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12 *Attorneys for Plaintiff and the Proposed Class*

13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 DANIELLE COOPER, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 KIND LLC,

20 Defendant.

NO.

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

DEMAND FOR JURY

21
22 Plaintiff, Danielle Cooper (hereinafter referred to as “Plaintiff”), on behalf of herself and
23 all others similarly situated, by her undersigned counsel, for this class action Complaint against
24 Defendant, KIND LLC, and its present, former, or future direct and indirect parent companies,
25 subsidiaries, affiliates, agents, and/or other related entities (hereinafter referred to as “Defendant”
26 or “KIND”), alleges as follows:
27

I. INTRODUCTION

1
2 1. This class action is brought, first, on behalf of all individuals who purchased
3 Defendant’s products containing the unnatural ingredient soy lecithin and/or modified citrus
4 pectin (the All Natural Class) within the four years prior to the filing of this Complaint (“Class
5 Period”).

6 2. Keenly aware of the enormous advantage to be gained from the marketing and
7 sale of all natural products, Defendant developed a marketing scheme designed to exploit the
8 natural foods market. Describing its scheme as a “philosophy” and a “movement,” Defendant
9 urges consumers to be “KIND” to their bodies by purchasing all natural products that contain
10 only natural ingredients consumers can “see & pronounce.” Defendant declares that it is as
11 “transparent” as its wrappers. “No secret ingredients and absolutely nothing artificial here” is
12 Defendant’s pitch. Defendant’s pitch, however, is untrue.

13 3. All of Defendant’s product labels are prominently adorned with the false
14 representation “all natural.” For years, Defendant has actively misled Class Members, and
15 omitted, concealed, and failed to disclose the material truth to consumers that some of its
16 products contain the following unnatural ingredients: soy lecithin—a solvent processed by-
17 product of soybean oil production, which is not natural to the reasonable consumer; and modified
18 citrus pectin—an acid treated, molecularly altered fiber, which is not natural to the reasonable
19 consumer.

20 4. Among Defendant’s products containing soy lecithin, which are marketed and
21 sold nationwide to consumers, are varieties of KIND “Fruit & Nut” Bars, KIND “Plus” Bars,
22 KIND “Nuts & Spices” Bars, and KIND “Healthy Grains®” Bars (collectively “KIND All
23 Natural Products”).

24 5. Defendant prominently represents the KIND All Natural Products to be all
25 natural. However, the KIND All Natural Products are not all natural.

26 6. Defendant has profited greatly from inducing consumers to buy KIND All Natural
27 Products instead of other granola, snack, and nutrition bars not misleadingly labeled as “all

1 natural.” In fact, Defendant is able to charge a price premium for its products because they are
2 falsely labeled “all natural.” As a result, consumers are willing to, and do, pay more than other
3 comparable products that are not falsely labeled.

4 7. This class action is brought, second, on behalf of all individuals who purchased
5 Defendant’s products that are represented to be healthy but that, in fact, contain unhealthy levels
6 of saturated fat (the Healthy Class) within the Class Period.

7 8. Defendant’s products represented to be healthy despite containing unhealthy
8 levels of saturated fat include at least the following, as determined by the federal Food & Drug
9 Administration (FDA): KIND Fruit & Nut Almond & Apricot, KIND Fruit & Nut Almond &
10 Coconut, KIND Plus Peanut Butter Dark Chocolate + Protein, and KIND Plus Dark Chocolate
11 Cherry Cashew + Antioxidants (collectively “KIND Healthy Products”). (The KIND All Natural
12 Products and KIND Healthy Products are hereinafter collectively referred to as “KIND
13 Products.”)

14 9. Defendant represents KIND Healthy Products to be healthy when, in fact, the
15 KIND Healthy Products are not healthy.

16 10. Defendant has profited greatly from inducing consumers to buy KIND Healthy
17 Products instead of other granola, snack, and nutrition bar options not misleadingly labeled as
18 “healthy.”

19 11. In fact, Defendant is able to charge a price premium for its KIND Products
20 because they are falsely labeled “healthy.” As a result, consumers are willing to, and do, pay
21 more than they pay for other comparable products that are not falsely labeled.

22 12. Labeling KIND Healthy Products as “healthy” is deceptive and confusing. A
23 reasonable consumer purchases the KIND Healthy Products believing they are healthy choices.
24 Reasonable consumers, however, would not deem the KIND Healthy Products to be healthy if
25 they knew that the KIND Healthy Products are not healthy.

26 13. While it is undeniable that KIND Products have been a marketing sensation and
27 an unmitigated financial success, Defendant’s success has been the result of fraudulent,

1 unlawful, and unfair business practices in the marketing and sale of KIND Products. These
2 practices are plainly improper and unacceptable—particularly for a company that touts that “one
3 foundational principle underpins it all: there’s more to business than just profits.”
4

5 **II. PARTIES**

6 14. Plaintiff, Danielle Cooper, is a citizen of California, residing in San Francisco
7 County, California.

8 15. Defendant, KIND LLC, is a Delaware limited liability company with its principal
9 place of business in New York, New York. Defendant, thus, is a citizen of New York.
10 Defendant does business in California and throughout the United States.

11 **III. JURISDICTION AND VENUE**

12 16. Subject Matter Jurisdiction. This Court has subject matter jurisdiction under the
13 Class Action Fairness Act, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more
14 than 1,000 class members; (2) Plaintiff proposes a nationwide class action, while Defendant is a
15 citizen of the State of New York; and (3) the amount in controversy exceeds the sum of
16 \$5,000,000, exclusive of interest and costs.

17 17. Personal Jurisdiction. This Court has personal jurisdiction over Defendant
18 because Defendant does business in and throughout the State of California through the
19 promotion, sale, marketing, and distribution of its products, and the wrongful acts alleged in this
20 Complaint were committed in California.

21 18. Venue. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2) in
22 that a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this
23 District; and (2) 28 U.S.C. § 1391(b)(3) in that Defendant is subject to personal jurisdiction in
24 this District.
25
26
27

IV. FACTUAL ALLEGATIONS

A. “Natural” Is A Highly Profitable Descriptor

19. Product packaging is a significant vehicle through which the purveyors of natural and organic food products communicate material which they believe, and reasonably expect to be important to consumers in making purchasing decisions. For example, United States Food and Drug Administration (“FDA”) Commissioner, Margaret Hamburg, observed, in a 2009 media briefing, “[s]tudies show that consumers trust and believe the nutrition fact information and...use it to help them build a healthy diet.”

20. The health food market is no longer a niche market. Consumers have become increasingly health conscious since the 1970s. They seek out and covet food products that are natural and look for labels that convey these qualities in the food they choose to purchase. According to *Natural Foods Merchandiser*, a leading information provider for the natural, organic, and health food industry, the natural food industry enjoyed over \$81 billion in total revenue in 2010, and grew over 7% in 2009. The market for all natural and organic foods grew 9% in 2010 to \$39 billion, and 2010 sales were 63% higher than sales in 2005. Consumer demand for all natural and organic foods is expected to grow 103% between 2010 and 2015, corresponding to projected natural food industry sales exceeding \$78 billion in 2015.

21. The designations “natural” and “organic” appeal to consumers not only for their health attributes but the fact that they are kind to a person’s body. These designations also appeal to reasonable consumers’ interests in protecting the environment, promoting sustainable living and local farming, and minimizing both people’s and the Earth’s exposure to pesticides and other toxins.

22. According to a 2008 article in *The Economist*, “natural” products are a fast growing market because of the power of “mother nature,” which conjures up images of heart-warming, healthy wholesomeness, and simplicity. According to *The Economist*, a chief selling point of the organic food industry is that no man-made chemicals are used in the production process.

1 23. Any doubt about the money generating power of natural foods is dispelled by the
2 entry and success of large conglomerates in the health food market. For example, the well-
3 known *Kashi* brand name is owned by *Kellogg's*. The *Odwalla* brand has flourished and
4 expanded significantly since its purchase by the *Coca-Cola Company* in 2001 for \$181 million
5 dollars.

