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CHARITY BUSTAMANTE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHARITY BUSTAMANTE, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

KIND LLC, a Delaware Limited Liability  
Company, and DOES 1-10,

Defendants.

Case No. **'15CV0891 JAH JMA**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Charity Bustamante (“Plaintiff”), by and through her counsel, brings this  
 2 Class Action Complaint against Kind LLC (“Defendant”) on behalf of herself and all  
 3 others similarly situated, and alleges, upon personal knowledge as to her own actions  
 4 and her counsel’s investigations, and upon information and belief as to all other matters,  
 5 as follows:

### 6 NATURE OF THE CASE

7 1. This is a consumer protection and false advertising class action concerning  
 8 Defendant’s false and/or unlawful labels on its “KIND” bars and snack products  
 9 including (1) Almond & Apricot, (2) Nut Delight, (3) Blueberry Vanilla & Cashew, (4)  
 10 Fruit & Nut Delight, (5) Apple Cinnamon & Pecan, Almonds & Apricots in Yogurt, (6)  
 11 Peanut Butter & Strawberry, (7) Almond & Coconut, (8) Almond Coconut Cashew  
 12 Chai, (8) Fruit & Nuts in Yogurt, (9) Almond Walnut Macadamia With Peanuts +  
 13 Protein, (10) Pomegranate Blueberry Pistachio + Antioxidants, (11) Blueberry Pecan +  
 14 Fiber, (12) Dark Chocolate Cherry Cashew + Antioxidants, (13) Peanut Butter Dark  
 15 Chocolate + Protein, (14) Cashew & Ginger Spice, (15) Dark Chocolate Chili Almond,  
 16 (16) Maple Glazed Pecan & Sea Salt, (17) Madagascar Vanilla Almond, (18) Dark  
 17 Chocolate Cinnamon Pecan, (19) Dark Chocolate Mocha Almond, (20) Caramel  
 18 Almond & Sea Salt, (21) Dark Chocolate Nuts & Sea Salt, (22) Salted Caramel & Dark  
 19 Chocolate Nut, (23) Dark Chocolate Chunk, (24) Maple Pumpkin Seeds with Sea Salt,  
 20 (25) Oats & Honey with Toasted Coconut, (26) Vanilla Blueberry, (27) Peanut Butter  
 21 Dark Chocolate, (28) Maple Quinoa Clusters with Chia Seeds, (29) Cinnamon Oat  
 22 Clusters with Flax Seeds, (30) Peanut Butter Whole Grain Clusters, (31) Vanilla  
 23 Blueberry Clusters with Flax Seeds, and (32) Fruit & Nut Clusters (collectively, the  
 24 “Products”).

25 2. As alleged in more detail below, at least four of the Products — Almond &  
 26 Apricot, Almond & Coconut, Peanut Butter Dark Chocolate + Protein, and Dark  
 27 Chocolate Cherry Cashew + Antioxidants — are misbranded in violation of the Federal  
 28 Food, Drug and Cosmetic Act (“FDCA”) for the reasons set forth in a warning letter

1 that the FDA sent to Defendant on or about March 17, 2015. A copy of this letter is  
2 attached as Exhibit A, and it is available through the FDA's website at:  
3 <<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm440942.htm>>  
4 (last visited April 21, 2015).

5 3. In addition, Defendant falsely and prominently labels the Products as "All  
6 Natural" and "Non GMO," while manufacturing the Products with genetically modified  
7 and non-natural, highly processed ingredients including soy lecithin, soy protein isolate,  
8 and canola oil.

9 4. Plaintiff brings claims against Defendant individually and on behalf of  
10 classes of all other similarly situated purchasers of the Products for: (1) breach of  
11 express warranties; (2) violations of California's Consumers Legal Remedies Act, Cal.  
12 Civ. Code § 1750, *et seq.*; (3) violations of California's False Advertising Law, Cal.  
13 Bus. & Prof. Code § 17500, *et seq.*; and (4) violations of California's Unfair  
14 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*

15 5. Plaintiff seeks an order requiring Defendant to, among other things: (1)  
16 cease the unlawful marketing; (2) conduct a corrective advertising campaign; (3)  
17 comply strictly with the FDCA, 21 U.S.C. § 301, *et seq.*, and regulations issued in  
18 accordance with the FDCA; and (4) pay damages and restitution to Plaintiffs and Class  
19 members in the amounts paid to purchase the products at issue.

#### 20 **JURISDICTION AND VENUE**

21 6. This Court has subject matter jurisdiction over this action under the Class  
22 Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual  
23 class members exceed \$5,000,000, exclusive of interest and costs, and this is a class  
24 action in which more than two-thirds of the proposed plaintiff class, on the one hand,  
25 and Defendant, on the other, are citizens of different states.

26 7. This Court has personal jurisdiction over Defendant because it conducts  
27 business in California and otherwise intentionally avails itself of the markets in  
28 California to render the exercise of jurisdiction by this Court proper. Defendant has

1 marketed, promoted, distributed, and sold the Products in California.

2 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)  
3 because a substantial part of the events or omissions giving rise to the alleged claims  
4 occurred in this District given that Plaintiff purchased the Products in this District and  
5 Defendant markets, promotes, distributes and sells the Products in this District.

### 6 **PARTIES**

7 9. Plaintiff is a resident of Los Angeles County, California, who used to  
8 reside in San Diego County and purchased the Products in San Diego County, most  
9 recently at Target in Poway, California.

10 10. Defendant Kind LLC is a Delaware Limited Liability Company. Upon  
11 information and belief, Defendant's principal place of business is located in New York.  
12 Defendant manufactures, promotes, markets, and distributes the Products to consumers  
13 throughout California and the United States.

14 11. Plaintiff is unaware of the true names and capacities of the defendants sued  
15 as DOES 1-10, and therefore sues these defendants by fictitious names. Plaintiff will  
16 seek leave to amend this Complaint when and if the true identities of these DOE  
17 defendants are discovered. Plaintiff is informed and believes and thereon alleges that  
18 each of the Defendants designated as a DOE is responsible in some manner for the acts  
19 and occurrences alleged herein, whether such acts or occurrences were committed  
20 intentionally, negligently, recklessly or otherwise, and that each said DOE defendant  
21 thereby proximately caused injuries and damages to Plaintiff as herein alleged, and is  
22 thus liable for the damages suffered by Plaintiff.

