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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MASON KIEN, On Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

v.

KELLOGG CO.,

Defendant.

Case No.: '18CV2759 AJB MSB

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*; and
2. VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT, Civil Code §1750 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Mason Kien brings this action on behalf of himself and all others
2 similarly situated against Defendant Kellogg Co. and states:

3 **FACTUAL ALLEGATIONS**

4 1. Defendant manufactures, markets, sells, and distributes various food
5 products under the Kellogg's brand. This lawsuit concerns two of those products:
6 (1) Kellogg's Nutrigrain Soft Baked Breakfast Bars – Strawberry; and (2) Kellogg's
7 Cracklin' Oat Bran oat cereal (the "Products").¹

8 2. In marketing the Products, Defendant seeks to appeal to the consuming
9 public's ever-growing health consciousness and increasing appetite for nutritious,
10 wholesome foods that will benefit their health and avoidance of highly-processed
11 foods with non-healthy attributes such as GMOs, artificial additives, gluten, added
12 sugars, and hydrogenated oils.

13 3. Defendant makes several detailed representations about the health
14 attributes of the Products on the front of the Product packages. For example,
15 Defendant represents on the front of the Kellogg's Nutrigrain Soft Baked Breakfast
16 Bars – Strawberry Product that the Product provides "8g Whole Grains", is
17 "Strawberry naturally flavored with other natural flavors", is "made with real fruit",
18 and contains "No artificial flavors", and "No colors from artificial sources".
19 Defendant makes similar attribute representations on the front of the Kellogg's
20 Cracklin' Oat Bran oat cereal Product. These representations are collectively referred
21 to as the "Product Health Representations".

22 4. The Product Health Representations lead reasonable consumers to
23 believe the Products will foster their "good health" and not pose a safety risk to or
24 potentially harm their health.

25 5. However, recent testing by the Environmental Working Group (EWG),
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27

¹ Plaintiff reserves the right to add additional products upon completion of discovery.
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1 a nonprofit organization dedicated to protecting human health and the environment,
2 revealed that Defendant's Products contain glyphosate. EWG's Children's Health
3 Initiative, "Breakfast With a Dose of Roundup?" August 15, 2018, *available at*
4 <https://www.ewg.org/childrenshealth/glyphosateincereal/#.W3TTbPZFw2w>
5 ("EWG") (last visited December 6, 2018). Glyphosate is one of the most widely used
6 weed killing poisons in the United States. *Id.* It is also sprayed on wheat, barley, and
7 oats as a preharvest desiccant to dry the grain faster. Each year, more than 250
8 million pounds of glyphosate is sprayed on American crops, including wheat, barley,
9 and oats just before they are harvested. *Id.* Glyphosate adheres to the crops and
10 Defendant's cleansing process fails to remove the glyphosate residue.

11 6. The International Agency for Research on Cancer, part of the World
12 Health Organization, has determined that glyphosate is "probably carcinogenic to
13 humans". IARC Monographs Volume 112: evaluation of five organophosphate
14 insecticides and herbicides, March 20, 2015, *available at*
15 <http://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf> (last
16 visited August 23, 2018). Glyphosate is even more dangerous for children, who are
17 more susceptible to carcinogens. *See* EWG. This is because, *inter alia*, children's
18 detoxification pathways are not yet fully developed, so their ability to eliminate even
19 tiny amounts of pesticides and other harmful chemicals is limited. The danger is
20 amplified by the fact that few people, children in particular, eat only a single serving
21 of the Products on any given day and repeated daily exposures can add up.

22 7. Because it is a probable carcinogen with no nutritional value, the
23 presence of *any* amount of glyphosate in the Products, no matter whether above or
24 below regulatory limits, is material to reasonable consumers. No reasonable
25 consumer would purchase the Products knowing that they contained glyphosate. This
26 is particularly true given that there are numerous comparable products without
27 glyphosate.

