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**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

DAWN MOLINA,
Individually, and on behalf of
all others similarly situated,

CASE NO.

DIVISION:

Plaintiff,

CLASS REPRESENTATION

v.
KIND, LLC

Defendant.

_____ /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DAWN MOLINA ("Molina"), on behalf of herself and all others similarly situated, by and through her attorneys, bring this Class Action Complaint and Demand for Jury Trial against Defendant, KIND, LLC ("Defendant"), and alleges as follows:

1. Defendant, at all times relevant, actively sold its products under the trade name of "KIND" and using registered trademarks, including, but not limited to: "NOTHING TO HIDE," "KIND," "KIND Healthy Grains," "YOU'VE BEEN KINDED," "YOU SHOULDN'T HAVE TO CHOOSE BETWEEN HEAVEN AND HEALTH," "IT'S USUALLY THE NUTS THAT CHANGED THE WORLD," "DO THE KIND THING – FOR YOUR BODY, YOUR TASTE BUDS, & THE WORLD," and "GRAB HEALTH BY THE NUTS," "CLEARING NUTS OF THEIR BAD WRAP," and "HEALTHY SNACKS SHOULDN'T HAVE TO HIDE," at various places in the State of Florida and throughout the United States.

I. NATURE OF ACTION

2. Plaintiff brings this class action, individually, and on behalf of a proposed class more fully defined below, of all similarly situated consumers who purchased KIND Products designed,

manufactured, marketed, advertised, distributed, and/or sold by Defendant, or their predecessors, successors, subsidiaries, or other distribution partners.

II. PARTIES

3. Plaintiff is an individual and at all times mentioned was a resident of Tampa, Hillsborough County, Florida.

4. Defendant is a Delaware for-profit limited liability company organized and existing under the laws of Delaware, with its principal place of business in New York, New York, and was engaged in the business of making, selling, and advertising self-described “healthy snacks and foods.”

III. JURISDICTION AND VENUE

5. This is a claim for both equitable relief and monetary damages in excess of \$15,000, exclusive of interest, attorneys’ fees and costs.

6. This Court has jurisdiction over this controversy under section 26.012(2)(a) Florida Statutes.

7. The venue over this controversy is proper with this Court pursuant to section 47.011, Florida Statutes, because Hillsborough County, Florida, is where certain of the actions accrued. In addition, Defendant transacts significant business in Hillsborough County, Florida.

8. This court has personal jurisdiction over Defendant KIND, LLC because it conducts substantial business in Florida, including the marketing, sale, and distribution of KIND Products, and has sufficient contacts with Florida, or otherwise, to intentionally avail themselves of the laws and markets of Florida, so as to sustain this Court’s jurisdiction over Defendant.

IV. FACTS

9. Defendant manufactures, markets, distributes and/or sells its product throughout the United States including Florida under various brand and product names, including, but not limited to, “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,” (collectively, “KIND Products”).

10. During the class period, Defendant made various representations to consumers about the purported nature of the KIND Products by failing to use the implied nutrient terms ‘healthy,’ including, but not limited to:

- a. Misrepresenting the nutrient content of 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;
- b. Implying various nutrient content claims using statements to consumers that the Kind Products may be useful in maintaining healthy dietary practices in connection with claims or statements about nutrients contained in the KIND Products. Specifically, the labels of the aforementioned products bear the claim “Healthy and tasty, convenient and wholesome” in connection with statements such as: “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”;
- c. Misrepresenting that Kind Fruit & Nut Almond & Coconut, Kind Plus Peanut Butter Dark Chocolate + Protein, and Kind Plus Dark Chocolate Cherry Cashew +

Antioxidants are “low fat” pursuant to applicable regulations; and

- d. Misbranding 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 by not properly disclosing required information.

11. Defendant advertised and marketed its products to consumer across the nation, including in the State of Florida using a widespread campaign of television commercials, website(s), advertising, packaging, among other marketing efforts.