### 23 **SUBSTANTIVE ALLEGATIONS**

#### 24 **A. Defendant's False "All Natural" and "Non GMO" Label Claims**

25 12. Defendant falsely and prominently labels the Products as "All Natural"  
26 and "Non GMO."

27 13. First, the Products are not "All Natural" or "Non GMO" because they all  
28 include ingredients that are sourced from genetically-modified crops, such as soy

1 lecithin,<sup>1</sup> soy protein isolate,<sup>2</sup> and/or canola oil.<sup>3</sup> A genetically modified crop is a crop  
 2 whose genetic material has been altered by humans using genetic engineering  
 3 techniques. The World Health Organization defines genetically modified organisms  
 4 (“GMOs”), which include GM crops, as “organisms in which the genetic material  
 5 (DNA) has been altered in a way that does not occur naturally.” GMO crops are not  
 6 natural, but man-made. There are wide-ranging controversies related to GMO crops,  
 7 including health risks from ingesting GMO foods and negative environmental effects  
 8 associated with growing GMO crops. The use and labeling of GMO foods is the  
 9 subject of a variety of laws, regulations, and protocols worldwide.

10 14. Second, in addition to Defendant’s use of ingredients derived from GMO  
 11 crops in the Products, Defendant’s “All Natural” claim is false because Defendant  
 12 includes soy lecithin, soy protein isolate, canola oil, glucose, and certain other  
 13 ingredients in the Products that are, in fact, synthetic and highly processed  
 14 additives — not “All Natural” ingredients.

15 15. Defendant places the “All Natural” and “Non GMO” claims  
 16 conspicuously and prominently on the front of the Products’ packaging for every  
 17 person to see as soon as they pick up the Products to read it. For instance, on  
 18 Defendants’ bars Defendant places these claims as the first of several deceptive

19  
 20 ///

21  
 22 ///

23  
 24 <sup>1</sup> Contained in nearly all of the Products.

25 <sup>2</sup> Contained in at least the following Products: Almond Walnut Macadamia With Peanuts + Protein;  
 26 Peanut Butter Dark Chocolate + Protein; Peanut Butter Whole Grain Clusters; and Fruit & Nut  
 Clusters.

27 <sup>3</sup> Contained in at least the following Products: Dark Chocolate Chunk; Maple Pumpkin Seeds with Sea  
 28 Salt; Oats & Honey with Toasted Coconut; Vanilla Blueberry; Maple Quinoa Clusters with Chia  
 Seeds; Cinnamon Oat Clusters with Flax Seeds; Vanilla Blueberry Clusters with Flax Seeds; Fruit &  
 Nut Clusters

checkmarks directly below the brand name, touting the Products' claimed benefits, as shown in the following example:



16. Upon information and belief, Defendant uses hexane-processed soy lecithin, soy protein isolate, and canola oil in the Products. Hexane is a constituent of gasoline obtained from crude oil, natural gas liquids, or petroleum refinery processing. As recognized by the United States Occupational Safety and Health Administration (“OSHA”), hexane is a neurotoxin, which can cause irritation to the eyes and upper respiratory tract. Commercial hexane also contains benzene, a known hematologic poison linked to chronic leukemia. Although Defendant discloses these ingredients on



1 the lists of ingredients on its Products, Defendant fails to disclose that it uses hexane-  
2 processed, GMO soy lecithin, soy protein isolate, and canola oil.

3 17. Although the Products are not “All Natural” or “Non GMO,” Defendant  
4 prominently labels the Products as such because consumers perceive all natural foods as  
5 better, healthier, and more wholesome. In fact, the market for all natural foods has  
6 grown rapidly in recent years, a trend that Defendant exploits through its false  
7 advertising.

8 18. Any consumer who purchased the Products — irrespective of their  
9 motivation for purchasing the Products — suffered harm in the form of a higher price  
10 that Defendant was able to command for the Products based on the false representations  
11 that they are “All Natural” and “Non GMO.”

12 19. By conspicuously and prominently placing the “All Natural” and “Non  
13 GMO” representations on the Products’ packaging, Defendant has ensured that all  
14 consumers purchasing the Products are exposed to these claims.

15 20. Genetically modified crops do not occur in nature, and are crops that are  
16 genetically manipulated from their natural state. Monsanto, one of the largest producers  
17 of genetically modified crop seed, defines genetic modification (or genetic engineering)  
18 to mean “[t]he technique of removing, modifying or adding genes to a living organism  
19 via genetic engineering or other more traditional methods. Also referred to as gene  
20 splicing, recombinant DNA (rDNA) technology or genetic engineering.”

21 <<http://www.monsanto.com/newsviews/pages/glossary.aspx#g>> (last visited April 21,  
22 2015). Monsanto also defines Genetically Modified Organisms (“GMO”) as “[p]lants  
23 or animals that have had their genetic makeup altered to exhibit traits that are not  
24 naturally theirs. In general, genes are taken (copied) from one organism that shows a  
25 desired trait and transferred into the genetic code of another organism.” *Id.*

26 21. The World Health Organization’s (“WHO”) definition of GMO is  
27 consistent with Monsanto’s definition: “Genetically modified (GM) foods are foods  
28 derived from organisms whose genetic material (DNA) has been modified in a way that

1 does not occur naturally, e.g. through the introduction of a gene from a different  
2 organism.” <[http://www.who.int/topics/food\\_genetically\\_modified/en/](http://www.who.int/topics/food_genetically_modified/en/)> (last visited  
3 April 21, 2015). WHO also cautions that “All GM foods should be assessed before  
4 being allowed on the market.” *Id.*

5 22. Romer Labs, a company that provides diagnostic services to the  
6 agricultural industry, including tests to detect and determine the existence of GM crops,  
7 defines GM crops as “[a]griculturally important plants [that] are often genetically  
8 modified by the insertion of DNA material from outside the organism into the plant’s  
9 DNA sequence, allowing the plant to express novel traits that normally would not  
10 appear in nature, such as herbicide or insect resistance. Seed harvested from GMO  
11 plants will also contain these modifications.”

12 <<http://www.romerlabs.com/en/knowledge/gmo/>> (last visited Jan. 15, 2015).

13 23. The United States Department of Agriculture (“U.S.D.A”) estimates that,  
14 as of 2014, approximately 94% of soybeans grown in the United States are genetically  
15 modified, as are over 80% of U.S. canola crops.<sup>4</sup>

16 24. The market for natural products is large and ever growing and consumers  
17 are willing to pay a premium for products they believe to be natural, healthy, and/or free  
18 of GMOs.