1 8. Even though Defendant knew that the Products contain the probable
2 carcinogen glyphosate or, at a minimum, that they could not guarantee the Products
3 did not contain glyphosate given its wide use as a pesticide, Defendant does not
4 disclose this information on the front of the Product labels, choosing instead to
5 specifically identify only the healthy attributes of the Products. Nor does Defendant
6 include this information on the back or sides of the packages, where more detailed
7 Product information is generally found, instead choosing to repeat and reinforce the
8 Health Representations identified on the front of the packages. In fact, nowhere on
9 the Product packages – inside or out – does Defendant disclose that the Products
10 contain or likely contain glyphosate, such that Defendant’s Product Health
11 Representations are false, deceptive, or, at a minimum, misleading half-truths.

12 9. As the manufacturers and distributors of the Products, Defendant knew
13 that the Products contained or likely contained glyphosate. By contrast, Plaintiff and
14 consumers did not and do not have access to such information. Nor is that fact easily
15 discovered by Plaintiff and consumers before purchase of the Products. Because
16 Defendant had knowledge that the Products contain or likely contain glyphosate, and
17 Plaintiff and consumers did not, Defendant had a duty to disclose that fact—and that
18 glyphosate is a probable carcinogen—to consumers. Defendant did not disclose these
19 material facts.

20 10. Consumers have a reasonable expectation that material product
21 information, such as the presence of a probable carcinogen like glyphosate, will be
22 provided by a product manufacturer, especially when the manufacturer prominently
23 features and affirmatively identifies the health-related attributes of the Products such
24 as “8g Whole Grains”, “naturally flavored”, and “no colors from artificial sources”.
25 By only identifying the health attributes of the Products and failing to disclose that
26 the Products contain or likely contain glyphosate and glyphosate is a probable
27 carcinogen, Defendant actively concealed this information from Plaintiff, Class

1 members, and the general public. *See* representative Product labels, attached hereto
2 as Exhibit A.

3 11. Defendant had a duty to disclose that the Products contain or likely
4 contain glyphosate and that glyphosate is a probable carcinogen, which was known
5 to Defendant and unknown and/or not reasonably accessible to Plaintiff and
6 consumers, on the Product labels where the disclosure could be viewed by Plaintiff
7 and consumers at the point-of-sale.

8 12. By failing to disclose that the Products contain or likely contain
9 glyphosate and glyphosate is a probable carcinogen and continuing to sell the
10 Products in packages omitting this information, Defendant has and continues to
11 deceive and mislead consumers, including Plaintiff.

12 13. As a result of Defendant's false and deceptive Product Health
13 Representations, misleading half-truths and material nondisclosures, consumers will
14 continue to purchase Defendant's Products that, unbeknownst to them, contain or
15 likely contain glyphosate.

16 14. Plaintiff brings this action on behalf of himself and other similarly
17 situated consumers who purchased the Products to halt the dissemination of this
18 misleading and deceptive advertising message, correct the misleading perception it
19 has created in the minds of consumers, and obtain redress for those who have
20 purchased the Products. Based on violations of California unfair competition laws
21 (detailed below), Plaintiff seeks declaratory, injunctive, and restitutionary relief for
22 consumers who purchased the Products.

23 **JURISDICTION AND VENUE**

24 15. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
25 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
26 of \$5,000,000 and is a class action in which there are in excess of 100 class members
27 and some members of the Class are citizens of a state different from Defendant.

16. This Court has personal jurisdiction over Defendant because Defendant is authorized to conduct and do business in California, including this District. Defendant marketed, promoted, distributed, and sold the Products in California, and Defendant has sufficient minimum contacts with this State and/or sufficiently availed itself of the markets in this State through its promotion, sales, distribution, and marketing within this State, including this District, to render the exercise of jurisdiction by this Court permissible.

17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events giving rise to Plaintiff's claims occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendant transacts substantial business in this District.

