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14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

16 CHERYL FERNANDEZ, individually)  
17 and on behalf of all others )  
18 similarly situated, )

Case No. '17CV1628 GPC WVG

19 Plaintiffs, )

**CLASS ACTION COMPLAINT**

20 v. )

**JURY TRIAL DEMANDED**

21 ATKINS NUTRITIONALS, INC., )  
22 and )  
23 DOES 1-10; )

24 Defendants. )  
\_\_\_\_\_ )

25 Plaintiff Cheryl Fernandez, individually and on behalf of all other similarly  
26 situated individuals, by and through her counsel, brings this Complaint against

1 Defendants Atkins Nutritionals, Inc., and Doe Defendants 1-10, for damages  
2 arising out of the purchase of a product from Defendants that purported to have a  
3 “Net Carbs” representation that did not include sugar alcohols in its calculation of  
4 “Net Carbs.” In support of her Complaint, Plaintiff respectfully submits and alleges  
5 the following:

6  
7 **NATURE OF THE CASE**

8 1. This case concerns the labeling used by Atkins Nutritionals, Inc. when  
9 it touts its products as having low “net carbs” even though the products contain  
10 sugar alcohols.

11 2. When it calculates “net carbs” for labeling purposes, Atkins subtracts  
12 carbohydrates associated with sugar alcohols from its calculation, even though  
13 sugar alcohols contribute to a product’s carbohydrates and impact blood sugar.  
14 Atkins itself has characterized the term “net carbs” as “imprecise.”

15 3. Simply put, the calculation that Atkins employs is wrong, meaning  
16 that the labeling and representations regarding net carbs also are wrong. Atkins  
17 conceals these facts from consumers in violation of California law.

18 4. Plaintiff thus brings this suit on her own behalf, and on behalf of other  
19 affected purchasers in California, to obtain all remuneration available under the  
20 law.

21 **PARTIES**

22 5. Plaintiff Cheryl Fernandez is a resident of San Diego County,  
23 California.

1 6. Defendant Atkins is a Colorado corporation with headquarters located  
2 at 1050 17<sup>th</sup> Street, Ste. 1000, Denver, Colorado 80265-1001.

3 7. The true names and capacities, whether individual, corporate,  
4 associate, or otherwise, of Doe Defendants 1 through 10, inclusive, are unknown to  
5 Plaintiff at this time, and Plaintiff therefore sues these Defendants by such  
6 fictitious names. When Plaintiff ascertains the true names and capacities of these  
7 Defendants, Plaintiff will seek leave to amend this complaint accordingly. Plaintiff  
8 is informed and believes and thereon alleges that each defendant designated herein  
9 as a Doe is: (a) either a resident of California or does business in California of such  
10 nature and/or quantity as to render such defendant subject to jurisdiction in  
11 California in this case, and (b) responsible, in some actionable manner, for the  
12 events and happenings hereinafter referred to, and has proximately caused injuries  
13 and damages to Plaintiff, as hereinafter alleged.

14 **JURISDICTION AND VENUE**

15 8. The United States District Court for the Southern District of  
16 California has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. §  
17 1332(d). The aggregated claims of the individual class members exceed the sum  
18 value of \$5,000,000, exclusive of interest and costs, and this is a class action in  
19 which more than two-thirds of the proposed plaintiff class are citizens of  
20 California, and Defendant Atkins is a citizen of Colorado.

21 9. This Court has jurisdiction over Atkins because Atkins is registered to  
22 conduct business in California, has sufficient minimum contacts with California,  
23 and intentionally avails and has availed itself of California's marketplace through  
24

1 the promotion, sale, marketing, and distribution of its products in California, such  
2 that the exercise of jurisdiction by this Court is both proper and necessary.

3 10. Venue is proper in this District under 28 U.S.C. § 1391(b) because a  
4 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred  
5 in this District.

6 **FACTUAL ALLEGATIONS**

7 11. Defendant Atkins has concealed material facts from consumers in that  
8 it has failed to disclose that its “net carb” calculation is misleading because sugar  
9 alcohols have a carbohydrate impact that should be included in any carbohydrate  
10 calculation.

11 12. Furthermore, Atkins made false, misleading statements to deceive  
12 consumers into purchasing its products under the belief that they are extremely low  
13 in carbohydrates, when, in fact, they are not.

14 13. Defendant Atkins’s fraudulent market scheme includes touting a low  
15 “net carb” total for many products, but the phrase “net carb” is highly deceiving,  
16 and, as calculated on Atkins’s product labels, fraudulent. This is particularly true  
17 where Atkins conceals the true nature of sugar alcohols, and conceals the fact that  
18 it subtracts sugar alcohols from its total carbohydrate calculation to reach its “net  
19 carbs” calculation.

20 14. Defendant Atkins is the company which was formed by the late Dr.  
21 Robert Atkins (hereinafter “Dr. Atkins”) to promote the sale of books and food  
22 items related to the “Atkins Diet,” a low to no carbohydrate diet.