19 25. Upon information and belief, the soy lecithin, soy protein isolate, and  
20 canola oil used as ingredients in the Products have been produced from GMO soybeans  
21 or canola during the four-year period preceding the filing of this Complaint.

22 26. Independent of the use of GMO crops in the Products, Defendant’s “All  
23 Natural” claims are false because the Products contain ingredients that are synthetic  
24 and so heavily processed that they no longer are chemically the same as the raw

25 \_\_\_\_\_  
26 <sup>4</sup> <[http://www.ers.usda.gov/media/185551/biotechcrops\\_d.html](http://www.ers.usda.gov/media/185551/biotechcrops_d.html)> (last visited Jan. 15, 2015); *see also*  
27 [http://www.huffingtonpost.com/margie-kelly/genetically-modified-food\\_b\\_2039455.html](http://www.huffingtonpost.com/margie-kelly/genetically-modified-food_b_2039455.html) (last visited  
28 Jan. 15, 2014); *see also* Economic Research Service, USDA, Genetically engineered varieties of corn,  
upland cotton, and soybeans, by State and for the United States, 2000-14 (alltables.xls),  
<[http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-](http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx#.VBcWqC5dWyR)  
[us.aspx#.VBcWqC5dWyR](http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx#.VBcWqC5dWyR)> (last visited Jan. 15, 2015).



1 ingredients.

2 27. Soy lecithin, for example, is used in food as an emulsifier, lubricant, and  
3 preservative. Soy Lecithin is extracted from soybeans by immersing them in hexane  
4 before further processing. Soy lecithin's chemical manufacturing process places it  
5 outside of reasonable consumer's definition and understanding of "All Natural."

6 28. Soy protein isolate also is produced using hexane extraction, followed by  
7 further heavy processing.

8 29. Unlike truly natural products such as cold-pressed, extra virgin olive oil,  
9 industrially produced canola oil also is produced using hexane extraction, and then is  
10 put through a complex refining process during which such oils is treated with various  
11 chemicals and acids, run through one or more centrifuges, bleached, and deodorized.  
12 The heavy processing is necessary to remove (at least some) dangerous toxins and  
13 impurities left in crude canola oil from the hexane processing, but also removes  
14 natural components of the oil such as vitamins, chlorophyll, flavor, aroma, and  
15 oxygen.

16 30. The U.S. Department of Agriculture ("USDA") takes into account the  
17 level of processing in its policy on natural claims on food labeling, in guidance it has  
18 provided for the labeling of meat and poultry. In such guidance, the USDA allows  
19 such products to be labeled "natural" when "(1) The product does not contain any  
20 artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined  
21 in 21 C.F.R. 101.22), or any other artificial or synthetic ingredient; and (2) the product  
22 and its ingredients are not more than minimally processed. Minimal processing may  
23 include those traditional processes used to make food edible or to preserve it or to  
24 make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and  
25 fermenting. . . . Relatively severe processes, e.g., solvent extraction, acid hydrolysis,  
26 and chemical bleaching would clearly be considered more than minimal processing."

27 USDA, FOOD STANDARDS AND LABELING POLICY BOOK, *available at*

28 <[http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_Book\\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf)>

1 (last visited April 21, 2015).

2 31. Upon information and belief, Defendant knew and intended that  
3 consumers would pay a price premium for the Products if they were labeled “All  
4 Natural” and/or “Non GMO.”

5 **B. The Products are Misbranded in Violation of the FDCA**

6 32. A copy of the FDA’s warning letter to Defendant dated March 17, 2015  
7 (the “FDA Warning Letter”), is attached hereto as Exhibit A, and is incorporated by  
8 reference.

9 33. Despite Defendant’s long-term use of the term “healthy” and related  
10 claims on the labels of the Products, none of the Products identified in the FDA  
11 Warning Letter meet the requirements for use of the “healthy” claim set forth in 21  
12 CFR 101.65(d)(2).

13 34. The term “plus” is defined in 21 CFR 101.54(e), and is defined more  
14 specifically in connection with protein claims, such as those made by Defendant on  
15 certain of the Products, as described in Paragraphs 1-2, above. However, as stated in  
16 the FDA Warning Letter, the Products do not meet the requirements for such use of  
17 the “plus” claim.

18 35. Similarly, certain of the Products use the term “antioxidant” in their  
19 labels, but do not meet the requirements for use of that term under 21 CFR 101.54(g).

20 36. Also as described in the FDA Warning Letter, certain of the Products are  
21 misbranded within the meaning of 21 U.S.C. § 343(r)(2)(A)(v) because their labels  
22 include the nutrient content claim “Good Source of Fiber,” without including the  
23 required statement disclosing that the food is not low in total fat in immediate  
24 proximity to the claim, as required by 21 CFR 101.54(d) and 21 CFR 101.62(b)(2).

25 37. The Products’ labels bear “no trans fat” claim but fail to include the levels  
26 of monounsaturated fatty acids and polyunsaturated fatty acids in the nutrition  
27 information, as required by 21 CFR 101.9 (c)(2)(iii) and (iv).

28 38. Defendant’s Peanut Butter Dark Chocolate + Protein Product labels

1 include the nutrient content claims “+ protein” and “plus 7 g protein” on the principal  
 2 display panel, but fail to include the percent daily value for protein as required when  
 3 the label bears a nutrient content claim for protein as required by 21 CFR  
 4 101.9(c)(7)(i).

5 39. In violation of 21 CFR 101.5(d), the Products’ labels fail to accurately  
 6 declare Defendant’s place of business.

7 40. California prohibits the misbranding of food in a way which parallels the  
 8 FDCA through the “Sherman Law,” Cal. Health & Saf. Code § 109875, *et seq.* The  
 9 Sherman Law provides that food is misbranded “if its labeling is false or misleading in  
 10 any particular.” *Id.*

11 41. The Sherman Law explicitly incorporates by reference “[a]ll food  
 12 labeling regulations and any amendments to those regulations adopted pursuant to the  
 13 [FDCA].” Cal. Health & Saf. Code, § 110100(a).

14 42. Defendant’s false and misleading representations and omissions are  
 15 material, and likely to deceive reasonable consumers of the Products.