6
7 **B. The KIND Marketing Scheme**

8 24. KIND was founded by Daniel Lubitsky in 2003. Frustrated that he could not find
9 the type of healthy, portable snack that he craved, Lubitsky started KIND with the mission to
10 produce tasty and attractive offerings with only ingredients that consumers could “see and
11 pronounce.”

12 25. In a December 15, 2011 interview with *The Wall Street Journal* entitled “Healthy
13 Cravings Feeds ‘Kind’ Bars,” Lubitsky offered the following marketing approach that separates
14 KIND Products from other health food makers:

15 The way we win in the marketplace is by being authentic and
16 transparent. It’s not just the transparent wrapper. It’s the process
17 we use, the ingredients we use, the names of our products. We
18 don’t come up with hokey names. We tell you exactly what the
19 products are that you get.

20 26. This marketing approach, which Defendant presents to consumers and others as
21 its “philosophy” and as a “movement,” permeates Defendant’s extensive self-promotion
22 designed to present Defendant as a transparent and responsible purveyor of snacks that
23 consumers can trust to be natural and healthy.

24 27. KIND’s website mission statement reads:

25 There’s healthy. There’s tasty. Then there’s healthy and tasty. At
26 KIND, we believe that you deserve both. That’s why you’ll find
27 that all of our snacks are pretty much the nirvana of healthful
tastiness. What began with just 8 bar varieties in 2004 has grown
to over 22 bars and 6 Healthy Grains snackable clusters, and a
multitude of new recipes being produced to delight your taste buds
and keep your body happy.

1 28. Defendant’s marketing, including its website, reiterates this core message:

2 Ingredients you can see & pronounce

3 We believe if you can’t pronounce an ingredient, it shouldn’t go in
4 your body. Actually, it shouldn’t even go in your pantry. That’s
5 why all KIND Healthy Snacks are made from all-natural whole
6 nuts, fruits and whole grains. No secret ingredients and absolutely
7 nothing artificial here. Just a delicious way of getting your body
essential nutrients like fiber, protein and antioxidants (to name a
few).

8 29. Echoing this sentiment on its website, Defendant asserts that “mysteries belong in
9 novels, not in your food.”

10 30. Furthermore, on its website, Defendant summarizes its core principle that “One
11 foundational belief underpins it all: There’s more to business than just profit.”

12 31. These marketing statements, and others, including its website content, underscore
13 and validate Defendant’s “philosophy” and “movement,” which implores consumers to be kind,
14 like Defendant, in all things, including what they put in their body. Defendant repeatedly
15 reference the terms “healthy,” “natural,” and “all natural” in describing its KIND Products.
16 Photographs of healthy looking people, doing healthy things, with depictions of “KIND Healthy
17 Snacks” on shirts and vans, are featured prominently. Consumers are asked to share their acts of
18 kindness with other KIND Product customers. Defendant undertakes “missions” and seeks out
19 consumer “pledges” that emphasize being kind, like Defendant, in all things. This marketing
20 scheme is designed to and does in fact promote Defendant, giving its alleged “philosophy” and
21 “movement” credibility as a trusted and transparent purveyor of natural health foods with the
22 utmost integrity.

23 32. Defendant’s marketing scheme has catapulted KIND founder, Lubitsky, to the
24 forefront of national media as a marketing genius. On the strength of this “philosophy” and
25 “movement,” Lubitsky and Defendant have succeeded in the creation of strategic alliances with
26 health conscious businesses such as Starbucks and Whole Foods, which have provided a massive
27 distribution network for KIND Products.

1 33. Defendant's financial performance reflects the enormous success of its marketing
2 scheme. In 2008, Defendant was able to attract a \$20 million dollar private equity investment by
3 VMG Capital. By 2010, Defendant's annual revenues were approximately \$50 million dollars.
4 In 2011, annual revenues were over \$100 million. In 2014, Defendant succeeded to the point
5 that it valued itself at \$728.5 million dollars based on 3.7 times its 2013 annual revenue of nearly
6 \$197 million. Lubitsky himself profited so much from Defendant's skyrocketing financial
7 success that, in early 2014, he was able to buy back VMG Capital's \$20 million minority
8 investment for \$220 million dollars, including \$200 million in cash.

9 34. Defendant's success has been awe-inspiring. This success would be laudable if
10 its core marketing representation of all natural and healthy KIND Products were actually
11 transparent and honest.

12 **C. KIND All Natural Products – “All Natural”?**

13 35. During the Class Period, Defendant has sold approximately 22 different KIND
14 Products, including the following fourteen (14), which are currently featured on its website:
15 Caramel Almond & Sea Salt, Dark Chocolate Cherry Cashew + Antioxidants, Pomegranate
16 Blueberry Pistachio + Antioxidants, Maple Glazed Pecan & Sea Salt, Dark Chocolate Cinnamon
17 Pecan, Almond & Coconut, Blueberry Pecan + Fiber, Dark Chocolate Chili Almond, Almond
18 Walnut Macadamia With Peanuts +Protein, Fruit & Nuts in Yogurt, Nut Delight, Dark Chocolate
19 Mocha Almond, Almonds & Apricots in Yogurt, and Apple Cinnamon & Pecan.

20 36. All KIND Products, including those identified immediately above, feature the
21 following prominent labelling representation and warranty on the front of the bar's packaging:
22 “ALL NATURAL” followed by a check mark.

23 37. All KIND Products, including those specifically identified above, contain the
24 ingredient soy lecithin.

25 38. Several KIND Products, including Fruit and Nut Delight and Almond and Apricot
26 contain the ingredient citrus pectin.

1 **D. KIND All Natural Products Are Not “All Natural”**

2 39. Defendant represents prominently on its consumer packaging that its KIND
3 Products are “all natural.” They are not.

4 40. The New Oxford American Dictionary defines “natural” as “existing in or caused
5 by nature; not made or caused by humankind.”¹ “All” is defined as “the whole quantity or extent
6 of a group or thing.”²

7 41. By labelling, Defendant represents that “the whole quantity [and] extent” of the
8 ingredients making up its KIND Products “[exist] in or [are] caused by nature; not made or
9 caused by humankind.”³

10 42. The presence of highly and severely processed soy lecithin and synthetic and
11 artificial modified citrus pectin, render Defendant’s description “all natural” false and misleading
12 under an objective reasonable consumer standard.

13 43. The FDA has not promulgated a regulation defining the term “natural” or “all
14 natural.” The FDA, however, has established a policy defining the outer boundaries of the use of
15 the term “natural” by clarifying that a product is not natural if it contains color, artificial flavors,
16 or synthetic substances. *See*

17 <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and

18 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>. Specifically, the FDA

19 states: “the agency will maintain its policy (Ref. 32) regarding the use of ‘natural,’ as meaning
20 that nothing artificial or synthetic (including all color activities regardless of source) has been

21 included in, or has been added to, a food that would not normally be expected to be in the food.”

22 58 Fed. Reg. 2302, 2407 (Jan. 6, 2003). Although this definition is not a regulation, it is the

23 “most definitive statement of the agency’s view.”

24
25
26 ¹ New Oxford American Dictionary 1167 (3d ed. 2010).

27 ² *Id.*

³ *Id.*

1 44. Courts and those in the food industry have requested that the FDA provide a
2 regulatory definition of “natural.” The FDA has thus far declined because the time required to
3 conduct a public hearing would take years to complete.