1           15. To follow the Atkins Diet, users must forsake carbs which are present  
2 in most processed foods in the average American’s diet. In 1999, at the time the  
3 Atkins Diet was gaining sweeping popularity, the late Dr. Atkins informed  
4 adherents that the most popular artificial sweeteners that American manufacturers  
5 use to replace conventional sugars were not approved for use in the Atkins Diet.  
6 Dr. Atkins wrote, “Sweeteners such as sorbitol, mannitol, and other hexitols [i.e.,  
7 sugar alcohols] are not allowed.” See Robert C. Atkins, M.D., *Dr. Atkins’ New*  
8 *Diet Revolution* (Rev.) at p. 100 (1999).

9           16. In 2002, Dr. Atkins revised this prohibition. He stated, “certain sugar  
10 alcohols such as maltitol do not affect blood sugar and are acceptable.” Robert C.  
11 Atkins, M.D., *Dr. Atkins’ New Diet Revolution* (3rd ed.) at p. 112 (2002).

12           17. What changed? Between 1999 and 2002, Atkins had established a  
13 growing line of food products that included sugar alcohols.

14                           **Atkins’s Specific Claims on “Net Carbs”**

15           18. Atkins’s website at [www.atkins.com](http://www.atkins.com) explains its definition of “net  
16 carbs” as “the total carbohydrate content of the food minus the fiber content and  
17 sugar alcohols.” It further claims, “The Net Carbs number reflects the grams of  
18 carbohydrate the significantly impact your blood sugar level and therefore are the  
19 only carbs you need to count when you do Atkins.”

20           19. Atkins claims its “Net Carb” calculation is based on “science.”

21           20. Atkins further claims:  
22  
23  
24

1 Net Carbs are the carbohydrates that significantly impact the blood-sugar  
2 level; they're the only carbs that count when following Atkins. The good  
3 news is that the grams of carbohydrate in fiber, glycerine, and sugar alcohols  
4 don't break down and convert to blood sugar and need not be counted by  
5 people on the ANA. ... So Net Carbs represent the number of grams of total  
6 carbohydrate minus those that do not impact blood sugar.<sup>1</sup>

7 21. Atkins manufactures, distributes, markets, advertises, and sells  
8 products containing sugar alcohols as replacements for ordinary carbohydrates.

9 22. Maltitol is the sugar alcohol of Atkins' choice. For example, it is a  
10 leading ingredient in the following Atkins' products: (a) Blueberry Greek Yogurt  
11 Bar; (b) Chocolate Peanut Butter Pretzel Bar; (c) Strawberry Almond Bar; (d)  
12 Cinnamon Bun Bar; (e) Chocolate Chip Granola Bar; (f) Chocolate Peanut Butter  
13 Bar; (g) Cookies n' Crème Bar; (h) Mudslide Bar; (i) Chocolate Chip Cookie  
14 Dough Bar; (j) Triple Chocolate Bar; (k) Caramel Chocolate Peanut Nougat Bar;  
15 (l) Caramel Double Chocolate Crunch Bar; (m) Cashew Trail Mix Bar; (n)  
16 Coconut Almond Delight Bar; (o) Dark Chocolate Almond Coconut Crunch Bar;  
17 (p) Caramel Chocolate Nut Roll; (q) Dark Chocolate Decadence Bar; (r) Chocolate  
18 Chip Crisp Bar; (s) Chocolate Hazelnut Bar; (t) Chocolate Oatmeal Fiber Bar; (u)  
19 Cranberry Almond Bar; (v) Chocolate Covered Almonds; (w) Chocolate Candies;  
20 (x) Chocolate Peanut Candies; (y) Caramel Nut Chew Bar; (z) Chocolate Caramel

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21 <sup>1</sup> See [http://www.atkins.com/Science/Articles---Library/Carbohydrates/The-Blood-Sugar-  
23 Roller-Coaster--Excess-Carbs,-Exce.aspx](http://www.atkins.com/Science/Articles---Library/Carbohydrates/The-Blood-Sugar-<br/>22 Roller-Coaster--Excess-Carbs,-Exce.aspx)

1 Mousse Bar; (aa) Chocolate Coconut Bar; (bb) Nutty Fudge Brownie; (cc) Peanut  
2 Butter Cups; and (dd) Peanut Caramel Cluster Bar.

3 23. The Atkins “net carb” formula subtracts all grams of sugar alcohol  
4 from carbohydrates. For example, its “Chocolate Candies” product claims to have  
5 just “1g Net Carb.”