16 **C. Plaintiffs’ Reliance and Damages**

17 43. Plaintiff purchased many of the Products in California over the past four  
 18 years in reliance on Defendant’s representations that the Products were All Natural,  
 19 healthy, and non-GMO.

20 44. Plaintiff was willing to pay for the Products because of the  
 21 representations that they were All Natural, healthy, and non-GMO, and would not  
 22 have purchased the Products, would not have paid as much for the Products, or would  
 23 have purchased alternative products in absence of the representations, or with the  
 24 knowledge that the Products contained artificial, synthetic, highly processed  
 25 ingredients, and/or ingredients sourced from GMO crops.

26 45. Plaintiff paid for All Natural Products, but received Products that were  
 27 not in fact All Natural.

28 46. The Products that Plaintiff received were worth less than the products for

1 which she paid. By purchasing products in reliance on advertising that is false,  
 2 Plaintiff has suffered injury in fact and lost money as a result of the unfair business  
 3 practices alleged here.

#### 4 **CLASS ACTION ALLEGATIONS**

5 47. Plaintiff seeks relief in her individual capacity and as a class representative  
 6 of all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2)  
 7 and/or (b)(3), Plaintiff seeks certification of the following Nationwide and California  
 8 classes.

9 48. The Nationwide Class is initially defined as follows:

10 All persons residing in the United States who, from April 22,  
 11 2010 until the date notice is disseminated to the Class,  
 12 purchased any of the Products (the "Nationwide Class").

13 49. The California Class is initially defined as follows:

14 All persons residing in the California who, from April 22,  
 15 2010 until the date notice is disseminated to the Class,  
 16 purchased any of the Products (the "California Class").

17 50. Excluded from each of the above Classes are Defendant, including any  
 18 entity in which Defendant has a controlling interest, is a parent or subsidiary, or which  
 19 is controlled by Defendant, as well as the officers, directors, affiliates, legal  
 20 representatives, predecessors, successors, and assigns of Defendant. Also excluded  
 21 are the judges and Court personnel in this case and any members of their immediate  
 22 families, as well as any person who purchased the Product for the purpose of resale.

23 51. Plaintiff reserves the right to amend or modify the Class definitions with  
 24 greater specificity or division into subclasses after having had an opportunity to  
 25 conduct discovery.

26 a. Numerosity. Fed. R. Civ. P. 23(a)(1). Each Class is so numerous that  
 27 joinder of all members is unfeasible and not practicable. While the precise number of  
 28 Class members has not been determined at this time, Plaintiff is informed and believes  
 that many thousands or millions of consumers have purchased the Products.

1        52. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of  
2 law and fact common to each Class, which predominate over any questions affecting  
3 only individual Class members. These common questions of law and fact include,  
4 without limitation:

5            a. Whether Defendant engaged in the conduct alleged herein;

6            b. Whether Defendant's practices were deceptive, unfair, improper  
7 and/or misleading;

8            c. Whether Defendant uniformly conveyed to the class that the  
9 Products were "All Natural;"

10           d. Whether Defendant's claim that the Products are "All Natural" is  
11 true or false or likely to deceive a reasonable consumer;

12           e. Whether Defendant uniformly conveyed to the class that the  
13 Products were "Non GMO;"

14           f. Whether Defendant's claim that the Products are "Non GMO" is  
15 true or false or likely to deceive a reasonable consumer;

16           g. Whether Defendant mislabeled the Products as described in the FDA  
17 Warning Letter;

18           h. Whether Defendant violated California Civil Code §§ 1750, *et seq.*;

19           i. Whether Defendant violated California Business and Professions  
20 Code §§ 17200, *et seq.*;

21           j. Whether Defendant violated California Business and Professions  
22 Code §§ 17500, *et seq.*;

23           k. Whether Defendant breached an express warranty;

24           l. Whether Defendant violated California's Sherman Law;

25           m. Whether Defendant violated the Federal Food, Drug and Cosmetic  
26 Act (FDCA), 21 U.S.C. § 301, *et seq.*

27           n. The nature of the relief, including equitable relief, to which  
28 Plaintiffs and the Class members are entitled.

1       53.    Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the  
2 claims of the Class. Plaintiff and all Class members were exposed to uniform practices  
3 and sustained injury arising out of and caused by Defendant's unlawful conduct.

4       54.    Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly  
5 and adequately represent and protect the interests of the members of the Classes.  
6 Plaintiff's Counsel are competent and experienced in litigating class actions.

7       55.    Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is  
8 superior to other available methods for the fair and efficient adjudication of this  
9 controversy since joinder of all the members of the Classes is impracticable.  
10 Furthermore, the adjudication of this controversy through a class action will avoid the  
11 possibility of inconsistent and potentially conflicting adjudication of the asserted  
12 claims. There will be no difficulty in the management of this action as a class action.

13       56.    Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Defendant's  
14 misrepresentations are uniform as to all members of the Classes. Defendant has acted  
15 or refused to act on grounds that apply generally to the Classes, so that final injunctive  
16 relief or declaratory relief is appropriate with respect to the Classes as a whole.

### 17                               **FIRST CAUSE OF ACTION**

#### 18                               **Breach of Express Warranty**

19       57.    Plaintiff incorporates all preceding factual allegations as if fully set forth  
20 herein.

21       58.    Defendant sold the Products in its regular course of business.

22       59.    Plaintiff and Class members purchased the Products.

23       60.    Defendant made a promise and representation to Plaintiffs and Class  
24 members that the Products were "All Natural," "Non GMO," and generally "Healthy."  
25 Defendant's promises and representations constitute an express warranty that was  
26 provided to all consumers, and that became the basis of the bargain between Plaintiff  
27 and Class members on the one hand, and Defendant on the other. Defendant gave  
28 these express warranties to Plaintiff and Class members in written form on the



1 packaging of the Products.

2 61. Defendant's written affirmations of fact, promises, and/or descriptions as  
3 alleged are each a written warranty.

4 62. Defendant breached the warranty because the representations on the  
5 Products' packaging that the Products are ""All Natural," "Non GMO," and generally  
6 "Healthy" are false, as the Products did not contain the properties represented by  
7 Defendant.

8 63. All conditions precedent to seeking liability under this claim for breach of  
9 express warranty have been performed by Plaintiff and Class members who paid for  
10 the Products at issue.

11 64. On April 15, 2014, Plaintiff provided notice to Defendant of its breaches  
12 of express warranty with respect to the Products.

