffs will fairly and adequately protect the interests of the class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the class members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the members of the class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs 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. 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.

IV. ARGUMENT

A. Plaintiffs May Challenge Defendant's Affirmative Defenses by Demurrer

An objection to an affirmative defense may be made by demurrer. Code of Civil Procedure ("CCP") § 430.20 states:

> A party against whom an Answer has been filed may object, by Demurrer as provided in Section 430.30, to the Answer upon any one or more of the following grounds:
>
> (a) The Answer does not state facts sufficient to constitute a defense.
>
> (b) The Answer is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.
>
> (c) Where the Answer pleads a contract, it cannot be ascertained from the Answer whether the contract is written or oral.

Under California law, "[d]emurring to an answer is a commonly recognized practice." (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-80.) "Unlike the usual general demurrer to a complaint, the inquiry is not into the statement of the cause of action. Instead it is whether the answer raises a defense to the plaintiff's stated cause of action." (*Ibid.*)

//

In the instant case, Defendant's affirmative defenses are subject to demurrer pursuant to both subdivisions (a) of section 430.20 given that Defendant has not alleged *any* facts to support those defenses. Moreover, the affirmative defenses are also subject to demurrer pursuant to subdivision (b) of section 430.20 given that—in the absence of any facts—the statement of the defenses is uncertain. Because it is improbable that Defendant can state valid affirmative defenses for unclean hands, accord and satisfaction, failure to mitigate, laches, standing, statute of limitations, preemption, and the other asserted defenses, Plaintiffs respectfully request that this Court grant their Demurrer without leave to amend as to Defendant's affirmative defenses.

B. Defendant's Answer Does Not Plead Facts Sufficient To Establish Affirmative Defenses And Is Uncertain

To withstand demurrer, an affirmative defense must be pleaded with particularity and must allege ultimate facts "averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) While for purposes of a demurrer the factual allegations included in an affirmative defense must be regarded as true, the demurrer does not admit contentions, deductions, or conclusions of facts or law. (*See South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) Thus, a defendant is required to plead not just conclusions, but all facts necessary to establish the elements of any affirmative defense he may raise. "[T]he essential facts upon which a determination of the controversy depends should be stated with clearness and precision so that nothing is left to surmise. Those recitals, references to, or allegations of material facts which are left to surmise are subject to special demurrer for uncertainty." (*Ankeny v. Lockheed Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 537.)

Despite this, Defendant's affirmative defenses consist entirely of single-sentence conclusions that fail to allege *any* facts to support the defenses. This approach runs afoul of well-established law that requires even defenses to allege facts, and not merely conclusions.

Defendant's First Affirmative Defense asserts that "Plaintiffs fail to state a claim and/or sufficient facts upon which relief can be granted." (Answer at 1:14-15.) This affirmative defense is merely boilerplate that does not identify any defect in Plaintiffs' complaint. If Defendant is

aware of any alleged defects in the complaint, Defendant must include them in its Answer. Failure to do so renders this affirmative defense fatally superficial and uncertain.

Defendant's Second Affirmative Defense asserts simply that "Plaintiffs are not real parties in interest and lack standing to seek any relief against Defendant." (Answer at 1:16-18.) This affirmative defense is boilerplate that does not state facts sufficient to constitute the defense. Were this true, it seems that any reasonable Defendant would want the lack of standing issue addressed at the outset of litigation. If Plaintiffs have no standing, then why did Defendant not demur? This affirmative defense does not provide any explanation of the claim that Plaintiffs lack standing, rendering this defense uncertain.

Defendant's Third Affirmative Defense asserts simply that "Plaintiffs' claims are barred by the doctrine of unclean hands." (Answer at 1:19-20.) This affirmative defense is boilerplate that does not state facts sufficient to constitute the defense. No explanation whatsoever is provided to support this baseless accusation that calls into question the conduct of Plaintiffs. Defendant fails to provide what conduct on the part of Plaintiffs give them "unclean hands," rendering the defense uncertain.

Defendant's Fourth Affirmative Defense asserts simply that "One or more of Plaintiffs' claims is barred by the doctrine of accord and satisfaction." (Answer at 1:21-22.) This affirmative defense is boilerplate that does not state any facts sufficient to constitute the defense. No further explanation is provided as to how there was an accord and satisfaction in Plaintiffs' transactions with Defendant, rendering the defense uncertain.