4 45. The United States Department of Agriculture (“USDA”), which regulates the
5 labeling of meat and poultry, has also set limits, offering instructive and helpful guidance on the
6 use of the term “natural.” The USDA’s Food Safety and Inspection Service dictates that the term
7 “natural” may be used on labeling of meat and poultry products so long as “(1) the product does
8 not contain any artificial flavor or flavorings, color ingredient, or chemical preservatives...or any
9 other artificial or synthetic ingredient, and (2) the product and its ingredients are not more than
10 minimally processed.”⁴

11 46. According to the USDA, “[m]inimal processing may include: (a) those traditional
12 processes used to make food edible or to preserve it or to make it safe for human consumption,
13 e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which
14 do not fundamentally alter the raw product and/or which only separate a whole, intact food into
15 component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits
16 to produce juices.” However, “[r]elatively severe processes, e.g., solvent extraction, acid
17 hydrolysis, and chemical bleaching would clearly be considered more than minimal
18 processing.”⁵

19 47. Under the USDA’s guidelines, if a product contains artificial or synthetic
20 ingredients, or is severely processed, the product can still be labeled “all natural” but only if: (1)
21 the ingredient would not significantly change the character of the product to the point that it
22 could no longer be considered a natural product; and (2) *“the natural claim [is] qualified to*
23

24 _____
25
26 ⁴ See United States Department of Agriculture Food Standards and Labeling Policy book
27 available at http://www/fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf
(last visited February 3, 2012).

⁵ *Id.*

1 *clearly and conspicuously identify the ingredient, e.g., all natural or all natural ingredients*
2 *except dextrose, modified food starch, etc.*”⁶ (emphasis added).

3 48. Congress has elsewhere defined “synthetic” to mean “a substance that is
4 formulated or manufactured by a chemical process or by a process that chemically changes a
5 substance extracted from naturally occurring plant, animal, or mineral sources, except that such
6 term shall not apply to substances created by naturally occurring biological processes.” 7 U.S.C.
7 § 6502(21). *See also* 7 C.F.R. § 205.1, *et seq.* (defining, in USDA’s National Organic Program
8 regulations, a “nonsynthetic” as “a substance that is derived from mineral, plant, or animal
9 matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7
10 U.S.C. § 6502(21)”).

11 49. The terms “synthetic” and “artificial” closely resemble each other and, in lay use,
12 are considered synonymous. The scientific community defines “artificial” as something not
13 found in nature, whereas “synthetic” is defined as something man-made, whether it merely
14 mimics nature or is not found in nature.⁷ In the scientific community, “synthetic” includes
15 substances that are also artificial, but a synthetic substance also can be artificial or non-artificial.⁸
16 The lay understanding of “artificial” is consistent with the scientific community’s definition of
17 “synthetic.” Oxford Dictionaries, at www.oxforddictionaries.com, defines “artificial” as “made
18 or produced by human beings rather than occurring naturally.” The same reference source
19 describes “synthetic” as a synonym of “artificial,” and separately defines “synthetic” as
20 something “made by chemical synthesis.”

21 50. **Soy Lecithin.** Soy Lecithin is a processed by-product of soybean oil production.
22 It is derived from the sludge left after crude oil undergoes a degumming process. More
23

24
25 ⁶ *Id.*

26 ⁷ Peter E. Nielsen, *Natural-synthetic-artificial!*, *Artificial DNA: PNA & XNA*, Volume 1, Issue
27 1 (July/August/September 2010), available at
<http://ncbi.nlm.nih.gov/pmc/articles/PMC3109441/>.

⁸ *Id.*

1 specifically, to produce soybean oil, soybeans are ground into small fragments and then flakes.
2 The flakes are then combined with hexane or other similar solvent. Because soybean oil is
3 soluble in hexane, this process removes the oil from the flakes—leaving crude soybean oil
4 containing gums or sludge—including a large quantity of hexane or similar solvent. The
5 resulting product is subjected to heat to remove the solvents. Clarified soybean oil is then
6 produced when the gum and water are mechanically separated from the crude soybean oil. The
7 waste sludge or gum left remaining is then dried to produce lecithin.

8 51. Federal Regulations list hexane as a “synthetic organic chemical manufacturing
9 industry chemical.” *See* 40 C.F.R. 63, Subpt. F, Tbl. 1. Hexane is a constituent of gasoline
10 derived from crude oil, natural gas liquids, or petroleum refinery processing. 40 C.F.R.
11 § 99.2155. The United States Occupational Safety and Health Administration (“OSHA”) defines
12 hexane as a narcotic and neurotoxic agent that can cause irritation to the eyes and upper
13 respiratory tract. Commercial hexane also contains benzene, a known hematologic poison linked
14 to leukemia. Hexane and hexane-processed ingredients cannot reasonably or responsibly
15 classified or described as “natural” or included as an ingredient in an “all natural” food product.

16 52. Soy lecithin is not minimally processed, but rather heavily and severely
17 processed, using volatile solvents found in gasoline and other fuels. It is made or produced by
18 humans through the processes described above and is therefore not “natural” to the reasonable
19 consumer of food products.

20 53. **Modified Citrus Pectin (“MCP”).** Citrus pectin is a fiber plentiful in citrus fruit
21 rind. It is undigestible in the human body. MCP is a form of pectin that has been altered through
22 human controlled processes so that it can be more easily absorbed in the human digestive tract.
23 MCP is made when naturally occurring citrus pectin’s pH is altered, generally through treatment
24 with sodium hydroxide and hydrochloric acid. The resulting breakdown or depolymerization of
25 the natural pectin creates a substance with shorter molecular strands comprised predominantly of
26 D-polygalacturonates, which makes MCP more easily digestible to humans.

1 54. Because it is not minimally processed, but rather heavily and severely processed,
2 using acids like hydrochloric acid, which break down the naturally occurring molecular chains to
3 create resulting smaller molecular chains, which are more easily digestible to humans, and is
4 produced by humans through the processes described which are not naturally occurring, MCP is
5 not natural to the reasonable consumer of food products.

6 **E. KIND Healthy Products – “Healthy”?**

7 55. During the Class Period, Defendant has sold numerous products represented to be
8 healthy, including KIND Fruit & Nut Almond & Apricot, KIND Fruit & Nut Almond &
9 Coconut, KIND Plus Peanut Butter Dark Chocolate + Protein, and KIND Plus Dark Chocolate
10 Cherry Cashew + Antioxidants.

11 56. The packaging of KIND Healthy Products claims the products are, among other
12 benefits, “healthy,” and implies certain nutritional content in the products. Thus, the labeling of
13 KIND Healthy Products is designed to create consumer belief that they are, among other
14 benefits, healthy in the common use of that term.

15 57. Should any consumers further research their purchasing options, Defendant’s
16 online marketing confirms the representations made on the packaging of the KIND Healthy
17 Products (“There’s healthy. There’s tasty. Then there’s healthy and tasty. At KIND, we believe
18 you deserve both—we call it our brAND philosophy. That’s why you’ll find all of our snacks
19 are pretty much the nirvana of healthful tastiness.”⁹). Thus, Defendant’s marketing and website
20 confirm its intent to create consumer belief KIND Healthy Products are superior choices useful
21 in maintaining a healthy diet. Reasonable consumers would believe these representations, but
22 they would be wrong.

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27 ⁹ KIND LLC / KIND Healthy Snacks, <http://www.kindsnacks.com/about/> (last visited April 17, 2015).

1 **F. KIND Healthy Products Are Not “Healthy”**

2 58. None of the KIND Products meet the requirements for use of the term “healthy”
3 that are set forth in 21 CFR 101.65(d)(2).

4 59. Defendant’s marketing of KIND Healthy Products as healthy and useful in
5 maintaining healthy dietary practices is false and misleading. In fact, KIND Healthy Products
6 have numerous unhealthy facets, including that:

7 • All KIND Healthy Products contain excessive levels of saturated fats—as much
8 as 5 grams of saturated fats per 40 grams of food;

9 • All KIND Healthy Products are labeled as good sources of fiber, but their high
10 content of saturated fats do not make them superior sources of fiber in comparison to available
11 options lower in saturated fats;

12 • KIND “Plus” Peanut Butter Dark Chocolate + Protein bar, a KIND Healthy
13 Product, advertises that it has some added degree of protein benefits, when in fact it contains just
14 7 grams of protein, approximately what would be expected for a bar of this type and ingredients;
15 and

16 • KIND “Plus” Dark Chocolate Cherry Cashew + Antioxidants bar, a KIND
17 Healthy Product, advertises that it has some added degree of antioxidant benefit, when in fact it
18 contains no special antioxidant benefit beyond what would be expected from a bar of this type
19 and ingredients.