13 65. Defendant's breaches of warranty have caused Plaintiff and Class  
14 members to suffer injuries, paying for falsely labeled Products, and entering into  
15 transactions they would not have entered into for the consideration that Plaintiff and  
16 Class members paid.

17 66. As a direct and proximate result of Defendant's breaches of warranty,  
18 Plaintiff and Class members have suffered damages and continue to suffer damages,  
19 including economic damages in terms of the difference between the value of the  
20 Products as promised and the value of the Products as delivered.

21 67. As a result of the breach of these warranties, Plaintiff and Class members  
22 are entitled to legal and equitable relief including damages, costs, attorneys' fees,  
23 rescission, and/or other relief as deemed appropriate, for an amount to compensate  
24 them for not receiving the benefit of their bargain.

25 **SECOND CAUSE OF ACTION**

26 **Violation of Consumers Legal Remedies Act – Civil Code § 1750, *et seq.***

27 68. Plaintiff incorporates all preceding factual allegations as if fully set forth  
28 herein.

1        69. This cause of action is brought pursuant to the Consumers Legal  
2 Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”) because  
3 Defendant’s actions and conduct described herein constitute transactions that have  
4 resulted in the sale or lease of goods or services to consumers.

5        70. Plaintiff and each member of the California Classes are consumers as  
6 defined by California Civil Code §1761(d).

7        71. The Products are goods within the meaning of Civil Code §1761(a).

8        72. Defendant violated the CLRA in at least the following respects:

9            a. in violation of §1770(a)(2), Defendant misrepresented the source of  
10 the Products as “All Natural” and “non GMO,” when in fact the Products contained  
11 artificial, synthetic ingredients, and ingredients sourced from GMO crops;

12            b. in violation of Section 1770(a)(5), Defendant represented that the  
13 Products have characteristics and benefits that they do not have;

14            c. in violation of Section 1770(a)(7), Defendant represented that the  
15 Products are of a particular standard, quality, or grade when they are of another;

16            d. in violation of Section 1770(a)(9), Defendant has advertised the  
17 Products with the intent not to sell them as advertised; and

18            e. in violation of Section 1770(a)(16), Defendant has represented that  
19 the Products were supplied in accordance with previous representations when in fact  
20 they were not).

21        73. Defendant knew, or should have known, that its representations and  
22 advertisements were false and misleading.

23        74. Plaintiff notified Defendant in writing, by certified mail on April 15,  
24 2015, of the violations alleged herein and demanded that Defendant remedy those  
25 violations.

26        75. If Defendant fails to rectify or agree to rectify the false labels detailed  
27 above and give notice to all affected consumers within 30 days of the date of  
28 Plaintiff’s written notice, Plaintiff will seek to amend this Complaint to seek actual,

1 punitive, and statutory damages pursuant to the CLRA.

2 76. Plaintiff also seeks a Court order enjoining the above-described wrongful  
3 acts and practices of Defendant and for restitution, disgorgement, statutory damages,  
4 and any other relief that the Court deems proper.

5 **THIRD CAUSE OF ACTION**

6 **California False Advertising Law – Cal. Bus. & Prof. Code § 17500, *et seq.***

7 77. Plaintiff incorporates all preceding factual allegations as if fully set forth  
8 herein.

9 78. Defendant publicly disseminated untrue or misleading advertising or  
10 intended not to sell the Products as advertised in violation of California’s False  
11 Advertising Law (“FAL”), Business & Professional Code § 17500, *et seq.*.

12 79. Defendant committed the violations of the FAL alleged herein with actual  
13 knowledge, or in the exercise of reasonable care should have known, that its labels  
14 were untrue or misleading.

15 80. Plaintiff reasonably relied on Defendant’s representations and/or  
16 omissions made in violation of California Business & Professional Code § 17500, *et*  
17 *seq.*

18 81. As a direct and proximate result of Defendant’s violations, Plaintiff  
19 suffered injury in fact and lost money.

20 82. Plaintiff, on behalf of herself and the Classes, seeks: (a) injunctive relief  
21 in the form of an order requiring Defendant to cease the acts of unfair competition  
22 alleged herein and to correct its advertising, promotion and marketing campaigns; (b)  
23 full restitution of all monies paid by Plaintiff and all Class members because of  
24 Defendant’s deceptive practices including, but not limited to, disgorgement of all  
25 profits derived from the sale of the Products; (c) interest at the highest rate allowable  
26 by law; and (d) the payment of Plaintiff’s attorneys’ fees and costs pursuant to, *inter*  
27 *alia*, California Code of Civil Procedure Section 1021.5.

**FOURTH CAUSE OF ACTION**

**California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.***

83. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

84. Through the conduct alleged above, Defendant engaged in unlawful, unfair, and/or fraudulent conduct under California’s Unfair Competition Law (“UCL”), California Business & Professions Code § 17200, *et seq.*

85. Defendant’s conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, California’s False Advertising Law, California Business & Professions Code §§ 17500 *et seq.*, California’s Sherman Law, the FDCA, and the federal regulations identified above.

86. Defendant’s conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiff and Class members. The harm to Plaintiff and Class members arising from Defendant’s conduct outweighs any legitimate benefit Defendant derived from the conduct. Defendant’s conduct undermines and violates the stated spirit and policies underlying the Consumers Legal Remedies Act, the False Advertising Law, the Sherman Law, and federal laws and regulations as alleged herein.

87. Defendant’s actions and practices constitute “fraudulent” business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers.

88. Plaintiff relied on Defendant’s representations and omissions.

89. As a direct and proximate result of Defendant’s violations, Plaintiff and other Class members suffered injury in fact and lost money because they purchased the Products at the price they paid believing the labeling claims described above to be true.

90. Plaintiff seeks: (a) injunctive relief in the form of an order requiring Defendant to cease the acts of unfair competition alleged herein and to correct its advertising, promotion, and marketing campaigns; (b) full restitution of all monies paid

1 by Plaintiff and all Class members because of Defendant's deceptive practices  
2 including, but not limited to, disgorgement of all profits derived from the sale of the  
3 Products; (c) interest at the highest rate allowable by law; and (d) the payment of  
4 Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil  
5 Procedure Section 1021.5.