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1 24. The ingredients panel for Atkins’ Chocolate Candies reveals the  
 2 following:

3 **Nutrition Facts**  
 4 Serving Size 1 pack (28g)

Amount Per Serving	
Calories 110	Fat Cal. 60
% Daily Value*	
Total Fat 7g	11%
Saturated Fat 4.5g	23%
Trans Fat 0g	
Cholesterol <5mg	1%
Sodium 5mg	0%
Potassium 60mg	2%
Total Carbohydrate 19g	6%
Dietary Fiber 4g	16%
Sugars 1g	
★ Sugar Alcohols 14g	
Protein 1g	1%
Vitamin A 0%	Vitamin C 0%
Calcium 2%	Iron 2%

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

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

INGREDIENTS: CHOCOLATE COATING [MALTITOL, COCOA BUTTER, INULIN, UNSWEETENED CHOCOLATE, WHOLE MILK POWDER, MILK FAT, COCOA POWDER (PROCESSED WITH ALKALI), SOY LECITHIN, VANILLA, NATURAL FLAVORS, SUCRALOSE], MALTITOL, LESS THAN 1% OF PURE VANILLA EXTRACT, CONFECTIONER’S GLAZE, CARNAUBA WAX, BEESWAX, TITANIUM DIOXIDE COLOR, YELLOW 5 LAKE, RED 40 LAKE, BLUE 1 LAKE, BLUE 2 LAKE, YELLOW 6 LAKE, YELLOW 6, GUM ARABIC. FR01  
**CONTAINS MILK AND SOY.**  
**THIS PRODUCT IS MANUFACTURED IN A FACILITY THAT USES PEANUTS, OTHER TREE NUTS AND WHEAT.**

★ Sugar Alcohols total includes 0g of glycerin.

15 25. Thus, Atkins’s starts with 19g of total carbs then subtracts 4g of  
 16 Dietary Fiber and 14g of Sugar Alcohols to arrive at a Net Carbs claim of just 1  
 17 gram. The ingredient list reveals “maltitol” is the largest content of the product.

18 26. By this calculation, Atkins assigns a carbohydrate value of zero to  
 19 maltitol and any other sugar alcohols for this product.

20 27. But this method of calculation conflicts with the method espoused by  
 21 Dr. Atkins in his books. Indeed, Dr. Atkins stated that to arrive at net carbs, an  
 22 individual should subtract only carbohydrates associated with fiber. He stated:  
 23 “Basically, you can deduct the grams of fiber from the food’s total carb count. I



1 call the net number of grams, “The carbs that count when you do Atkins.”” Robert  
2 C. Atkins, M.D., *Dr. Atkins’ New Diet Revolution* (3rd ed.) at p. 68 (2002). He  
3 further elaborated, “And determining which carbs count is simple: Check the total  
4 fiber grams listed on the food label and subtract that number from the total grams  
5 of carbohydrate listed.” *Id.* at p. 69. Thus, even Dr. Atkins uses a different  
6 carbohydrate calculation than that used by Atkins in its labeling.

7 28. Atkins does not disclose the conflict between Dr. Atkins’s espoused  
8 method of calculating “net carbs” and the method used by the company.

9 **Sugar Alcohols Retain Significant Energy Value**

10 29. Contrary to Atkins’s claims, the authoritative scientific research on  
11 sugar alcohols, particularly maltitol, shows that they continue to have a significant  
12 impact on blood sugar levels.

13 30. The Diabetes Teaching Center at the University of California, San  
14 Francisco puts it best, “[D]on’t be fooled – sugar alcohols are still a form of  
15 carbohydrate, and they still affect your blood sugar levels, if not as dramatically.”<sup>2</sup>

16 31. Similarly, Dr. Regina Castro of the Mayo Clinic warns consumers  
17 should “be cautious with sugar alcohols” because they “can increase your blood  
18 sugar level.”<sup>3</sup>

19 \_\_\_\_\_  
20 <sup>2</sup> See <http://dtc.ucsf.edu/living-with-diabetes/diet-and-nutrition/understanding-carbohydrates/counting-carbohydrates/learning-to-read-labels/counting-sugar-alcohols/>.

21 <sup>3</sup> See <http://www.mayoclinic.org/diseases-conditions/diabetes/expert-answers/artificial-sweeteners/faq-20058038>.  
22

1           32. To Plaintiffs’ knowledge, no independent scientist, doctor, or  
2 researcher agrees with Atkins’s assertion that maltitol and other sugar alcohols  
3 have a net energy value of zero. Atkins conceals this fact from consumers, and  
4 does not disclose this fact in its labeling or representations to consumers.

5           33. In the study “Sugar Alcohols and Diabetes: A Review,”<sup>4</sup> Dr. Thomas  
6 Wolever explained:

7           Some people may believe that products sweetened with sugar alcohols allow  
8 for more variety in food choices, and, hence, increased quality of life for  
9 people with diabetes. However, there is *no evidence* that sugar alcohol-  
10 sweetened products have any benefit on long-term glycemic control in  
11 people with diabetes.

11           ...

12           The rationale behind the use of sugar-alcohol sweetened products for weight  
13 management is that they reduce both the energy and sugar contents of  
14 confectionary. However, the reduction in energy content is not large[.] ...  
15 Most sugar alcohols have an energy content 1.0 to 2.0 kcal/g less than  
16 sucrose or other carbohydrates, and since tolerance for sugar alcohol intake  
is limited, their impact on overall energy balance is likely to be, at most,  
approximately 20 to 40 kcal/day.

17 Thomas Wolever, M.D. Ph.D., “Sugar Alcohol and Diabetes: A Review,”  
18 Canadian Journal of Diabetes 2002; 26(4): 356-362.

19           34. Ordinary carbs have an energy value of approximately four calories  
20 per gram.