20 60. No reasonable consumer would believe that bars high in saturated fat, not superior
21 sources of fiber, and lacking in “plus” benefits beyond the expected are healthy.

22 61. Defendant’s packaging of KIND Healthy Products unequivocally demonstrates its
23 intent to persuade consumers that KIND Healthy Products are healthy choices that impart
24 various general and specific health benefits.

25 62. Reasonable consumers, including Plaintiff, purchased KIND Healthy Products
26 based on the belief that they are healthy and superior to less-healthy options available.

27 Reasonable consumers, however, would not deem KIND Healthy Products healthy if they knew

1 that KIND Healthy Products are high in saturated fat and do not impart the additional benefits
2 implied on the labeling.

3 63. In fact, the FDA recently concluded that Defendant's health claims are misleading
4 and in direct contravention of FDA regulations. On March 17, 2015, the FDA issued a Warning
5 Letter to Defendant. After reviewing the labels on the KIND Healthy Products, the FDA
6 determined that the labels are in violation of Section 403 of the Federal Food, Drug, and
7 Cosmetic Act, 21 U.S.C. § 343.

8 64. In particular, the FDA concluded that the KIND Healthy Products are mislabeled
9 because they make false nutrient health claims. The FDA stated that "the labels of the
10 aforementioned products bear the claim 'Healthy and tasty, convenient and wholesome' in
11 connection with statements such as:

- 12 • 'good source of fiber,'
- 13 • 'no trans fats,'
- 14 • 'very low sodium' [Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut
15 Almond & Coconut, and Kind Plus Dark Chocolate Cherry Cashew +
16 Antioxidants],
- 17 • 'low sodium' [Kind Plus Peanut Butter Dark Chocolate + Protein],
- 18 • '+ antioxidants' [Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],
- 19 • '50% DV antioxidants vitamins A, C and E' [Kind Plus Dark Chocolate Cherry
20 Cashew + Antioxidants],
- 21 • '+ protein' [Kind Plus Peanut Butter Dark Chocolate + Protein], and
- 22 • '7g protein' [Kind Plus Peanut Butter Dark Chocolate + Protein]."

23 The FDA concluded that "none of [Defendant's] products listed above meet the requirements for
24 use of the nutrient content claim "healthy" that are set forth in 21 CFR 101.65(d)(2)." In
25 particular, the FDA noted that the identified KIND Products should not be labeled as "healthy"
26 due to the substantial amount of saturated fact in the KIND Products. The FDA also found that
27 the use of the terms "+ Antioxidants" was misleading as the KIND Products are not in fact rich

1 in antioxidants. The FDA also found that the use of the phrase “good source of fiber” was
2 misleading because they are not a good source of fiber in light of the large amount of fat in the
3 KIND Products. The FDA Warning Letter is attached hereto as Exhibit 1.

4 **G. Plaintiff’s Purchase of KIND Products**

5 65. Over the past year, Plaintiff regularly purchased KIND Products in California
6 including San Francisco, California. Plaintiff regularly purchased these KIND Products at
7 Whole Foods. The cost of each KIND Product Plaintiff purchased was approximately \$1.75.

8 66. The packaging on the KIND Products that Plaintiff purchased represented and
9 promised that the KIND Products were prominently labelled “all natural.” Plaintiff specifically
10 relied on this labelling, which represented the product as a healthy, natural food product. These
11 facts were material and important to her in making the decision to purchase KIND Products.
12 Had Defendant not misrepresented, but rather disclosed the truth that KIND Products cannot be
13 reasonably or responsibly described as all natural, Plaintiff would not have purchased the KIND
14 Products. Furthermore, Plaintiff relied on Defendant’s misrepresentation that the KIND
15 Products were healthy. Plaintiff would not have purchased the KIND Products had she known
16 the KIND Products were not, in fact, healthy.

17 **V. CLASS ACTION ALLEGATIONS**

18 67. Class Definition. Pursuant to CR 23(b)(2) and (b)(3), Plaintiff brings this case as
19 a class action on behalf of National Classes and California Sub-Classes defined as follows:
20

21 All Natural Class: All persons in the United States who purchased
22 KIND All Natural Products for their personal use at any time in the
23 period that begins four years before the date of filing this
Complaint to trial.

24 Healthy Class: All persons in the United States who purchased
25 KIND Healthy Products for their personal use at any time in the
26 period that begins four years before the date of filing this
Complaint to trial.

27 California All Natural Sub-Class: All persons in the State of
California who purchased KIND All Natural Products for their

1 personal use at any time in the period that begins four years before
2 the date of filing this Complaint to trial.

3 California Healthy Sub-Class: All persons in the State of
4 California who purchased KIND Healthy Products for their
5 personal use at any time in the period that begins four years before
6 the date of filing this Complaint to trial.

7 Excluded from the All Natural Class, Healthy Class, California All Natural Sub-Class, and
8 California Healthy Sub-Class (collectively referred to as the “Classes”) are Defendant, any entity
9 in which Defendant has a controlling interest or that has a controlling interest in Defendant, and
10 Defendant’s legal representatives, assignees, and successors. Also excluded are the judge to
11 whom this case is assigned and any member of the judge’s immediate family.

12 68. Numerosity. The Classes are each so numerous that joinder of all members is
13 impracticable. On information and belief, the Classes each have more than 1,000 members.
14 Moreover, the disposition of the claims of the Classes in a single action will provide substantial
15 benefits to all parties and the Court.

16 69. Commonality. There are numerous questions of law and fact common to Plaintiff
17 and Class Members. These common questions of law and fact include, but are not limited to, the
18 following:

19 a. Whether Defendant materially misrepresented to Class Members that
20 KIND All Natural Products are all natural and free from unnatural ingredients;

21 b. Whether Defendant materially misrepresented to Class Members that
22 KIND Healthy Products are healthy choices that are helpful in maintaining healthy dietary
23 choices;

24 c. Whether Defendant’s misrepresentations and omissions were material to
25 reasonable consumers;

26 d. Whether Defendant’s labeling, marketing, and sale of KIND All Natural
27 Products and/or KIND Healthy Products constitutes deceptive conduct;

e. Whether Defendant’s conduct described above constitutes a breach of
warranty;

1 f. Whether Defendant was unjustly enriched due to its iniquitous conduct;

2 g. Whether Defendant’s conduct injured consumers and, if so, the extent of
3 the injury; and

4 h. The appropriate remedies for Defendant’s conduct.

5 70. Typicality. Plaintiff’s claims are typical of the claims of the Classes. Plaintiff
6 suffered the same injury as Class Members—*i.e.*, Plaintiff purchased KIND All Natural Products
7 and KIND Healthy Products based on Defendant’s misleading representations about the quality
8 and nature of those products.

9 71. Adequacy. Plaintiff will fairly and adequately protect the interests of the Classes.
10 Plaintiff has retained competent and capable attorneys with significant experience in complex
11 and class action litigation, including consumer class actions. Plaintiff and her counsel are
12 committed to prosecuting this action vigorously on behalf of the Classes and have the financial
13 resources to do so. Neither Plaintiff nor her counsel have interests that are contrary to or that
14 conflict with those of the proposed Classes.

15 72. Predominance. Defendant has engaged in a common course of conduct toward
16 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff
17 and Class Members predominate over any individual issues. Adjudication of these common
18 issues in a single action has important and desirable advantages of judicial economy.

19 73. Superiority. A class action is the superior method for the fair and efficient
20 adjudication of this controversy. In this regard, the Class Members’ interests in individually
21 controlling the prosecution of separate actions is low given the magnitude, burden, and expense
22 of individual prosecutions against large corporations such as Defendant. It is desirable to
23 concentrate this litigation in this forum to avoid burdening the courts with individual lawsuits.
24 Individualized litigation presents a potential for inconsistent or contradictory judgments, and also
25 increases the delay and expense to all parties and the court system presented by the legal and
26 factual issues of this case. By contrast, the class action procedure here will have no management
27 difficulties. Defendant’s records and the records available publicly will easily identify the Class

1 Members. The same common documents and testimony will be used to prove Plaintiff's claims
2 as well as the claims of Class Members. Finally, proceeding as a class action provides the
3 benefits of single adjudication, economies of scale, and comprehensive supervision by a single
4 court.