6 **REQUEST FOR RELIEF**

7 WHEREFORE, Plaintiffs, individually and on behalf of the other members of the  
8 Classes proposed in this Complaint, respectfully requests that the Court enter judgment  
9 in her favor and against Defendant, as follows:

10 A. Declaring that this action is a proper class action, certifying the Classes as  
11 requested herein, designating Plaintiff as Class Representative and appointing the  
12 undersigned counsel as Class Counsel;

13 B. Awarding injunctive relief as permitted by law or equity, including  
14 enjoining Defendant from continuing the unlawful practices as set forth herein, and  
15 ordering Defendant to engage in a corrective advertising campaign;

16 C. For an accounting by Defendant for any and all profits derived from the  
17 herein-alleged unlawful, unfair, and/or fraudulent conduct and/or business practices;

18 D. Ordering Defendant to pay actual damages, restitution, and disgorgement  
19 of all money or property wrongfully obtained by Defendant by means of their herein-  
20 alleged unlawful, unfair, and fraudulent business practices, and equitable monetary  
21 relief to Plaintiffs and the other members of the Class;

22 E. Recovery of the amounts by which Defendant has been unjustly enriched;

23 F. Ordering Defendant to pay punitive damages, as allowable by law, to  
24 Plaintiff and the other members of the Class;

25 G. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff  
26 and the other members of the Classes pursuant to California Code of Civil Procedure  
27 Section 1021.5 and the common law private attorney general doctrine;

28 H. Ordering Defendant to pay both pre- and post-judgment interest on any

1 amounts awarded; and

2 I. Ordering such other and further relief as may be just and proper.

3  
4 **JURY DEMAND**

5 Plaintiff demands a trial by jury of all claims in this Complaint so triable.

6  
7  
8  
9 DATED: April 22, 2015

Respectfully submitted,

10 **AHDOOT & WOLFSON, PC**

11 By: /s/ Theodore Maya

12 Tina Wolfson

13 Robert Ahdoot

Theodore W. Maya

14 1016 Palm Avenue

West Hollywood, California 90069

15 Tel: 310-474-9111

16 Fax: 310-474-8585

17 **BARBAT, MANSOUR & SUCIU PLLC**

18 Nick Suciu III (*pro hac vice* application  
forthcoming)

19 434 West Alexandrine #101

Detroit, Michigan 48201

20 Tel: (313) 303-3472

Email: nicksuciu@bmslawyers.com

21 Counsel for Plaintiff

CHARITY BUSTAMANTE



**AFFIDAVIT OF COUNSEL**

I, Theodore Maya, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, P.C. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code Section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendant Kind LLC (“Defendant”) does business within the State of California, and Plaintiff purchased Defendant’s product within the State of California, including but not limited to within San Diego County, as alleged in this Class Action Complaint.

I declare under penalty of perjury under the laws of the United States and the State of California this 22nd day of April, 2015 in West Hollywood, California that the foregoing is true and correct.

/s/ Theodore Maya  
Theodore Maya

## Exhibit A

**U.S. Food and Drug Administration**  
Protecting and Promoting *Your* Health

## KIND, LLC 3/17/15



Department of Health and Human Services

Public Health  
Food and Drug Administration  
College Park, MD

### WARNING LETTER

MAR 17, 2015

#### VIA OVERNIGHT DELIVERY

Daniel Lubetsky, CEO  
Kind, LLC  
55 West 21<sup>st</sup> Street  
New York, New York 10010-6809

Re: 437043

Dear Mr. Lubetsky,

The Food and Drug Administration (FDA) reviewed the labels for your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products for these products direct the consumer to your website at the Internet address [www.kindsnacks.com](http://www.kindsnacks.com). We examined the labels for these products. Based on our review, we have concluded that these products are in violation of section 403 of the Federal Food, Drug, and Cosmetic Act, [21 U.S.C. § 343] and its implementing regulations found in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101). FDA regulations through links on FDA's home page at <http://www.fda.gov> (<http://www.fda.gov/>).

The significant violations are as follows:

1. Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products are misbranded within the meaning of section 403(r)(1)(A) of the Act because the product labels bear nutrient content claims, but the products do not meet the requirements to make such claims.

Under section 403(r)(1)(A) of the Act, a claim that characterizes the level of a nutrient which is of the type required to be made in accordance with a regulation authorizing the use of such a claim. Characterizing the level of a nutrient in a product without complying with the specific requirements pertaining to nutrient content claims for that nutrient under section 403(r)(1)(A) of the Act. Specifically:

a. The labels of your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products bear an implied nutrient content claim, by suggesting that the product may be useful in maintaining healthy dietary practices, and those statements are made in connection with statements about nutrients. Specifically, the labels of the aforementioned products bear the claim "Healthy and t in connection with statements such as:

- "good source of fiber,"
- "no trans fats,"
- "very low sodium" [Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],

- “low sodium” [Kind Plus Peanut Butter Dark Chocolate + Protein],
- “+ antioxidants” [Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],
- “50% DV antioxidants vitamins A, C and E” [Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],
- “+ protein” [Kind Plus Peanut Butter Dark Chocolate + Protein], and
- “7g protein” [Kind Plus Peanut Butter Dark Chocolate + Protein].

Additionally, your website at <http://www.kindsnacks.com/about/> states, “There’s healthy. There’s tasty. Then there our snacks are pretty much the nirvana of healthful tastiness.” In addition, your webpage for the Kind Peanut Butter Dark Chocolate + Protein product at [www.kindsnacks.com/products/kind-store/buy-kind-bars/kind-plus/peanut-butter-darkchocolate-protein](http://www.kindsnacks.com/products/kind-store/buy-kind-bars/kind-plus/peanut-butter-darkchocolate-protein) is a healthy and satisfying blend of peanuts and antioxidant-rich dark chocolate protein, which promotes satiety and strengthens bones, muscles and skin.”

However, none of your products listed above meet the requirements for use of the nutrient content claim “healthy” [21 CFR 101.65(d)(2)].

In accordance with 21 CFR 101.65(d)(2), you may use the term “healthy” as an implied nutrient content claim on food provided that the food, among other things, is “low saturated fat” as defined in 21 CFR 101.62(c)(2) [i.e., the food contains 1 g or less per Reference Amount Customarily Consumed (RACC) and no more than 15 percent of the calories from saturated fat].