Defendant's Fifth Affirmative Defense asserts simply that "One or more of Plaintiffs' claims is barred by the applicable statutes of limitations and/or the equitable doctrine of laches." (Answer at 1:23-25.) This affirmative defense is boilerplate that does not state facts sufficient to constitute the defense. Defendant provides no factual underpinning to demonstrate how the doctrine of laches applies to the facts at hand, nor does Defendant set forth a single fact as to why the claims are barred by the statutes of limitations, rendering the defense uncertain.

Defendant's Sixth Affirmative Defense asserts simply that "Plaintiffs' purported causes of action are barred or otherwise limited to the extent that Plaintiffs have failed to mitigate or avoid

the purported damages alleged." (Answer at 1:26-28.) Like the other affirmative defenses, this defense is boilerplate that does not state facts specific to constitute the defense. There is no explanation for how Plaintiffs should have or could have "mitigate[d] or avoid[ed] the purported damages," rendering the defense uncertain.

Defendant's Seventh Affirmative Defense asserts simply that "Plaintiffs' claims are preempted by federal law." (Answer at 2:1-2.) This affirmative defense is boilerplate that does not state facts sufficient to constitute the defense. Defendant does not assert which claims are preempted or what federal law(s) apparently preempt Plaintiffs' claims, nor does Defendant offer any other support for this defense, rendering the defense uncertain.

Defendant's Eighth Affirmative Defense states that "Plaintiffs' claims are barred by the doctrine of primary jurisdiction." (Answer at 2:3-4.) Again, this affirmative defense is boilerplate that does not state facts sufficient to constitute the defense. It is also uncertain. Defendant provides no information as to why jurisdiction in this Court is not proper, nor what jurisdiction is proper.

Defendant's Ninth Affirmative Defense asserts simply that "Plaintiffs' claims are foreclosed by the First Amendment." (Answer at 2:5-6.) Just like the other affirmative defenses, this one is boilerplate that does not state facts sufficient to constitute the defense. The Answer contains no explanation as to how or why Plaintiffs' claims are barred by the First Amendment, rendering the defense uncertain.

Defendant's Tenth Affirmative Defense states "Plaintiffs' claims are precluded by actions, determinations and regulations of the Federal Trade Commission ("FTC") and the Food and Drug Administration ("FDA") Skinnypop Popcorn LLC's compliance with FDA and FTC regulation is a complete and/or partial defense to Plaintiffs' claims." (Answer at 2:7-11.) This affirmative defense is boilerplate that does not state facts sufficient to constitute the defense. The Defendant in no way identifies or attempts to identify any facts supporting its assertion that it is in compliance with FDA and FTC regulation. Defendant does not specifically refute any of the violations of FDA actions, determinations, and/or regulations that are alleged in Plaintiffs'

complaint, as those actions, determinations, and/or regulations are incorporated in whole or in part by California law, rendering the defense uncertain.

Defendant's Eleventh Affirmative Defense asserts simply that "Plaintiffs' claims are moot." (Answer at 2:12-13.) Like the other affirmative defenses, this one is boilerplate that fails to state facts sufficient to constitute the defense. The defense is also uncertain. Defendant offers no explanation as to why the allegations made in Plaintiffs' complaint are now moot.

Defendant's Twelfth Affirmative Defense states that "Plaintiffs' purported class action claims are inappropriate as this action cannot be certified as a class." (Answer at 2:14-16.) This affirmative defense is boilerplate that does not state facts sufficient to constitute a defense. The defense is also uncertain. Defendant provides no reason beyond this simple conclusory statement as to why Plaintiffs cannot satisfy the prerequisites for class certification.

* * *

In short, each of Defendant's twelve affirmative defenses merely recites legal doctrines without providing any facts to support their application, leaving Plaintiffs to speculate as to how Defendant intends to defend against the allegations in the complaint. As such, each of the defenses is subject to demurrer.

V. CONCLUSION

An answer to a complaint is required to state clear and concise facts that support each element of any asserted affirmative defense. Here, Defendant drafted a boilerplate answer with bald and uncertain assertions. The affirmative defenses are so generic and nonspecific that there is nothing about them that makes them any more applicable to this case than to any other complaint that has been filed by any plaintiff against any defendant at any time. Plaintiffs respectfully request that this Demurrer be sustained without leave to amend.

DATE: February 18, 2014

THE VEEN FIRM, P.C.

CHAVEZ & GERTLER LLP

By: /s/ Jonathan E. Gertler
Jonathan E. Gertler

Attorneys for Plaintiffs and the Proposed Class

PROOF OF SERVICE
(C.C.P. §1013a(3))

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

I am employed in the County of Marin, State of California. I am over the age of 18 years and not a party to the within action; my business address is Chavez & Gertler LLP, 42 Miller Avenue, Mill Valley, CA 94941.