5 74. Injunctive and Declaratory Relief Appropriate. A class action is appropriate
6 under Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds that
7 apply generally to Class Members, so that final injunctive relief or corresponding declaratory
8 relief is appropriate as to all Class Members.

9
10 **VI. FIRST CLAIM FOR RELIEF**
11 **(Breach of Express Warranty –All Natural Class, Healthy Class, California All Natural**
12 **Sub-Class & California Healthy Sub-Class)**

13 75. Plaintiff realleges and incorporates by reference each and every allegation set
14 forth in the preceding paragraphs.

15 76. Defendant provided Plaintiff and the Class Members with written express
16 warranties including, but not limited to, warranties that the KIND All Natural Products were all
17 natural and the KIND Healthy Products were healthy.

18 77. These representations became part of the basis of the bargain between Plaintiff
19 and Class Members, on the one hand, and Defendant, on the other.

20 78. Defendant represented and warranted that the KIND All Natural Products were all
21 natural, but Defendant breached that warranty because the KIND Products contain unnatural soy
22 lecithin and MCP.

23 79. Defendant represented and warranted that the KIND Healthy Products were
24 healthy when they were not, that they are a good source of fiber when they were not, and offered
25 specified health characteristics, including antioxidant and protein benefits, when they do not.

26 80. Defendant made the above-described representations to induce Plaintiff and Class
27 Members to purchase KIND Products, and Plaintiff and Class Members relied on the
representations in purchasing KIND Products.

1 81. All conditions precedent to Defendant’s liability under the above-referenced
2 contract have been performed by Plaintiff and Class Members, who paid the asking price for the
3 KIND Products in question.

4 82. Defendant’s breach resulted in damages to Plaintiff and Class Members, who
5 bought the products but did not receive the goods as warranted.

6 83. As a result of Defendant’s breaches of express warranty, Plaintiff and Class
7 Members were damaged in the amount of the purchase price they paid for KIND Products.
8 Plaintiff and Class Members were deprived of the benefit of their bargain and spent money on
9 KIND Products that did not have any value or had less value than warranted. Alternatively,
10 Plaintiff and Class Members would not have purchased and the KIND Products had they known
11 the true facts about them.

12
13 **VII. SECOND CLAIM FOR RELIEF**
14 **(Breach of Implied Warranty of Merchantability –All Natural Class, Healthy Class,**
15 **California All Natural Sub-Class & California Healthy Sub-Class)**

16 84. Plaintiff realleges and incorporates by reference each and every allegation set
17 forth in the preceding paragraphs.

18 85. In designing, packaging, marketing, distributing, and/or selling the KIND
19 Products, Defendant warranted that the KIND Products were fit for their intended purpose in that
20 the KIND Products were all natural and healthy as labelled.

21 86. Defendant breached the warranty implied in the contract for the sale of the KIND
22 Products because the KIND Products could not pass without objection in the trade under the
23 label descriptions, the goods were not of fair or average quantity within the description, and the
24 goods were unfit for their intended and ordinary purpose. Accordingly, Plaintiff and Class
25 Members did not receive merchantable goods as impliedly warranted by Defendant.

26 87. Plaintiff and Class Members purchased the KIND Products in reliance on
27 Defendant’s skill and judgment and the implied warranties of fitness for their intended purpose.

88. The KIND Products were not altered by Plaintiff or Class Members.

1 89. The KIND Products were defective when they left the exclusive control of the
2 Defendant.

3 90. Defendant knew that the KIND Products would be purchased and consumed
4 without additional testing by Plaintiff and Class Members.

5 91. The KIND Products were defectively designed and unfit for their intended
6 purpose, and Plaintiff and Class Members did not receive the goods as warranted by Defendant.

7 92. As a direct and proximate cause of Defendant’s breach of the implied warranty,
8 Plaintiff and Class Members have been injured and harmed because (1) they would not have
9 purchased the KIND Products on the same terms if they had known the products’ true contents;
10 (2) they paid a price premium for the KIND Products based on Defendant’s representations that
11 they were all natural and healthy; and (3) the KIND Products did not have the characteristics,
12 ingredients, uses, benefits, or quantities promised.

13
14 **VIII. THIRD CLAIM FOR RELIEF**
15 **(Unjust Enrichment/Common Law Claim for Restitution – All Natural Class, Healthy**
16 **Class, California All Natural Sub-Class & California Healthy Sub-Class)**

17 93. Plaintiff realleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraphs.

19 94. Because of their wrongful acts and omissions, Defendant charged a higher price
20 for the KIND Products than the products’ true value and Defendant obtained monies that
21 rightfully belong to Plaintiff and Class Members.

22 95. Defendant enjoyed the benefit of increased financial gains, to the detriment of
23 Plaintiff and Class Members. It would be inequitable and unjust for Defendant to retain these
24 wrongfully obtained profits.

25 96. Plaintiff, therefore, seeks an order requiring Defendant to make restitution to her
26 and Class Members.
27

IX. FOURTH CLAIM FOR RELIEF
(Negligent Misrepresentation –All Natural Class, Healthy Class, California All Natural Sub-Class & California Healthy Sub-Class)

97. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

98. Defendant made representations to Plaintiff and Class Members regarding the contents and healthiness of the KIND Products that were untrue.

99. Defendant had no reasonable grounds for believing these representations were true when they made them, yet they intended that Plaintiff and Class Members would rely on these representations.

100. Plaintiff and Class Members reasonably relied on Defendant’s representations and as a result Plaintiff and Class Members were harmed.

X. FIFTH CLAIM FOR RELIEF
(Violation of New York General Business Law § 349 – All Natural Class & Healthy Class)

101. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

102. G.B.L. § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York].”

103. As fully alleged above, by advertising, marketing, distributing, and/or selling the KIND All Natural Products and KIND Healthy Products with claims that they were all natural and/or healthy to Plaintiff and All Natural Class Members and Healthy Class Members (collectively referred to as “National Class Members”), Defendant engaged in, and continues to engage in, deceptive acts and practices because the KIND All Natural Products in fact contain unnatural synthetic ingredients and the KIND Healthy Products are not healthy.

104. Plaintiff and National Class Members believed Defendant’s representations that the KIND All Natural Products were all natural and that the KIND Healthy Products were healthy, and they would not have purchased the products at a premium price had they known the truth.

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105. Plaintiff and National Class Members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the products at issue. Plaintiff and the National Class Members paid for all natural and/or healthy products but did not receive such products.

106. The products Plaintiff and National Class Members received were worth less than the products for which they paid. Plaintiff and National Class Members paid a price premium on account of Defendant’s misrepresentations that KIND All Natural Products were all natural and/or the KIND Healthy Products were healthy.

107. The foregoing acts and practices were directed at consumers.

108. The foregoing deceptive acts and practices are misleading in a material way because the fundamentally misrepresent the ingredients in the KIND Products.

109. Plaintiff and National Class Members were injured as a direct and proximate result of Defendant’s violation of G.B.L. § 349 because they paid for the Product, which they would not have purchased had they known the true facts.

110. Application of G.B.L. § 349 to all National Class Members, regardless of their state or residence, is appropriate because, *inter alia*:

a. Defendant’s nationwide sales operations are controlled, directed, and originate from New York;

b. Defendant’s marketing operations, including the decisions regarding how to advertise, promote, and sell the KIND Products, are made in New York, and internal marketing personnel and external marketing consultants all are based there;

c. Defendant’s sales force, customer service, and Internet website and advertising operations are controlled, directed and originate in New York;

d. Defendant’s principal place of business is in New York;

e. All significant employees of Defendant are based in New York;

1 f. The facts and circumstances of this case include such numerous contacts
2 with the State of New York as to create a state interest in applying New York’s consumer laws to
3 Defendant, making application of New York law to National Class Members appropriate.