12. Defendant’s extensive advertising and marketing scheme was designed to mislead Plaintiff and members of the putative class. Defendant, through disseminating false and misleading information about the KIND Products, Plaintiff and members of the putative class were induced into purchasing, at a premium price and upon information and belief, millions of dollars worth of the KIND Products.

13. Defendant knew or should have known that their extensive false and otherwise flawed advertising and marketing campaign was misleading to consumers.

14. During the class period, Defendant took no meaningful steps to clarify consumer misconceptions regarding its products.

15. As a result of Defendant’s extensive pattern of deceptive, false, and otherwise improper advertising, sales, and marketing practices and through other actions and inactions complained of herein, Defendants violated Florida Statutes Chapter 501, the Florida Unfair and Deceptive Trade Practices Act (“FUDTPA”) and were unjustly enriched. To remedy Defendant’s illegal conduct, Plaintiff, individually, on behalf of other similarly situated purchasers, seeks restitution, monetary damages, equitable relief, declaratory relief, and/or disgorgement of profits in

connection with the KIND Products designed, manufactured, marketed, advertised, distributed, and sold by Defendant, or by its predecessors, successors, partners, or subsidiaries.

16. Plaintiff and those similarly situated have suffered damages due to Defendant's unlawful actions and inactions.

17. Plaintiff has retained the law firm of Savage, Combs & Villoch, PLLC, to represent her and all other similarly situated consumers in this matter and has agreed to pay the Savage, Combs & Villoch, PLLC law firm a reasonable attorneys' fee for its services.

18. All conditions precedent to the filing of this action have been fulfilled by Plaintiff or waived by Defendant.

V. CLASS REPRESENTATION ALLEGATIONS

19. Pursuant to Rule 1.220(b)(1), Florida Rules of Civil Procedure, Plaintiff bring this class action on behalf of herself and all members of the following class (the "Class"):

All persons residing in Florida who purchased KIND Products, except for resale, within the applicable statutory limitations period, including the period following the filing date of this action.

Excluded from the Class are: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and its current or former employees, officers, and directors; (3) counsel for Plaintiff and Defendant; and (4) legal representatives, successors, or assigns of any such excluded persons.

20. Plaintiff believes that the Class includes thousands of consumers across Florida, even though at the current time the exact number and the identities of the Class members are unknown.

21. The Class members are so numerous that joinder of all Class members is impracticable.

22. Common questions of law and fact exist as to all Class members and predominate over any questions affecting solely individual Class members. Nearly all factual, legal, and statutory

relief issues raised in this Complaint are common to each of the Class members and will apply uniformly to every Class member. Among the questions of law and fact common to Class members are whether:

- a. Defendant engaged in the wrongful conduct alleged herein;
- b. Defendant, in the course of business, misrepresented the nutrient content, characteristics, uses, benefits, or qualities of the KIND Products when Plaintiff and Class members purchased and consumed KIND Products in a customary manner;
- c. Defendant's claims made and continued to be made during the Class Period regarding KIND Products are and were unfair or deceptive, specifically, that KIND Products actually contained the nutrient content as advertised by Defendant;
- d. Defendant has been unjustly enriched through its acts and/or omissions alleged herein;
- e. Plaintiff and Class members that purchased KIND Products suffered monetary damages and, if so, what is the measure of those damages;
- f. Plaintiff and Class members are entitled to an injunction, damages, restitution, equitable relief, and other relief deemed appropriate and the amount and nature of such relief.

23. Plaintiff's claims are typical of the claims of other Class members because Plaintiff and every Class member have suffered similar injuries as a result of the same practices alleged herein.

24. Plaintiff has no interests adverse to the interests of the other Class members.

25. Plaintiff will fairly and adequately represent and protect the Class interests. The Plaintiff's interests are coincident with, and not antagonistic to, the interests of the other Class members.

26. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in federal civil litigation.