According to the Nutrition Facts panels:

- The Kind Fruit & Nut Almond & Apricot product contains 3.5 g of saturated fat per 40 g of the food,
- The Kind Fruit & Nut Almond & Coconut product contains 5 g of saturated fat per 40 g of the food,
- The Kind Plus Peanut Butter Dark Chocolate + Protein product contains 3.5 g of saturated fat per 40 g of the food,
- The Kind Fruit & Nut Dark Chocolate Cherry Cashew + Antioxidants contains 2.5 g of saturated fat per 40 g of the food.

These amounts exceed 1 g of saturated fat per 40 g RACC. These amounts also exceed the maximum of 15 percent of the calories from saturated fat definition. Accordingly, your products do not meet the requirements for use of the nutrient content claim “healthy” [21 CFR 101.65(d)(2)]. Your products are thus misbranded within the meaning of section 403(r)(1)(A) of the Act.

b. Your Kind Peanut Butter Dark Chocolate + Protein and Kind Dark Chocolate Cherry Cashew + Antioxidants products (plus) as part of the product name but the products do not comply with the requirements governing the use of the names of your Kind Peanut Butter Dark Chocolate + Protein and Kind Dark Chocolate Cherry Cashew + Antioxidants Protein” and “50% DV Antioxidant, vitamins A, C and E,” respectively, meets the definition for a nutrient content claim “plus” if the product’s level of vitamins and minerals, which are nutrients of the type required to be in nutrition labeling [21 CFR 101.54(e)].

The term “plus” is defined in 21 CFR 101.54(e). This term may be used on the label or in labeling of foods to describe a food as a source of a nutrient (vitamin and mineral) in the food, provided that:

- (1) the food contains at least 10 percent more of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) than an appropriate reference food,
- (2) where the claim is based on nutrients that are added to the food, that the fortification is in accordance with the requirements for fortified foods in 21 CFR 104.20, and
- (3) the claim bears the required information for relative claims as described in 21 CFR 101.13(j)(2) and 101.13(k)(2).

However, neither product label states the identity of the reference food and the percentage (or fraction) that the RDI or DRV declared in immediate proximity to the most prominent such claim. Accordingly, these products are misbranded under section 403(r)(1)(A) of the Act because they bear the nutrient content claim “plus” but do not comply with the regulatory requirements for such a claim.

c. The product page for your KIND Peanut Butter Dark Chocolate + Protein product on your website at [www.kindsnacks.com/products/kind-store/buy-kind-bars/kind-plus/peanut-butter-darkchocolate-protein.html](http://www.kindsnacks.com/products/kind-store/buy-kind-bars/kind-plus/peanut-butter-darkchocolate-protein.html) includes the nutrient content claim “antioxidant-rich” but does not meet the requirements for the use of such claim that are set forth in 21 CFR 101.13(b).

The phrase “antioxidant-rich” characterizes the level of antioxidant nutrients in the product and, therefore, this claim is subject to the requirements for “rich in” claims under 21 CFR 101.13(b). Nutrient content claims using the term “antioxidant” must comply with the requirements for nutrient content claims. The requirements state, in part, that for a product to bear such a claim, an RDI must have been established for each nutrient of the claim [21 CFR 101.54(g)(1)], and these nutrients must have recognized antioxidant activity [21 CFR 101.54(h)]. That is the subject of the claim must also be sufficient to qualify for the claim under 21 CFR 101.54(b), (c), or (e) [21 CFR 101.54(f)]. In order to qualify for a “rich” or “high antioxidant” claim the product must contain 20 percent or more of the RDI for each antioxidant activity, such as vitamin C, vitamin E, or beta carotene (when 10% or more of the RDI for vitamin A is required). Based on the information in the Nutrition Facts label, this product contains 10% of the RDI for vitamin E and 0% of vitamin C and vitamin A. Therefore this product does not qualify for a “rich in” claim and the claim is misbranded under section 403(r)(2)(A)(i) of the Act.

2. Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate Cherry Cashew + Antioxidants products are misbranded within the meaning of section 403(r)(2)(A)(v)] because the labels include the nutrient content claim “Good Source of Fiber” without including the required statement that the food is not low in total fat in immediate proximity to the claim. Under 21 CFR 101.54(d), if a product label makes a claim that the product is a good source of fiber and the food is not “low” in total fat as defined in 21 CFR 101.54(d), the food must disclose the level of total fat per serving.

According to the Nutrition Facts panels:

- the Kind Fruit & Nut Almond & Apricot product contains 10 g of total fat per 40 g of the food,
- the Kind Fruit & Nut Almond & Coconut product contains 12 g of total fat per 40 g of the food; the Kind Plus Peanut Butter Dark Chocolate Cherry Cashew + Antioxidants product contains 13 g of total fat per 40 g of the food, and
- the Kind Fruit & Nut Dark Chocolate Cherry Cashew + Antioxidants contains 9 g of total fat per 40 g of the food.

These amounts exceed the maximum of 3 g of total fat per 40 g RACC in the “low fat” definition. Therefore these products are misbranded and you are required to disclose this fact on the labels in immediate proximity to the claims that the products are “Good Source of Fiber.”

3. Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate Cherry Cashew + Antioxidants products are misbranded within the meaning of section 403(q)(2)(A)] in that nutrition information is not disclosed in accordance with 21 CFR 101.9. Specifically,

- Your labels bear a claim about fatty acids (i.e., “no trans fat”) but fail to include the levels of monounsaturated and polyunsaturated fatty acids in the nutrition information as required by 21 CFR 101.9 (c)(2)(iii) and (iv).
- Your Kind Plus Peanut Butter Dark Chocolate + Protein product label includes the nutrient content claim “Good Source of Protein” on the principal display panel; however, the nutrition label fails to include the percent DV for protein. Your Kind Plus Peanut Butter Dark Chocolate + Protein product label also bears a nutrient content claim for protein as required by 21 CFR 101.9(c)(7)(i).

4. Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate Cherry Cashew + Antioxidants products are misbranded within the meaning of section 403(e)(1) of the Act because the name and the place of business fails to completely or accurately declare the place of business as required by the statement “Kind, LLC, P.O. Box 705 Midtown Station, NY, NY 10018” which is provided on the label does not match the street address of your business does not appear in a current city or telephone directory. FDA is unable to determine your firm using a city or telephone directory and the address listed on the label.

The above violations are not meant to be an all-inclusive list of violations that may exist in connection with your products. It is your responsibility to ensure that your products comply with the Act and its implementing regulations. You should take prompt action to correct the violations. Failure to promptly correct the violations may result in regulatory action without further notice, including seizure and injunction.