4 111. By reason of the foregoing, Defendant’s conduct, as alleged herein, constitutes
5 deceptive acts and practices in violation of G.B.L. § 349, and Defendant is liable to Plaintiff and
6 National Class Members for the actual damages that they have suffered as a result of
7 Defendant’s actions. The amount of such damages is to be determined at trial, but will not be less
8 than \$50.00 per violation. N.Y. Gen. Bus. Law § 349(h).

9 112. Plaintiff and National Class Members seek to enjoin such unlawful deceptive acts
10 and practices described above. Each National Class Member will be irreparably harmed unless
11 the Court enjoins Defendant’s unlawful, deceptive actions in that Defendant will continue to
12 falsely and misleadingly advertise the products, as detailed herein.

13 113. Plaintiff and National Class Members seek declaratory relief, restitution for
14 monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief
15 prohibiting Defendant from continuing to disseminate its false and misleading statements, and
16 other relief allowable under G.B.L. § 349.

17
18 **XI. SIXTH CLAIM FOR RELIEF**
(Violation of New York General Business Law § 350 – All Natural Class & Healthy Class)

19 114. Plaintiff realleges and incorporates by reference each and every allegation set
20 forth in the preceding paragraphs.

21 115. By the acts and conduct alleged herein, Defendant committed false advertising in
22 the conduct of business, trade, or commerce in the state of New York.

23 116. G.B.L. § 350-a defines “false advertising” as “advertising, including labeling, of a
24 commodity, or of the kind, character, terms or conditions of any employment opportunity if such
25 advertising is misleading in a material respect.”

1 117. The foregoing false advertisements are misleading in a material way because they
2 fundamentally misrepresent the nature of the ingredients in the KIND Products to induce
3 consumers to purchase the products.

4 118. Plaintiff and National Class Members were injured as a direct and proximate
5 result of Defendant's violation of G.B.L. § 350 because they paid for the KIND Products, which
6 they would not have purchased had they known the true facts.

7 119. Application of G.B.L. § 350 to National Class Members, regardless of their state
8 or residence, is appropriate because, *inter alia*:

9 a. Defendant's nationwide sales operations are controlled, directed and
10 originate from New York;

11 b. Defendant's marketing operations, including the decisions regarding how
12 to advertise, promote, and sell the KIND Products, are made in New York, and internal
13 marketing personnel and external marketing consultants all are based there;

14 c. Defendant's sales force, customer service, and Internet website and
15 advertising operations are controlled, directed, and originate in New York;

16 d. Defendant's principal place of business is in New York;

17 e. All significant employees of Defendant are based in New York;

18 f. The facts and circumstances of this case include such numerous contacts
19 with the State of New York as to create a state interest in applying New York's consumer laws to
20 Defendant, making application of New York law to the entire Class appropriate.

21 120. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes
22 false advertising in violation of G.B.L. § 350, and Defendant is liable to Plaintiff and National
23 Class Members for the actual damages that they have suffered as a result of Defendant's actions.
24 The amount of such damages is to be determined at trial, but will be consistent with the damages
25 prescribed in G.B.L. § 350(e).

26 121. Plaintiff and National Class Members seek to enjoin such unlawful acts and
27 practices described above. Each National Class Member will be irreparably harmed unless the

1 Court enjoins Defendant’s unlawful, deceptive actions in that Defendant will continue to falsely
2 and misleadingly advertise the products, as detailed herein.

3 122. Plaintiff and National Class Members seek declaratory relief, restitution for
4 monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief
5 prohibiting Defendant from continuing to disseminate its false and misleading statements, and
6 other relief allowable under G.B.L. § 350.

7
8 **XII. SEVENTH CLAIM FOR RELIEF**
9 **(Violation of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et. seq. – California**
10 **All Natural Sub-Class & California Healthy Sub-Class)**

11 123. Plaintiff realleges and incorporates by reference each and every allegation set
12 forth in the preceding paragraphs.

13 124. Plaintiff and each member of the California All Natural Sub-Class and California
14 Healthy Sub-Class (collectively referred to as “Sub-Class Members”) is a “Consumer” as that
15 term is defined by Cal. Civ. Code §1761(d).

16 125. KIND All Natural Products and KIND Healthy Products are each a “Good” as
17 that term is defined by Cal. Civ. Code §1761(a).

18 126. Defendant is a “Person” as defined by Cal. Civ. Code §1761(c).

19 127. The transaction(s) involved here are “Transaction(s)” as defined by Cal. Civ.
20 Code §1761(e).

21 128. Plaintiff and Sub-Class Members are Consumers who purchased KIND Products
22 for personal use within the applicable statute of limitations period.

23 129. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered
24 injury-in-fact and has lost money or property as a result of Defendant’s action as set forth herein.

25 130. Plaintiff and Sub-Class Members purchased KIND Products in reliance on
26 Defendant’s marketing claims that they were all natural and/or healthy.

27 131. Defendant has used deceptive representations with respect to KIND Products in
violation of Cal. Civ. Code §1770(a)(4).

1 132. Defendant has misrepresented the sponsorship, approval, characteristics, or
2 ingredients of KIND Products in violation of Cal. Civ. Code §1770(a)(5).

3 133. Defendant has misrepresented the standard, quality, or grade of KIND Products in
4 violation of Cal. Civ. Code §1770(a)(7).

5 134. Defendant advertised KIND Products as all natural and/or healthy when, in fact,
6 the KIND All Natural Products contain an unnatural synthetic ingredient and the KIND Healthy
7 Products are not healthy, in violation of Cal. Civ. Code §1770(a)(9).

8 135. Defendant represented that KIND Products were supplied in accordance with a
9 previous representation when they were not, in violation of Cal. Civ. Code §1770(a)(16).

10 136. Defendant knew or should have known that its representations of fact concerning
11 the ingredients and healthiness of KIND Products are material and likely to mislead Consumers.

12 137. Defendant's practices, acts, and course of conduct in marketing and selling KIND
13 Products are likely to mislead a reasonable consumer acting reasonably under the circumstances
14 to his or her detriment. Like Plaintiff, Sub-Class Members would not have purchased KIND
15 Products had they know they were not all natural or healthy.

16 138. Plaintiff and Sub-Class Members have been directly and proximately damaged by
17 Defendant's actions.

18 139. In conjunction with filing this Complaint, Plaintiff's Counsel mailed to
19 Defendant, by certified mail, return receipt requested, the written notice required by Civil Code
20 §1782(a). Should Defendant fail to respond within thirty days, Plaintiff will amend to seek
21 damages under the Consumer Legal Remedies Act.

22 140. Defendant has engaged in, and continues to engage in, business practices in
23 violation of the Consumer Legal Remedies Act, Civ. Code §1750, *et seq.*, by continuing to make
24 false and deceptive representations concerning the ingredients contained in KIND Products.
25 These business practices are misleading and/or likely to mislead consumers and should be
26 enjoined.
27

1 **XIII. EIGHTH CLAIM FOR RELIEF**
2 **(Violation of False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* – California All**
3 **Natural Sub-Class & California Healthy Sub-Class)**

4 141. Plaintiff realleges and incorporates by reference each and every allegation set
5 forth in the preceding paragraphs.

6 142. Plaintiff and Sub-Class Members have standing to pursue a cause of action for
7 false advertising under Bus. & Prof. Code §17500, *et seq.*, because Plaintiff and Sub-Class
8 Members have suffered an injury-in-fact and lost money as a result of Defendant's actions as set
9 forth herein.

10 143. Defendant advertised, marketed, and otherwise disseminated information to the
11 public through advertising mediums including the Internet statements to the effect that KIND All
12 Natural Products were all natural and that the KIND Healthy Products were healthy.

13 144. Defendant's statements were and are false.

14 145. Defendant knows and knew that these statements were false, or could have
15 discovered their falsity with the exercise of reasonable care.

16 146. Defendant's false statements were part of a scheme or plan to sell KIND Products
17 to the public at a premium without disclosing that they contained unnatural ingredients and were
18 not healthy.