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21  
22 <sup>4</sup> See <http://archive.diabetes.ca/files/SugarAlcohols--Wolever--CJDDecember2002.pdf>.

1 35. Maltitol has an energy value of approximately three calories per gram,  
2 25 percent less than the energy value of an ordinary carb.<sup>5</sup>

3 36. Dr. Wolever found that 50 to 75 percent of maltitol is absorbed into  
4 the body.

5 37. By multiplying the energy value by the percent of the sugar alcohol  
6 absorbed by the body, one can arrive at the carb value of a sugar alcohol relative to  
7 an ordinary carbohydrate. Thus, total carbohydrate energy consumed per gram of  
8 maltitol is actually between 38 to 56 percent of the carbohydrate value of table  
9 sugar or ordinary carbohydrates.

10 38. Thus, according to this scientifically-accurate calculation, the true  
11 “net carbs” in Atkins’s “Chocolate Candies” product would be between 6.32 and  
12 8.84 grams instead of the 1 gram fraudulently claimed by Atkins. Accordingly, just  
13 as one example, the “Chocolate Candies” product has a “net carb” value of  
14 between 632 to 884 percent times as high as that claimed by Atkins.

15 39. According to the Diabetes Teaching Center at the University of  
16 California, San Francisco, “When counting carbohydrates for products made with  
17 sugar alcohols, [one should] subtract half of the grams of sugar alcohol listed on  
18 the food label from the total grams of carbohydrate.”<sup>6</sup>

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19  
20 <sup>5</sup> See <http://www.inspection.gc.ca/food/labelling/food-labelling-for-industry/nutrition-labelling/elements-within-the-nutrition-facts-table/eng/1389206763218/1389206811747?chap=1>.

21 <sup>6</sup> See <http://www.diabetes.org/food-and-fitness/food/what-can-i-eat/understanding-carbohydrates/sugar-alcohols.html>.



1           45. Though the FDA does not formally regulate use of the phrase “net  
2 carb,” its Canadian counterpart has found that the phrase is “not acceptable due to  
3 lack of scientific consensus on ... definition and [its] potential to mislead  
4 consumers.”<sup>8</sup>

5           46. In another study, Dr. Wolever articulated the same concerns. He  
6 wrote, “Food labels of products containing sugar alcohols can be confusing.”  
7 Thomas Wolever, M.D. Ph.D., “Sugar Alcohol and Diabetes: A Review,”  
8 Canadian Journal of Diabetes 2002; 26(4): 356-362 at 360 (2002). He elaborated  
9 that “individuals who use product labels to count carbohydrates could potentially  
10 overestimate the amount of insulin to use for a carbohydrate load. Complicating  
11 this issue is a lack of consistent labelling, both nationally and internationally, for  
12 products containing sugar alcohols.” *Id.* at 361.

13           47. In 2004, Dr. Wolever told the New York Times, “It’s a big  
14 misconception to say maltitol does not raise blood sugar.” Instead, he explained,  
15 “Sugar alcohols have come on the market quite aggressively and it’s very  
16 confusing. The science is not good.”<sup>9</sup>

17           48. In 2004, Atkins appeared to agree with the consensus that food labels  
18 concerning sugar alcohols were misleading. The company announced in 2004 that  
19 it would discontinue using the term “net carbs” on its food labels because the term  
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21 <sup>8</sup> See <http://www.inspection.gc.ca/food/labelling/food-labelling-for-industry/nutrition-labelling/carbohydrate-claims/eng/1409844949900/1409845010355>.

22 <sup>9</sup> See Burros, Marian, “New ‘Low-Carb’ Foods Aren’t All-You-Can-Eat, N.Y. Times, Apr. 14,  
23 2004, available at <http://www.nytimes.com/learning/students/pop/20040415snapthursday.html>

1 is “imprecise.” Sarah Ellison, *Atkins Labels Will Drop Term ‘Net Carbs’*, THE  
2 WALL STREET JOURNAL, Oct. 6, 2004 (available at  
3 <http://www.wsj.com/articles/SB109700319191636814>). According to the article:

4 As low-carb products have proliferated, the food industry has  
5 faced increasing skepticism about their nutrient content and  
6 labeling. For example, many companies, including Atkins at  
7 one time, calculate a products “net carbs” by subtracting grams  
8 of fiber and sugar alcohols from the total carbohydrate grams.  
9 That calculation allows food makers to cook up starchy, sweet  
10 products like brownies, pastries and candy, and call them “low  
11 carb.” **But one thing the calculation doesn’t take into  
12 account is that sugar alcohols raise blood-sugar levels, just  
13 as “net carbs” do.**

14 *Id.* (emphasis added).

15 49. Nonetheless, despite acknowledging that the term “net carbs” is  
16 “imprecise” – particularly when it subtracts sugar alcohols from its consideration –  
17 Atkins continues to use the term in its labeling and continues to use the  
18 formulation that it publicly rejected in 2004.