PARTIES

18. Plaintiff Mason Kien resides in San Diego, California. Throughout the relevant period, Plaintiff Kien routinely was exposed to, saw, and relied upon Defendant's Product Health Representations by reading the Kellogg's NutriGrain Soft Baked Breakfast Bars – Strawberry Product labels at Ralph's in San Diego, California. Plaintiff Kien purchased the Product on several occasions and most recently in September 2018. At all relevant times, Plaintiff Kien was unaware that the Product contained glyphosate, that glyphosate was a probable carcinogen, or that Defendant could not guarantee the Product did not contain glyphosate. Had Defendant disclosed on the package that the Product contained or may contain glyphosate and that glyphosate was a probable carcinogen, Plaintiff Kien would have seen and read that disclosure and would not have purchased them. As a result, Plaintiff suffered injury in fact and lost money at the time of purchase. Plaintiff Kien continues to desire to purchase Kellogg's products with healthy attributes that do not contain glyphosate, and he would purchase such a product manufactured by Defendant if it were possible to determine prior to purchase whether the Product

1 contained or could contain glyphosate. Indeed, Plaintiff Kien regularly visits stores
 2 such as Ralph's, where Defendant's Products are sold, but will be unable to rely upon
 3 the Product Health Representations and will not be able to determine if the Product
 4 contain glyphosate when deciding whether to purchase the Product in the future.

5 19. Defendant Kellogg Co. is a Delaware corporation with its principal
 6 place of business in Michigan. Defendant Kellogg Co.'s headquarters is located at 1
 7 Kellogg Sq., Battle Creek, MI 49017. Kellogg Co. manufactures, advertises,
 8 markets, distributes, and/or sells the Kellogg's Nutrigrain Soft Baked Breakfast Bars
 9 – Strawberry and Kellogg's Cracklin' Oat Bran oat cereal Products to tens of
 10 thousands of consumers in California and throughout the United States.

11 CLASS DEFINITION AND ALLEGATIONS

12 20. Plaintiff brings this action on behalf of himself and all other similarly
 13 situated consumers pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of
 14 Civil Procedure and seeks certification of the following Class:

15 Multi-State Class Action

16 All consumers who, within the applicable statute of limitations
 17 period until the date notice is disseminated, purchased the Products
 18 in California, Florida, Illinois, Massachusetts, Michigan, Minnesota,
 Missouri, New Jersey, New York, and Washington.²

19 Excluded from this Class are Defendant and its officers,
 20 directors, employees and those who purchased the Products
 21 for the purpose of resale.

22
 23 ² The States in the Multistate Class are limited to those States with similar consumer
 24 fraud laws as applied to the facts of this case: California (Cal. Bus. & Prof. Code
 25 §17200, *et seq.*); Florida (Fla. Stat. §501.201, *et seq.*); Illinois (815 Ill. Comp. Stat.
 26 502/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich.
 27 Comp. Laws §445.901, *et seq.*); Minnesota (Minn. Stat. §325F.67, *et seq.*);
 Missouri (Mo. Rev. Stat. 010, *et seq.*); New Jersey (N.J. Stat. §56:8-1, *et seq.*); New
 York (N.Y. Gen. Bus. Law §349, *et seq.*); and Washington (Wash. Rev. Code
 §19.86.010, *et seq.*). These statutes are referred to as "Similar Consumer Fraud
 Statutes."

21. In the alternative to a Multi-State Class, Plaintiff seeks certification of the following California-Only Class:

California-Only Class Action

All California consumers who within the applicable statute of limitations period until the date notice is disseminated, purchased the Products.

Excluded from this Class are Defendant and its officers, directors and employees, and those who purchased the Products for the purpose of resale.

22. **Numerosity.** The members of the Classes are so numerous that joinder of all members of the Classes is impracticable. Plaintiff is informed and believes that the proposed Classes contain thousands of purchasers of the Products who have been damaged by Defendant's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

23. **Existence and Predominance of Common Questions of Law and Fact.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Defendant's alleged conduct is unlawful;
 - (b) whether the alleged conduct constitutes violations of the laws asserted;
 - (c) whether Defendant engaged in misleading and/or deceptive advertising;
- and
- (d) whether Plaintiff and Class members are entitled to appropriate remedies, including restitution and injunctive relief.

24. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Classes because, *inter alia*, all Class members were injured through the uniform misconduct described above. Plaintiff is also advancing the same claims and legal theories on behalf of himself and all Class members.