27. Plaintiff and other Class members have suffered damages as a result of Defendant's unlawful and wrongful conduct. Absent a class action, Defendant will retain substantial funds received as a result of its unlawful and wrongful conduct, and such unlawful and improper conduct shall, in large measure, go unremedied. Absent a class action, the Class members will not be able to effectively litigate these claims and will suffer further losses, as Defendant will be allowed to continue such conduct with impunity and retain the proceeds and profits of its unfair and deceptive trade practices as described herein.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. Moreover, because the damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it impossible for Class members to individually redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a class action will eliminate the possibility of repetitious litigation. There will be no difficulty in the management of this action as a class.

29. The prosecution of separate claims or defenses by or against individual Class members would create a risk of either:

- a. inconsistent or varying adjudications concerning individual Class members which would establish incompatible standards of conduct for the party opposing the

Class, or

- b. adjudications concerning individual Class members which would, as a practical matter, be dispositive of the interests of other Class members who are not parties to the adjudications, or substantially impair or impede the ability of other Class members who are not parties to the adjudications to protect their interests.

COUNT I
VIOLATION OF THE FLORIDA
UNFAIR AND DECEPTIVE TRADE PRACTICES ACT
(Florida Statutes Section 501)

30. Plaintiff hereby incorporates each preceding and succeeding paragraph as though fully set forth herein

31. Defendant's actions and inactions as described above comprise deceptive acts and unfair trade practices.

32. As a direct and proximate cause of Defendant's deceptive acts and unfair trade practices, Plaintiff and Class members purchased KIND Products.

33. As a direct and proximate cause of Defendant's deceptive acts and unfair practices, Plaintiff and Class members suffered actual damages when purchasing KIND Products based upon Defendant's deceptive acts and unfair trade practices.

WHEREFORE, pursuant to Florida Statute §501 *et. seq* and all relevant case law, Plaintiff and those similarly situated demand:

- a. Certification of this action as a class action pursuant to Rule 1.220, Florida Rules of Civil Procedure, on behalf of the Class members and appointing Plaintiff and her counsel to represent the Class;
- b. A declaratory judgment that KIND, LLC violated the FDUTPA;
- c. An injunction enjoining KIND, LLC from future violations of the FDUTPA

pursuant to Section 501.211(1), Fla. Stat.;

- d. Actual damages for violation of the FDUTPA pursuant to Section 501.211(2), Fla. Stat.;
- e. Monetary damages;
- f. An award of attorneys' fees and costs pursuant to Sections 501.211(2) and 501.2105, Fla. Stat.; and
- g. Such other relief that this Court deems just and proper.

COUNT II
UNJUST ENRICHMENT

34. Plaintiff hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

35. Plaintiff and Class members conferred a monetary benefit on Defendant by purchasing KIND Products.

36. Plaintiff and Class members would have expected remuneration from Defendant at the time this benefit was conferred had they known that the product was not as advertised and branded and that Defendant's claims about KIND Products' nutrient content was misleading and false.

37. As a result of Defendant's deceptive and misleading packaging, advertising, marketing, and sale of KIND Products, Defendant was enriched, at the expense of the Plaintiff and each member of the putative Class, through the payment of the purchase price for KIND Products.

38. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits received from Plaintiff and Class members, in light of the fact that the KIND Products purchased by Plaintiff and Class members were not as Defendant purported them to be, as alleged above.

39. It would be unjust and inequitable for Defendant to retain the benefit without restitution or disgorgement of monies paid to Defendant for KIND Products, or such other appropriate equitable remedy as appropriate, to the Plaintiff and other Class members.

WHEREFORE, Plaintiff and those similarly situated respectfully request class certification under the Florida Rules of Civil Procedure, damages for unjust enrichment, attorneys' fees and costs, and such other relief as the Court deems just and necessary:

JURY TRIAL DEMANDED

Plaintiff and any and all similarly situated persons demand a jury trial on all issues so triable.

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