#### 19 **Atkins Conceals Material Facts and Its Representations Are False**

20 50. Atkins’ “net carb” claims are false, misleading, and likely to deceive  
21 consumers, such as Plaintiff and members of the Class, in that Atkins’s products  
22 have multiple times the level of carbohydrates as labeled by Atkins’s net carb  
23 claim because sugar alcohol continues to have an effect on blood sugar and  
24 calories in direct contradiction to Atkins’ claims.

51. Over the course of the last several years and up until just a few  
months ago, Plaintiff has purchased at the Wal-Mart and/or Target stores near her  
home the following Atkins products that have a “net carbs” designation but still

1 include sugar alcohols: Chocolate Coconut Bar; Peanut Butter Cups; Dark  
2 Chocolate Almond Coconut Crunch Bar; Chocolate Peanut Candies; Caramel  
3 Double Chocolate Crunch Bar; and Dark Chocolate Decadence Bar. All of these  
4 products contain sugar alcohols (including maltitol), and the net carbs on each  
5 product wrongfully omit sugar alcohols from their calculation.

6 52. Plaintiff believed the false representations about “net carbs” that she  
7 saw on the product packaging, and she relied on those representations in deciding  
8 to purchase Defendants’ products. Plaintiff would not have purchased the products  
9 if she had known that the Atkins products identified herein instead had “net carbs”  
10 which were up to eight times higher than the amount claimed by Atkins.

11 53. Furthermore, ordinary and reasonable consumers would not purchase  
12 Atkins products containing the “net carbs” designation if they knew the facts and  
13 information that Atkins concealed from consumers.

14 54. Plaintiff and members of the Class have been economically damaged  
15 by their purchase of Atkins’s products, in that they spent money on products that  
16 they would not have purchased if they had known of the true facts and information  
17 that Atkins concealed and misled consumers about. Additionally, Plaintiff and  
18 members of the Class have been physically affected by Defendants’ concealments  
19 and misrepresentations because they have consumed significantly more  
20 carbohydrates than they would have if they had not been misled by Defendants,  
21 and these carbohydrates affect blood sugar levels and cause weight gain in an  
22 amount greater than the “net carb” amount claimed by Atkins. In this respect,  
23 Plaintiff and members of the Class have overpaid for Atkins products containing  
24 the “net carbs” calculation that omits sugar alcohols from its calculation.

1 55. At a minimum, Plaintiff contends that Defendant should cease  
2 labeling its products with a “net carb” calculation that assigns a value of zero to  
3 sugar alcohols.

4 **CLASS ACTION ALLEGATIONS**

5 56. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff  
6 brings this action on behalf of herself and the following proposed Class:

7 Residents of California who have purchased Atkins’s products in the  
8 State of California that contained sugar alcohols and were labeled and  
9 marketed with the “net carbs” calculation.

10 57. Excluded from the proposed Class are Defendants, any affiliate,  
11 parent, employee or subsidiary of Defendants; any entity in which Defendants have  
12 a controlling interest; any officer, director, or employee of Defendants; any  
13 successor or assign of Defendants; anyone employed by counsel for Plaintiff in this  
14 action; and any Judge to whom this case is assigned, as well as his or her  
15 immediate family.

16 58. This action has been brought and may be properly maintained as a  
17 class action under Federal Rule of Civil Procedure 23.

18 59. **Numerosity of the Class – Rule 23(a)(1)**. Class members are so  
19 numerous that their individual joinder is impracticable. While the exact number of  
20 class members is unknown to Plaintiff at the present time and can only be  
21 ascertained through appropriate discovery, Plaintiff believes that there are  
22 thousands of class members located throughout California. These members are  
23 readily ascertainable, such as through sales receipts.







1 64. As an alternative to class certification under Rule 23(b)(3), the  
2 proposed Class may be certified under 23(b)(2) because Defendants have acted or  
3 refused to act on grounds generally applicable to the class, thereby making final  
4 injunctive relief or corresponding declaratory relief appropriate with respect to the  
5 class.

6  
7 **FIRST CAUSE OF ACTION**  
8 **Violation of California Business and Professions Code §§ 17200 *et seq.***  
9 **(Plaintiff, individually and on behalf of the Class)**

10 65. Plaintiff incorporates by reference and re-alleges all paragraphs  
11 previously alleged herein.

12 66. Plaintiff asserts this cause of action on behalf of herself and the  
13 proposed Class against Defendant under the California Business and Professions  
14 Code §§ 17200 *et seq.*

15 67. California law prohibits unfair competition, which is defined as “any  
16 unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue  
17 or misleading advertising....” Cal. Bus. & Prof. Code § 17200; see also 17203.  
18 Defendants have violated and continue to violate this Unfair Competition Law  
19 (“UCL”).

20 68. Throughout the class period, Atkins engaged in unlawful business acts  
21 and/or practices by:  
22  
23  
24

1 a. Marketing, advertising, and selling products with the “net  
2 carbs” label without disclosing and omitting the true  
3 carbohydrate count of those products.

4 b. Asserting that sugar alcohols had effectively zero impact  
5 on blood sugar.