1 25. **Adequacy of Representation.** Plaintiff will fairly and adequately
2 protect the interests of Class members. Plaintiff has retained counsel experienced in
3 complex consumer class action litigation, and Plaintiff intends to prosecute this
4 action vigorously. Plaintiff has no adverse or antagonistic interests to those of the
5 Classes.

6 26. **Superiority.** A class action is superior to all other available means for
7 the fair and efficient adjudication of this controversy. The damages or other financial
8 detriment suffered by individual Class members is relatively small compared to the
9 burden and expense that would be entailed by individual litigation of their claims
10 against Defendant. It would thus be virtually impossible for members of the Classes,
11 on an individual basis, to obtain effective redress for the wrongs done to them.
12 Furthermore, even if Class members could afford such individualized litigation, the
13 court system could not. Individualized litigation would create the danger of
14 inconsistent or contradictory judgments arising from the same set of facts.
15 Individualized litigation would also increase the delay and expense to all parties and
16 the court system from the issues raised by this action. By contrast, the class action
17 device provides the benefits of adjudication of these issues in a single proceeding,
18 economies of scale, and comprehensive supervision by a single court, and presents
19 no unusual management difficulties under the circumstances here.

20 27. Plaintiff seeks preliminary and permanent injunctive and equitable relief
21 on behalf of the entire Classes, on grounds generally applicable to the entire Classes,
22 to enjoin and prevent Defendant from engaging in the acts described, and requiring
23 Defendant to provide full restitution to Plaintiff and Class members.

24 28. Unless a Class is certified, Defendant will retain monies received as a
25 result of its conduct that were taken from Plaintiff and Class members.

26 29. Unless an injunction is issued, Defendant will continue to commit the
27 violations alleged, and the members of the Classes and the general public will
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1 continue to be deceived and not know whether the Product Health Representations
2 are true or if the Products continue to contain glyphosate.

3 4 **COUNT I**

5 **Violation of Business & Professions Code §17200, *et seq.*** 6 **and Similar Consumer Fraud Statutes, *supra* note 2** 7 **(On Behalf of the Multi-State or California-Only Class)**

8 30. Plaintiff repeats and re-alleges the allegations contained in the
9 paragraphs above, as if fully set forth herein.

10 31. Plaintiff brings this claim individually and on behalf of the Classes.

11 32. As alleged herein, Plaintiff has suffered injury in fact and lost money or
12 property at the time of purchase as a result of Defendant's conduct because he
13 purchased Defendant's Products in reliance on Defendant's Product Health
14 Representations. Had Defendant disclosed on the packages that the Products
15 contained or may contain the probable carcinogen glyphosate, Plaintiff would have
16 seen and read that disclosure and would not have purchased the Products.

17 33. The Unfair Competition Law, Business & Professions Code §17200, *et*
18 *seq.* ("UCL") prohibits any "unlawful," "fraudulent," or "unfair" business act or
19 practice and any false or misleading advertising. The Similar Consumer Fraud
20 Statutes likewise prohibit the use of unfair or deceptive practices in the course of
21 trade or commerce, and are to be liberally construed.

22 34. In the course of conducting business, Defendant committed "unlawful"
23 business practices by, *inter alia*, making the Product Health Representations, which
24 are false and deceptive representations and misleading half-truths, and the material
25 omissions (which also constitute advertising within the meaning of §17200)
26 regarding the Products' labeling, as set forth more fully herein, and violating Civil
27 Code §§ 1552, 1573, 1709, and 1711, the California Legal Remedies Act, Civil Code
28 § 1750, *et seq.*, Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*,

1 the Similar Consumer Fraud Statutes, and the common law.

2 35. Plaintiff reserves the right to allege other violations of law, which
3 constitute other unlawful business acts or practices. Such conduct is ongoing and
4 continues to this date.