19 147. Plaintiff and Sub-Class Members relied on Defendant's marketing, labeling, and
20 other product literature that claimed KIND All Natural Products were all natural and that the
21 KIND Healthy Products were healthy.

22 148. Defendant's actions violate Cal. Bus. & Prof. Code § 17500, *et seq.*

23 149. As a direct and proximate result of Defendant's actions, as set forth herein,
24 Defendant has received ill-gotten gains and/or profits, including but not limited to money from
25 Plaintiff and Sub-Class Members who paid a premium for KIND Products. Therefore,
26 Defendant has been unjustly enriched.

27 150. Plaintiff and Sub-Class Members seek injunctive relief, restitution, and
disgorgement of Defendant's ill-gotten gains as provided for by Cal. Bus. & Prof. Code § 17535.

1 151. Plaintiff and Sub-Class Members seek injunctive relief to compel Defendant from
2 continuing to advertise KIND All Natural Products as all natural and that the KIND Healthy
3 Products are healthy and to prevent Defendant from engaging in these wrongful practices in the
4 future. No other adequate remedy at law exists. If an injunction is not ordered, Plaintiff and
5 Sub-Class Members will suffer irreparable harm and/or injury.

6
7 **XIV. NINTH CLAIM FOR RELIEF**
8 **(Violation of the Unfair Competition Act, Cal. Bus. & Prof. Code § 17200, et seq. –**
9 **California All Natural Sub-Class & California Healthy Sub-Class)**

10 152. Plaintiff realleges and incorporates by reference each and every allegation set
11 forth in the preceding paragraphs.

12 153. Plaintiff and Sub-Class Members have standing to pursue a cause of action for
13 false advertising under Bus. & Prof. Code §17200, et seq. because Plaintiff and Sub-Class
14 Members have suffered an injury-in-fact and lost money as a result of Defendant’s actions as set
15 forth herein.

16 154. Defendant’s actions as described herein constitute unfair competition within the
17 meaning of Bus. & Prof. Code §17200, in that Defendant has engaged in unlawful, unfair, or
18 fraudulent business practices by violating the federal FDCA, California’s Sherman Food Drug &
19 Cosmetic Act, and California’s Consumer Legal Remedies Act.

20 155. Defendant’s actions as described herein constitute unfair competition within the
21 meaning of Bus. & Prof. Code § 17200, on the additional grounds that Defendant has failed to
22 properly label KIND Products in accordance with 21 C.F.R. 101, et seq.

23 156. Defendant’s actions also constitute unfair competition within the meaning of Bus.
24 & Prof. Code § 17200, in that Defendant has made unfair, deceptive, untrue, or misleading
25 statements in advertising mediums, including the Internet, in violation of Bus. & Prof. Code
26 § 17500.
27

1 157. Defendant’s actions have caused economic injury to Plaintiff and Sub-Class
2 Members. Plaintiff and Sub-Class Members would not have purchased KIND Products at a
3 premium had they known they were neither all natural nor healthy.

4 158. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and Sub-Class Members seek an
5 injunction enjoining Defendant from continuing to market, advertise, and sell KIND Products
6 without first complying with federal law and to prevent Defendant from continuing to engage in
7 unfair competition or any other act prohibited by law.

8 159. Plaintiff and Sub-Class Members also seek an order requiring Defendant to make
9 full restitution and disgorgement of their ill-gotten gains of all money wrongfully obtained from
10 Plaintiff and Sub-Class Members as permitted by Bus. & Prof. Code § 17203.

11 **XV. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on her own behalf and on behalf of Class Members, prays for
13 judgment against Defendant as follows:

- 14 A. Certification of the proposed Classes;
- 15 B. Appointment of Plaintiff as representative of the Classes;
- 16 C. Appointment of the undersigned counsel as counsel for the Classes;
- 17 D. A declaration that Defendant’s actions complained of herein violate the Consumer
18 Legal Protection Act, Civ. Code §1750, *et seq.*; Bus. & Prof. Code §17500, and Bus. & Prof.
19 Code §17500;
- 20 E. An order enjoining Defendant and/or its affiliates, agents, and/or other related
21 entities, as provided by law, from engaging in the unlawful conduct set forth herein;
- 22 F. An order compelling Defendant to engage in a corrective advertising campaign to
23 inform the public concerning the true nature of the KIND Products, including a recall of the
24 falsely and deceptively labeled KIND Products.
- 25 G. An order requiring Defendant to disgorge and make restitution of all monies
26 Defendant acquired by means of the unlawful practices set forth herein;
- 27

1 H. An award to Plaintiff and the Classes of damages, as allowed by law;

2 I. An award to Plaintiff and the Classes of attorneys' fees and costs, as allowed by
3 law and/or equity;

4 J. Leave to amend this Complaint to conform to the evidence presented at trial; and

5 K. Orders granting such other and further relief as the Court deems necessary, just,
6 and proper.

7
8 **XVI. DEMAND FOR JURY**

9 Plaintiff demands a trial by jury for all issues so triable.

10 RESPECTFULLY SUBMITTED AND DATED this 21st day of January, 2014.

11 TERRELL MARSHALL DAUDT & WILLIE PLLC

12 By: /s/ Beth E. Terrell, WSBA #178181

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Attorneys for Plaintiff and the Proposed Classes

— EXHIBIT 1 —

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

- [Home \(/default.htm\)](/default.htm)
- [Inspections, Compliance, Enforcement, and Criminal Investigations \(/ICECI/default.htm\)](/ICECI/default.htm)
- [Compliance Actions and Activities \(/ICECI/EnforcementActions/default.htm\)](/ICECI/EnforcementActions/default.htm)
- [Warning Letters \(/ICECI/EnforcementActions/WarningLetters/default.htm\)](/ICECI/EnforcementActions/WarningLetters/default.htm)

KIND, LLC 3/17/15



Department of Health and Human Services

Public Health Service
Food and Drug Administration
College Park, MD 20740

WARNING LETTER

MAR 17, 2015

VIA OVERNIGHT DELIVERY

Daniel Lubetsky, CEO
Kind, LLC
55 West 21st 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 in August, 2014. The labels for these products direct the consumer to your website at the Internet address www.kindsnacks.com. We examined your website in October 2014. Based on our review, we have concluded that these products are in violation of section 403 of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 343] and its implementing regulations found in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101). You can find the Act and 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 [21 U.S.C. § 343(r)(1)(A)] 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 in the labeling of the food must be made in accordance with a regulation authorizing the use of such a claim. Characterizing the level of a nutrient on the food labeling of a product without complying with the specific requirements pertaining to nutrient content claims for that nutrient misbrands the product 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, because they bear statements suggesting that the product may be useful in maintaining healthy dietary practices, and those statements are made in connection with claims or statements about nutrients. Specifically, the labels of the aforementioned products bear the claim "Healthy and tasty, convenient and wholesome" 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’s healthy and tasty” and “all of 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.html states “KIND Peanut Butter Dark Chocolate + Protein is a healthy and satisfying blend of peanuts and antioxidant-rich dark chocolate. Each bar contains 7 grams of 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” that are set forth in 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 the label or in the labeling of a 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 has a saturated fat content of 1 g or less per Reference Amount Customarily Consumed (RACC) and no more than 15 percent of the calories are 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, and
- 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% of calories from saturated fat in the “low saturated fat” definition. Accordingly, your products do not meet the requirements for use of the nutrient content claim “healthy” on a food label [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 product labels bear the term “+” (plus) as part of the product name but the products do not comply with the requirements governing the use of this term. The term “+” as part of the names of your Kind Peanut Butter Dark Chocolate + Protein and Kind Dark Chocolate Cherry Cashew + Antioxidants read in conjunction with “7 g Protein” and “50% DV Antioxidant, vitamins A, C and E,” respectively, meets the definition for a nutrient content claim because it characterizes the product’s level of vitamins and minerals, which are nutrients of the type required to be in nutrition labeling [21 CFR 101.13(b)].