6 c. Marketing, advertising, and selling products using the  
7 “Atkins” name without disclosing and omitting that the  
8 products were not consistent with the philosophy of the diet and  
9 company’s eponymous founder.

10 69. Atkins’s conduct was misleading and deceptive, and unlawful because  
11 it violated the California Business & Professions Code §§ 17500 *et seq.*;  
12 California’s Sherman Food, Drug, and Cosmetics Act, Cal. Health & Safety Code  
13 § 109875 *et seq.*; the Consumer Legal Remedies Act, codified at California Civil  
14 Code § 1750 *et seq.*; and other applicable state and federal laws and regulations.

15 70. The acts, omissions, and practices alleged herein also constitute unfair  
16 business acts and practices in that Atkins’s conduct is immoral, unscrupulous, and  
17 offends public policy by seeking to profit from deceiving consumers.

18 71. As a direct result of Atkins’s unlawful, unfair or fraudulent business  
19 acts and/or practices, Plaintiff and members of the Class suffered injury in fact and  
20 lost money or property.

21 72. Accordingly, Plaintiff, on behalf of herself and the Class, seeks  
22 restitution against Atkins, and other relief as specifically prayed for herein.  
23

**SECOND CAUSE OF ACTION**

**Violation of California Business and Professions Code §§ 17500 *et seq.*  
(Plaintiff, individually and on behalf of the Class)**

1  
2  
3 73. Plaintiff incorporates by reference and re-alleges all paragraphs  
4 previously alleged herein.

5 74. Plaintiff asserts this cause of action on behalf of herself and the Class  
6 against Defendant under the California Business and Professions Code §§ 17500 *et*  
7 *seq.*

8 75. Throughout the class period, Atkins engaged in unlawful and/or  
9 fraudulent conduct under California Business & Professions Code §§ 17500 *et seq.*  
10 by engaging in the sale of misrepresented “net carbs” products identified herein  
11 and publicly disseminating various advertisements that Atkins knew or reasonably  
12 should have known were untrue and misleading. Atkins committed such violations  
13 of the False Advertising Law with actual knowledge or knowledge fairly implied  
14 on basis of objective circumstances.

15 76. Atkins’s advertisements, representations, and labeling were designed  
16 to, and did, result in the purchase of “net carbs” products, and Atkins profited from  
17 the sale of its product to unwary consumers.

18 77. Plaintiff and the Class suffered injury in fact and lost money as a  
19 direct result of Atkins’s misconduct.

20 78. Accordingly, Plaintiff, on behalf of herself and the Class, seeks relief  
21 against Atkins in the form of an order prohibiting Atkins from engaging in the  
22 alleged misconduct described herein, and other relief as specifically prayed for  
23 herein.

**THIRD CAUSE OF ACTION**  
**Breach of Express Warranty – Violation of**  
**California Commercial Code § 2313**  
**(Plaintiff, individually and on behalf of the Class)**

79. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein.

80. Plaintiff asserts this cause of action on behalf of herself and the proposed Class against Defendant under Cal. Com. Code § 2313.

81. Under Cal. Com. Code § 2313, an express warranty is created by an affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain. Additionally, a description of the goods which is made part of the basis of the bargain also creates an express warranty.

82. Atkins made an affirmation of fact or promise relating to its goods pursuant to Cal. Com. Code § 2313 when it represented on the label of its products that they contained a limited number of “net carbs.”

83. Atkins’s representation of the carbohydrate content and/or identity on the label of its products constitutes a description of the goods pursuant to Cal. Com. Code § 2313(1)(b).

84. Plaintiff and the Class were exposed to Atkins’s representations on the label of its products when they purchased the product.

85. Atkins’s representations on the label of its “net carbs” products were material to the Plaintiff and the Class in their decision to purchase the product.



1           91. At the time Defendants manufactured, tested, advertised, promoted,  
2 packaged, marketed, sold, and/or distributed Atkins brand products with packaging  
3 that contained “net carbs” representations that falsely underrepresented the true  
4 number of carbohydrates that the food products actually contained, for use by  
5 Plaintiff and the class members, Defendants knew that the products would be  
6 ingested, and impliedly warranted that the products were of merchantable quality  
7 and fit for their ordinary purpose.

8           92. Plaintiff and members of the proposed Class purchased these products  
9 that were manufactured and marketed by Atkins and sold by intermediary retail  
10 outlets, including Target and Wal-Mart. Plaintiff and members of the proposed  
11 Class purchased these products based on the mistaken belief, engendered by  
12 Defendants’ concealments and misrepresentations, that the products contained  
13 fewer weight-affecting and blood-sugar-level affecting carbohydrates than they  
14 actually contained. Defendants’ representations and warranties in this regard were  
15 false, misleading, and inaccurate, in that the products were not of merchantable  
16 quality because the products were defective, would not pass without objection in  
17 the trade, were not fit for ordinary purposes, did not conform to the promises on  
18 the labeling, and were potentially harmful and undesirable to consumers of  
19 products who sought to consumer foodstuffs that did not elevate their blood sugar  
20 and did not cause weight gain.