On February 18, 2014, I served the following documents:

- **PLAINTIFFS' NOTICE OF DEMURRER AND DEMURRER TO ANSWER TO COMPLAINT BY DEFENDANT SKINNYPOP POPCORN, LLC, MEMORANDUM OF POINTS AND AUTHORITIES**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed to each as follows:

J. Noah Hagey, Esq.
Matthew Borden, Esq.
Allyson Fair, Esq.
BRAUNHAGEY & BORDEN LLP
220 Sansome Street, Second Floor
San Francisco, California 94104
hagey@braunhagey.com
borden@braunhagey.cmo
fair@braunhagey.com

Attorneys for Defendant SkinnyPop

[X] **BY MAIL:** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Mill Valley, California.

[X] **BY EMAIL:** The above mentioned documents were also served on the interested parties in this action by transmitting them via email, addressed to the persons to be served at the email addresses shown above.

Executed on February 18, 2014, at Mill Valley, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Amber Berry

EXHIBIT 4

FILED 2.24.14

Superior Court of California
County of San Mateo
Civil Department
400 County Center
Redwood City, CA 94063-1655
(650)363-4599
www.sanmateocourt.org

RACHEL DOSSEY Plaintiff(s) vs. SKINNYPOP POPCORN LLC Defendant(s)	**Notice of Complex Case Status Conference** Case No.: CIV 526548 Date: **04/22/14** Time: **9:00 AM** **Dept. 21**
Title: RACHEL DOSSEY ETAL VS SKINNYPOP POPCORN LLC	

You are hereby given notice of your Complex Case Status Conference. The date, time and department have been written above. At this conference, the Presiding Judge will decide whether this action is a complex case within the meaning of California Rules of Court ("CRC"), Rule 3.400, subdivision (a) and whether it should be assigned to a single judge for all purposes.

1. In accordance with applicable **San Mateo County Local Rule 2.30**, you are hereby ordered to:
   a. **Serve** copies of this notice, your Civil Case Cover Sheet, and your Certificate Re: Complex Case Designation on all named parties in this action no later than service of your first appearance pleadings.
   b. **Give reasonable notice** of the Complex Case Status Conference to all named parties in this action, even if they have not yet made a first appearance or been formally served with the documents listed in subdivision (a). Such notice shall be given in the same manner as required for an ex parte application pursuant to CRC 3.1203.

2. **If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Complex Case Status Conference. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.**

3. An action is provisionally a complex case if it involves one or more of the following types of claims: (1) antitrust or trade regulation claims; (2) construction defect claims involving many parties or structures; (3) securities claims or investment losses involving many parties; (4) environmental or toxic tort claims involving many parties; (5) claims involving massive torts; (6) claims involving class actions; or (7) insurance coverage claims arising out of any of the claims listed in subdivisions (1) through (6). The Court shall treat a provisionally complex action as a complex case until the Presiding Judge has the opportunity to decide whether the action meets the definition in CRC 3.400(a).

4. Any party who files either a Civil Case Cover Sheet (pursuant to CRC 3.401) or a counter or joinder Civil Case Cover Sheet (pursuant to CRC 3.402, subdivision (b) or (c)), designating an action as a complex case in Items 1, 2 and/or 5, must also file an accompanying Certificate Re: Complex Case Designation in the form prescribed by the Court. The certificate must include supporting information showing a reasonable basis for the complex case designation being sought. Such supporting information may include, without limitation, a brief description of the following factors as they pertain to the particular action: (1) management of a large number of

separately represented parties; (2) complexity of anticipated factual and/or legal issues; (3) numerous pretrial motions that will be time-consuming to resolve; (4) management of a large number of witnesses or a substantial amount of documentary evidence; (5) coordination with related actions pending in one or more courts in other counties, states or countries or in a federal court; (6) whether or not certification of a putative class action will in fact be pursued; and (7) substantial post-judgment judicial supervision.

For further information regarding case management policies and procedures, see the court website at www.sanmateocourt.org

* Telephonic appearances at Complex Case Status Conference are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference.

CLERK'S CERTIFICATE OF MAILING

I hereby certify that I am the clerk of this Court, not a party to this cause; that I served a copy of this notice on the below date, by placing a copy thereof in separate sealed envelopes addressed to the address shown by the records of this Court, and by then sealing said envelopes and depositing same, with postage fully pre-paid thereon, in the United States Mail at Redwood City, California.