In addition, we offer the following comments:

- Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate Cherry Cashew + Antioxidants product labels bear the claim “No Trans Fats,” and we note that these labels do not include a partially hydrogenated oil as an ingredient. Under section 403(r)(1)(A) of the Act, a nutrient content claim may be made in accordance with a regulation authorizing the use of the claim in order for the food bearing such claim to be “truthful, not misleading, and not deceptive.” FDA has not defined the term “Contains No Trans Fat” by regulation, we announced in the *Federal Register* (4/15/09) that we would likely consider exercising enforcement discretion for a trans-fat nutrient content claim if it is adequately substantiated, and not misleading.

Scientific evidence suggests that trans-fat acts in a similar manner to saturated fat with respect to raising LDL cholesterol (July 11, 2003). Higher total and LDL cholesterol levels are associated with increased risk of developing coronary heart disease (July 11, 2003). Under 21 CFR 101.13(h), if a food bears a nutrient content claim and also contains more than 13.0 grams of total fat, 60 milligrams cholesterol, and 480 milligrams of sodium per reference amount customarily consumed (RACC) with a RACC of 30 grams or less or 2 tablespoons or less, per 50 grams), then the food must bear a statement disclosing that the food exceeds the specified level as follows: “See nutrition information for \_\_\_\_\_ content” with the nutrient exceeding the specified level.

We intend to consider the exercise of our enforcement discretion for the use of the “Contains No Trans Fat” claim if the claim includes a disclosure statement, in accordance with the requirements in 21 CFR 101.13(h). We will review such claims on a case-by-case basis. We note that your Kind Fruit & Nut Almond & Coconut product contains 5g of saturated fat per 40g but does not include a statement “See nutrition information for saturated fat content.”

- Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, and Kind Plus Peanut Butter Dark Chocolate Cherry Cashew + Antioxidants labels include the statement beginning “Allergen information: Contains...”; however, this allergen statement is not required. These product labels correctly declare the allergen information in the ingredients lists in accordance with 21 CFR 101.5. A separate “Contains” statement is not required. However, if a separate “Contains” declaration is used, it must be in the form of a statement that the product contains the allergen.

in the food and must use the names of the food sources as defined in sections 201(qq) and 403(w)(2) of the Act. Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, and Kind Plus Peanut Butter Dark Chocolate are not permitted to use the term “milk” as an ingredient; however, soy is not declared in the “Contains” statement. In addition, the term “milk” must be a specific name and not a collective (generic) name. The term “tree nuts” cannot be used in place of the names of the specific tree nuts such as almonds, coconuts, etc.

- Your Kind Plus Dark Chocolate Cherry Cashew + Antioxidants product ingredient list does not meet the requirements of 21 CFR 101.4(b)(2)(i). The label requires that the name of an ingredient shall be a specific name and not a collective (generic) name. This product declares “mixed nuts,” “dried fruits,” and “vitamins” as multicomponent foods and declares the specific nuts, fruits, and vitamins. The regulations do not allow the collective listing of nuts, fruits, or vitamins.
- Your Kind Plus Peanut Butter Dark Chocolate + Protein product ingredient list does not meet the requirements of 21 CFR 101.4(b)(2)(i). The label declares the standardized multicomponent food, peanut butter, but does not declare the sub-ingredient, “peanut butter oil.” In accordance with 101.4(b)(2)(ii), if the ingredients of the standardized food are incorporated in the product, then the name of the standardized ingredient must not be listed.
- The required information that appears on the information panels of your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products does not appear in one place without interruption. The information describing your brand that comes between the ingredient list and the name and place of business is an example of an interruption.
- Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants ingredient statements declare “non GMO glucose.” This is not a permitted claim for glucose syrup or dried glucose syrup in accordance with 21 CFR 101.4 and 168.120 or 168.121.
- The name and place of business declaration on your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products does not meet the requirements of 21 CFR 101.5(d). The street address may only be omitted if it is shown in a current city directory or search for your firm yielded several different street addresses in New York City; therefore, it is not clear which address is your place of business.
- Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants product labels do not include an appropriate statement of identity.

Please respond to this letter within 15 working days from receipt with the actions you plan to take in response to each violation. Include an explanation of each step being taken to correct the current violations and prevent similar violations. Include any information that correction has been achieved. If you cannot complete corrective action within 15 working days, state the reason why and the time within which you will complete the corrections.

You should direct your written reply to Carrie Lawlor, Food and Drug Administration, Center for Food Safety and Inspection Service, Branch Parkway, Office of Compliance (HFS-608), Division of Enforcement, College Park, Maryland 20740-3835. If you have any questions regarding this letter, you may contact Ms. Lawlor via email at [carrie.lawlor@fda.hhs.gov](mailto:carrie.lawlor@fda.hhs.gov) (<mailto:carrie.lawlor@fda.hhs.gov>).

Sincerely,

/S/  
William A. Correll, Jr.  
Director  
Center for Food Safety  
and Applied Nutrition

cc: FDA New York District



## 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**

CHARITY BUSTAMANTE, individually  
and on behalf of all others similarly situated,

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

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

AHDOOT & WOLFSON, P.C.  
1016 Palm Avenue, West Hollywood, CA 90069, (310) 474-9111  
twolfson@ahdootwolfson.com, tmaya@ahdootwolfson.com

**DEFENDANTS**

KIND LLC, a Delaware Limited Liability  
Company, and DOES 1-10,

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.

Attorneys (If Known)

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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:  
False advertising

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$  
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Cormac J. Carney

DOCKET NUMBER CD Cal 15-cv-00615

DATE

04/22/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Theodore Maya

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Print

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**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

## 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**

CHARITY BUSTAMANTE, individually  
and on behalf of all others similarly situated,

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

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

AHDOOT & WOLFSON, P.C.  
1016 Palm Avenue, West Hollywood, CA 90069, (310) 474-9111  
twolfson@ahdootwolfson.com, tmaya@ahdootwolfson.com

**DEFENDANTS**

KIND LLC, a Delaware Limited Liability  
Company, and DOES 1-10,

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.

Attorneys (If Known)

**'15CV0891 JAH JMA****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

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

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
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- ☐ 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:

False advertising

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$  
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Cormac J. Carney

DOCKET NUMBER CD Cal 15-cv-00615

DATE

04/22/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Theodore Maya

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

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  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
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- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
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- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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