21           93. Defendants breach the implied warranty of merchantability because  
22 the products that Defendants manufactured, packaged, and marketed, could not and  
23

24



1 did not deliver on the advertised and labeled claims with respect to the “net carbs”  
2 representations made by Defendants.

3 94. Defendants’ products that were purchased by Plaintiff and members  
4 of the proposed Class, did not have even the most basic degree of fitness for  
5 ordinary use as a diet food, in that at the time of Defendants’ marketing and sale of  
6 the products, and at the time of Plaintiff’s and the class members’ purchase of the  
7 products, the products contained carbohydrates in greater numbers than the  
8 packaging suggested. Purchasers of Atkins brand food products, including Plaintiff  
9 and members of the proposed Class, specifically purchased and purchase Atkins  
10 products because Dr. Atkins has long promoted the consumption of low-carb foods  
11 as a healthful diet and a method of managing weight. The fact that the products  
12 contained a much greater number of carbohydrates than claimed in Defendants’  
13 “net carbs” representations rendered the products not reasonably suitable for their  
14 ordinary uses.

15 95. Plaintiff and the members of the proposed Class relied on the implied  
16 warranty of merchantability in their selection, purchase, and consumption of these  
17 diet products. Plaintiff and the members of the proposed Class reasonably relied on  
18 the skill and judgment of Defendants, as manufacturers and marketers of diet  
19 products, to select, produce, and sell to consumers only those diet products that  
20 were of merchantable quality because they were suitable for the purpose that  
21 consumers reasonably use diet products for—that is, for human consumption of  
22 food that will not or will only minimally elevate their blood sugar and/or cause  
23 weight gain.

1 96. Defendants placed their diet products into the stream of commerce  
2 with higher carbohydrate content than represented, despite the fact that these  
3 products were expected to, and did, reach users, consumers, and other persons  
4 coming into contact with these products, without substantial change in the  
5 condition that they were packaged, marketed, and sold.

6 97. Neither Plaintiff nor any member of the proposed Class was required  
7 to provide pre-suit notice to Defendants of their claim for breach of the implied  
8 warranty of merchantability because Defendants were remote manufacturers with  
9 whom the purchaser did not deal. Plaintiff and members of the proposed Class are  
10 consumers who purchase food products from retailers rather than directly from  
11 manufacturers, and Plaintiff and members of the proposed Class purchased  
12 Defendants' products from retailers.

13 98. Additionally, neither Plaintiff nor any member of the proposed Class  
14 is required to establish privity of contract with Defendants because Plaintiff and  
15 each member of the proposed Class is an intended third-party beneficiary of  
16 contracts between Defendants and the retailers from whom Plaintiff and the  
17 proposed Class members purchased Defendants' manufactured products, and  
18 specifically were intended third-party beneficiaries of Defendants' implied  
19 warranties and agreements. Defendants' warranty agreements were designed for  
20 and intended to benefit Plaintiff and the proposed Class.

21 99. Privity also is not required because Defendants' products were  
22 foodstuffs. Considerations of public policy demand that the utmost care and  
23 caution be exacted from the manufacturer of articles of food, in order to protect

1 consumers from injuries resulting from the ingestion of products that  
2 manufacturers warrant are suitable for human consumption.

3 100. As a direct and proximate result of Defendants' breach of implied  
4 warranties, Plaintiff and the members of the proposed Class suffered and/or will  
5 continued to be harmed and suffer economic loss, in that Plaintiff and the members  
6 of the proposed Class spent money purchasing Defendants' products that they  
7 could not reasonably nor safely use for the intended purpose of consuming food  
8 that did not elevate their blood sugar levels or foster weight gain. The failure of  
9 Defendants' products to have their expected and advertised qualities, of being  
10 suitable for consumption as a diet food, was a substantial factor in causing Plaintiff  
11 and the members of the proposed Class to suffer economic loss.

12 101. As a direct and proximate result of the foregoing acts and/or  
13 omissions, Plaintiff and the members of the proposed Class have suffered damages  
14 and are entitled to compensatory damages, costs, and reasonable attorneys' fees.

15  
16 **FIFTH CAUSE OF ACTION**  
17 **Violations of the Magnuson-Moss Warranty Act ("MMWA"),**  
18 **15 U.S.C. §§ 2301 et seq.**  
19 **(Plaintiff, individually and on behalf of the Class)**

20 102. Plaintiff incorporates by reference and re-alleges all paragraphs  
21 previously alleged herein.

22 103. Defendants' products are consumer products that cost more than \$5;  
23 and the amount in controversy with respect to the individual claim of Plaintiff and  
24 of each member of the proposed Class, is greater than \$25.

1           104. Plaintiff and the Class are “consumers” as defined in 15 U.S.C. §  
2 2301(3), in that they are persons entitled under applicable state law to enforce  
3 against the warrantor the obligations of their express and implied warranties.

4           105. Defendants are “suppliers” and “warrantors” as defined in 15 U.S.C.  
5 §§ 2301(4) and (5).

6           106. Under 15 U.S.C. § 2301(d)(1), the MMWA provides a cause of action  
7 for any consumer who is damaged by the failure of a warrantor to comply with an  
8 express or implied warranty.