Date: 02/20/14

John C. Fitton,
Court Executive Officer/Clerk

By: HENRY L. CAJBON
Deputy Clerk

Copies mailed to:

JONATHAN E GERTLER
42 MILLER AVE
MILL VALLEY CA 94941

MATTHEW BROOKS BORDEN
220 SANSOME ST. 2ND FLR
SAN FRANCISCO CA 90104

Form: CCSC

EXHIBIT 5

Actions

Home | Complaints/Parties | Actions | Minutes | Pending Hearings | Case Report | Images

Case Type: ▼

Case Number: Search

Case CIV526548 - RACHEL DOSSEY ETAL VS SKINNYPOP POPCORN LLC

Move To This Date

Viewed	Date	Action Text	Disposition	Image
N	04/24/2014 9:00 AM DEPT. 7	CASE MANAGEMENT CONFERENCE - Minutes		
N	04/22/2014 9:00 AM DEPT. PJLM	COMPLEX CASE STATUS CONFERENCE - Minutes		
	03/25/2014 9:00 AM DEPT. LM	HEARING ON DEMURRER TO ANSWER OF SKINNYPOP POPCORN LLC TO COMPLAINT FILED 02/03/2014 OF RACHEL DOSSEY FILED BY RACHEL DOSSEY - Minutes		
N	02/19/2014	PROOF OF SERVICE (SUB-SERVICE) OF SUMMONS AND COMPLAINT FILED 02/03/2014 OF RACHEL DOSSEY AS TO SKINNYPOP POPCORN LLC, BY SUB-SERVING J NOAH HAGEY, AGENT FOR SERVICE. MAILING DATE OF 02/13/14.	-	
	02/18/2014	COURT REPORTER FEE OF $30.00 PAID BY RACHEL DOSSEY.	-	
	02/18/2014	MOTION FEE PAID BY RACHEL DOSSEY.	-	
N	02/18/2014	NOTICE DEMURRER AND DEMURRER TO SKINNYPOP POPCORN, LLCS ANSWER TO COMPLAINT, MPA FILED BY RACHEL DOSSEY.	-	
	02/13/2014	COMPLEX LITIGATION FEE OF $1,000.00 RECEIVED FROM RACHEL DOSSEY (PLAINTIFF).	-	
N	02/06/2014	(S) GENERAL DENIAL TO THE COMPLAINT FILED 02/03/2014 OF RACHEL DOSSEY FILED BY SKINNYPOP POPCORN LLC, REPRESENTED BY MATTHEW BROOKS BORDEN	-	
N	02/04/2014	CERTIFICATE OF COMPLEX CASE DESIGNATION FILED BY RACHEL DOSSEY	-	
	02/03/2014	ADVANCE JURY FEE POSTED BY PLAINTIFF ON BEHALF OF RACHEL DOSSEY, LOUISE TANG.	-	
	02/03/2014	FIRST PAPER FEE PAID BY RACHEL DOSSEY, LOUISE TANG.	-	
N	02/03/2014	CIVIL CASE COVERSHEET RECEIVED	-	
N	02/03/2014	30 DAY SUMMONS, ISSUED AND FILED.	-	
N	02/03/2014	(S) COMPLAINT FILED	-	

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
Dossey, Rachel
Tang, Louise

DEFENDANTS
SkinnyPop Popcorn LLC

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

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
The Veen Firm, P.C.,711 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Ph: 415-673-4800
Chavez & Gerlter LLP, 42 Miller Ave., Mill Valley, CA 94941
Ph: 415-381-5599
(see attachment)

Attorneys *(If Known)*
BraunHagey & Borden LLP
220 Sansome St., Second Floor
San Francisco, CA 94104

(see attachment)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

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

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

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
- ☐ 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 ☒ 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

Brief description of cause:
Defendant's labeling of its products.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ n/a

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

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

JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

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

DATE
March 3, 2014

SIGNATURE OF ATTORNEY OF RECORD

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ATTORNEYS FOR DEFENDANT
SKINNYPOP POPCORN LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RACHEL DOSSEY, and LOUISE TANG, on behalf of themselves, and on behalf of all others similarly situated, Plaintiffs, v. SKINNYPOP POPCORN LLC, AND DOES 1-100, inclusive, Defendants.	Case No. **CIVIL CASE COVER SHEET ADDENDUM** **Date:** **Time:** **Judge:**

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