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 the level of nutrients (such as vitamins and minerals) 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) for the nutrient per RACC consumed 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 policy on fortification of 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 101.54(e)(1)(iii).

However, neither product label states the identity of the reference food and the percentage (or fraction) that the nutrient is greater relative to the RDI or DRV declared in immediate proximity to the most prominent such claim. Accordingly, these products are misbranded within the meaning of section 403(r)(1)(A) of the Act because they bear the nutrient content claim “plus” but do not comply with the regulations governing the use of this 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 includes the nutrient content claim “antioxidant- rich dark chocolate”; however, the product and its labeling do not meet the requirements for the use of such claim that are set forth in 21 CFR 101.54(g).

The phrase “antioxidant-rich” characterizes the level of antioxidant nutrients in the product and, therefore, this claim is a nutrient content claim under 21 CFR 101.13(b). Nutrient content claims using the term “antioxidant” must comply with the requirements listed in 21 CFR 101.54(g). These requirements state, in part, that for a product to bear such a claim, an RDI must have been

established for each of the nutrients that are the subject of the claim [21 CFR 101.54(g)(1)], and these nutrients must have recognized antioxidant activity [21 CFR 101.54(g)(2)]. The level of each nutrient 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(g)(3)]. In addition, in order to qualify for a “rich” or “high antioxidant” claim the product must contain 20 percent or more of the RDI for nutrients that have recognized antioxidant activity, such as vitamin C, vitamin E, or beta carotene (when 10% or more of the RDI for vitamin A is present as beta carotene) in accordance with 21 CFR 101.54(b). Based on the information in the Nutrition Facts label, this product contains 15% of the Daily Value (DV) of vitamin E and 0% of vitamin C and vitamin A. Therefore this product does not qualify for a “rich in” claim and the product 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 + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products are misbranded within the meaning of section 403(r)(2)(A)(v) of the Act [21 U.S.C. § 343(r)(2)(A)(v)] because the labels include the nutrient content claim “Good Source of Fiber” without including the required statement disclosing 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 with respect to the level of dietary fiber (e.g., that the product is a good source of fiber) and the food is not “low” in total fat as defined in 21 CFR 101.62(b)(2), then the label 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 + Protein 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 not “low” in total fat and you are required to disclose this fact on the labels in immediate proximity to the claims that the products are a “good source of fiber.”

3. 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(q)(2)(A) of the Act [21

U.S.C. § 343(q)(2)(A)] in that nutrition information is not disclosed in accordance with 21 CFR 101.9. Specifically,

- a. Your labels bear a claim about fatty acids (i.e., “no trans fat”) but fail to include the levels of monounsaturated fatty acids and polyunsaturated fatty acids in the nutrition information as required by 21 CFR 101.9 (c)(2)(iii) and (iv).
 - b. Your Kind Plus Peanut Butter Dark Chocolate + Protein product label includes the nutrient content claims: “+ protein” and “plus 7 g protein” on the principal display panel; however, the nutrition label fails to include the percent DV for protein as required when the label 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 + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants products are misbranded within the meaning of section 403(e)(1) of the Act because the statement of the name and the place of business fails to completely or accurately declare the place of business as required by 21 CFR 101.5(d). Specifically, the statement “Kind, LLC, P.O. Box 705 Midtown Station, NY, NY 10018” which is provided on the label does not include the street address and the street address of your business does not appear in a current city or telephone directory. FDA is unable to determine the physical location of 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 or their labeling. 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/or 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 + Protein, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants product labels bear the claim “No Trans Fats,” and we note that your ingredient statements do not include a partially hydrogenated oil as an ingredient. Under section 403(r)(1)(A) of the Act, a nutrient content claim in food labeling must be made in accordance with a regulation authorizing the use of the claim in order for the food bearing such claim not to be misbranded. Although FDA has not defined the term “Contains No Trans Fat” by regulation, we announced in the *Federal Register* dated July 11, 2003 (68 FR 41507 at 41509) that we would likely consider exercising enforcement discretion for a trans-fat nutrient content claim that is demonstrably true,

balanced, 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. 68 FR 41445 at 41456 (July 11, 2003). Higher total and LDL cholesterol levels are associated with increased risk of developing coronary heart disease. 68 FR 41445 (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 fat, 4.0 grams of saturated fat, 60 milligrams cholesterol, and 480 milligrams of sodium per reference amount customarily consumed (RACC), per labeled serving (or for a food 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 nutrient exceeding the specified level is present in the food as follows: "See nutrition information for _____content" with the blank filled in with the identity of 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 on your products provided 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 contain the disclosure statement "See nutrition information for saturated fatcontent."

- Your Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, and Kind Plus Peanut Butter Dark Chocolate + Protein products labels include the statement beginning "Allergen information: Contains..."; however, this allergen statement is not declared correctly. We note that these product labels correctly declare the allergen information in the ingredients lists in accordance with section 403(w)(1)(B)(i) of the Act, so a separate "Contains" statement is not required. However, if a separate "Contains" declaration is used, it must include all of the major allergens 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. The ingredient lists for Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, and Kind Plus Peanut Butter Dark Chocolate + Protein declare soy lecithin as an ingredient; however, soy is not declared in the "Contains" statement. In addition, the term "milk" must be used instead of "dairy" and the generic term "tree nuts" cannot be used in place of the names of the specific tree nuts such as almonds, coconuts, and cashews.
- Your Kind Plus Dark Chocolate Cherry Cashew + Antioxidants product ingredient list does not meet the requirements in 21 CFR 101.4(b), which requires that the name of an ingredient shall be a specific name and not a collective (generic) name. This product lists the collective terms "mixed nuts," "dried fruits," and "vitamins" as multicomponent foods and declares the specific nuts, fruits, and vitamins as sub-ingredients. 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 in 21 CFR 101.4(b)(2) because the label declares the standardized multicomponent food, peanut butter, but does not declare the sub-ingredients as required in 21 CFR 101.4(b)(2)(i). In accordance with 101.4(b)(2)(ii), if the ingredients of the standardized food are incorporated in the finished food ingredient list, 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 product labels does not meet the requirements in 21 CFR 101.2(e) because all of the information does not appear in one place without intervening material. The paragraph describing your brand that comes between the ingredient list and the name and place of business is an example of intervening material.
- 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 an appropriate common or usual name 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 include the street address as required in 21 CFR 101.5(d). The street address may only be omitted if it is shown in a current city directory or telephone directory. An online 411 search for your firm yielded several different street addresses in New York City; therefore, it is not clear which address is correct and should be considered 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 as required in 21 CFR 101.3.

Please respond to this letter within 15 working days from receipt with the actions you plan to take in response to this letter, including an explanation of each step being taken to correct the current violations and prevent similar violations. Include any documentation necessary to show that correction has been achieved. If you cannot complete corrective action within 15 working days, state the reason for the delay 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 Applied Nutrition, 5100 Paint 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>).

Sincerely,

/S/

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

cc: FDA New York District

[More in Compliance Actions and Activities](#)
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[Warning Letters \(/ICECI/EnforcementActions/WarningLetters/default.htm\)](#)

[2015 \(/ICECI/EnforcementActions/WarningLetters/2015/default.htm\)](#)

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[2006 \(/ICECI/EnforcementActions/WarningLetters/2006/default.htm\)](#)

[2005 \(/ICECI/EnforcementActions/WarningLetters/2005/default.htm\)](#)

Tobacco Retailer Warning Letters

(/ICECI/EnforcementActions/WarningLetters/Tobacco/default.htm)

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
DANIELLE COOPER, individually, and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff San Francisco
(c) Attorneys (Firm Name, Address, and Telephone Number)
PLEASE SEE ATTACHED

DEFENDANTS
KIND LLC,
County of Residence of First Listed Defendant
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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
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(d)
Brief description of cause:
Defendant's sold products with false and deceptive labels and advertising.

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

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

DATE 04/24/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Beth E. Terrell, CSB #178181

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

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.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Danielle Cooper v. KIND LLC

Attachment to Civil Cover Sheet

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