9           107. In connection with their sale of the products described above,  
10 Defendants gave a written warranty as defined in section 2301(6). The particulars  
11 of this express warranty are set forth in Plaintiff’s Third Cause of Action above  
12 and incorporated by reference here. Defendants breached this warranty, as set forth  
13 above, depriving Plaintiff and the proposed Class of the benefit of their bargain.

14           108. Additionally, in connection with their sale of the products described  
15 above, Defendants gave an implied warranty of merchantability as defined in  
16 section 2301(7). The particulars of this warranty are set forth in Plaintiff’s Fourth  
17 Cause of Action above and incorporated by reference here. Defendants breached  
18 this warranty, as set forth above, depriving Plaintiff and the proposed Class of the  
19 benefit of their bargain and causing undesired and undesirable physical effects to  
20 Plaintiff and the proposed Class from the consumption of the products.

21           109. As a direct and proximate result of Defendants’ conduct, Plaintiff and  
22 the Class have suffered damages and continue to suffer damages and other losses  
23 in an amount to be determined at trial. Neither Plaintiff nor any member of the  
24

1 proposed Class is required to establish privity of contract with Defendants because  
2 Plaintiff and each member of the proposed Class is an intended third-party  
3 beneficiary of contracts between Defendants and the retailers from whom Plaintiff  
4 and the proposed Class members purchased Defendants' manufactured products,  
5 and specifically was an intended third-party beneficiary of Defendants' implied  
6 warranties. Defendants' warranty agreements were designed for and intended to  
7 benefit Plaintiff and the proposed Class.

8 110. Privity also is not required because Defendants' products were  
9 foodstuffs.

10 111. Plaintiff and the class members have been damaged by Defendants'  
11 breaches of warranties and therefore seek damages and other legal and equitable  
12 relief, as set forth below, as well as an award of attorneys' fees, costs, and  
13 expenses.

14  
15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of herself and the Class, requests  
17 judgment and relief as follows:

18 1. For an order certifying the proposed Class, and appointing Plaintiff  
19 and her counsel of record to represent the proposed Class;

20 2. For an order declaring that Atkins has violated California Business  
21 and Professions Code §§ 17200 *et seq.*;

22 3. For an order declaring that Atkins has violated California Business  
23 and Professions Code §§ 17500 *et seq.*;

1           4. For an order declaring that Atkins has breached an express warranty  
2 pursuant to California Commercial Code § 2313;

3           5. For an order declaring that Atkins breached the implied warranty of  
4 merchantability;

5           6. For an order declaring that Atkins violated the Magnuson-Moss  
6 Warranty Act;

7           7. For an order awarding Plaintiff and Class members damages and  
8 statutory damages in an amount to be proven at trial, including punitive damages,  
9 together with pre-trial and post-trial interest thereon;

10          8. For an order awarding Plaintiff and Class members restitution,  
11 disgorgement, or other equitable relief as the Court deems proper;

12          9. For an order awarding Plaintiff and the Class reasonable attorneys'  
13 fees and costs of suit, including expert witness fees; and

14          10. For an order awarding such other and further relief as this Court  
15 deems just and proper.

16  
17 ///

18 ///

19 ///

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1 **JURY DEMAND**

2 Plaintiff, on behalf of herself and all similarly situated persons, demands a  
3 trial by jury on all issues that are triable to a jury.  
4

5 Dated: August 11, 2017

Respectfully submitted,

6  
7 /s/ Matthew L. Dameron

8 Matthew L. Dameron (*pro hac vice*  
9 forthcoming)

10 Missouri Bar No. 52093

**WILLIAMS DIRKS DAMERON LLC**

11 1100 Main Street, Suite 2600

12 Kansas City, Missouri 64105

13 Telephone: (816) 945-7110

14 Facsimile: (816) 945-7118

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16 -and-

17 Deborah Rosenthal Cal. Bar No. \_\_\_\_\_

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21 San Francisco, California 94105

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Facsimile: (573) 635-6291

*Counsel for Plaintiff and the Class*

JS 44 (Rev. 06/17)

### 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.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>CHERYL FERNANDEZ, individually and on behalf of all others similar situated</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>San Diego County, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Deborah R. Rosenthal, Cal. Bar No. 184241 Simmons Hanly Conroy LLC 455 Market Street, Suite 2220, San Francisco, CA (415) 536-3986</p>	<p><b>DEFENDANTS</b></p> <p>ATKINS NUTRITIONALS, INC., and DOES 1-10;</p> <p>County of Residence of First Listed Defendant <u>Denver County, CO</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p> <p style="text-align: center; font-size: 1.2em; font-weight: bold;">'17CV1628 GPC WVG</p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:30%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			

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

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from Another District *(specify)*   
 6 Multidistrict Litigation - Transfer   
 8 Multidistrict Litigation - Direct File

**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); 15 USC § 2301 et seq.

Brief description of cause:  
Violation of Cal. Bus. & Prof. Code § 17200 et seq. (Unfair Competition/Business Practices); Breach of Warranties

**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 08/11/2017    SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_