5 36. In the course of conducting business, Defendant committed “unfair”
6 business acts or practices by, *inter alia*, making the Product Health Representations,
7 which are false and deceptive representations and misleading half-truths, and
8 material omissions (which also constitute advertising within the meaning of § 17200)
9 regarding the Products’ labeling, as set forth more fully herein. There is no societal
10 benefit from false advertising, only harm. While Plaintiff and the public at large were
11 and continue to be harmed, Defendant has been unjustly enriched by its misleading
12 half-truths and material omissions. Because the utility of Defendant’s conduct (zero)
13 is outweighed by the gravity of harm to Plaintiff, consumers, and the competitive
14 market, Defendant’s conduct is “unfair” having offended an established public
15 policy. Further, Defendant engaged in immoral, unethical, oppressive, and
16 unscrupulous activities that are substantially injurious to the public at large.

17 37. There were reasonable available alternatives to further Defendant’s
18 legitimate business interests, other than the conduct described herein.

19 38. In the course of conducting business, Defendant committed “fraudulent
20 business act[s] or practices” and deceptive or misleading advertising by, *inter alia*,
21 making the Product Health Representations, which are false and deceptive
22 representations and misleading half-truths, and the material omissions (which also
23 constitutes advertising within the meaning of §17200) regarding the Products as set
24 forth more fully herein.

25 39. Defendant’s actions, claims, and misleading statements, as more fully
26 set forth above, are misleading and/or likely to deceive the consuming public within
27 the meaning of Business & Professions Code §17200, *et seq.* and the Similar
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1 Consumer Fraud Statutes.

2 40. Plaintiff relied on Defendant's Product Health Representations and was
3 in fact injured as a result of those false and deceptive representations and misleading
4 half-truths and material omissions. Plaintiff has suffered injury in fact and lost
5 money as a result of his purchases of Defendant's Products.

6 41. Unless restrained and enjoined, Defendant will continue to engage in
7 the above described conduct. Accordingly, injunctive relief is appropriate.

8 42. Plaintiff, on behalf of himself, all others similarly situated, and the
9 general public, seeks declaratory relief and an injunction prohibiting Defendant from
10 continuing such practices, restitution of all money obtained from Plaintiff and the
11 members of the Classes collected as a result of unfair competition, and all other relief
12 this Court deems appropriate, consistent with Business & Professions Code § 17203
13 and the Similar Consumer Fraud Statutes.

14 **COUNT II**
15 **Violations of the Consumers Legal Remedies Act – Civil Code § 1750 *et seq.***
16 **(On Behalf of the California-Only Class)**

17 43. Plaintiff repeats and re-alleges the allegations contained in the
18 paragraphs above, as if fully set forth herein.

19 44. Plaintiff brings this claim individually and on behalf of the California-
20 Only Class.

21 45. This cause of action is brought pursuant to the Consumers Legal
22 Remedies Act, California Civil Code § 1750, *et seq.* (the "Act").

23 46. Plaintiff is a consumer as defined by California Civil Code § 1761(d).
24 The Products are "goods" within the meaning of the Act.

25 47. Defendant violated and continues to violate the Act by engaging in the
26 following practices proscribed by California Civil Code § 1770(a) in transactions
27 with Plaintiff and the California-Only Class which were intended to result in, and did

1 result in, the sale of the Products:

2 (5) Representing that [the Products have] . . . characteristics, . . . uses [and]
3 benefits . . . which [they do] not have

4 * * *

5 (7) Representing that [the Products] are of a particular standard, quality, or
6 grade . . . if they are of another.

7 48. Defendant violated the Act by making the Product Health
8 Representations, which are false and deceptive representations and misleading half-
9 truths, and the material omissions, as described above, when it knew or should have
10 known that the false and deceptive representations and misleading half-truths and
11 material omissions were misleading and deceptive.

12 49. Pursuant to California Civil Code § 1782(d), Plaintiff and the
13 California-Only Class seek a Court Order declaring Defendant to be in violation of
14 the CLRA, enjoining the above-described wrongful acts and practices of Defendant,
15 and ordering restitution and disgorgement.

16 50. Pursuant to § 1782 of the Act, Plaintiff notified Defendant in writing by
17 certified mail of the particular violations of § 1770 of the Act and demanded that
18 Defendant rectify the problems associated with the actions detailed above and give
19 notice to all affected consumers of Defendant's intent to so act. A copy of the letter
20 is attached hereto as Exhibit B.

21 51. If Defendant fails to rectify or agree to rectify the problems associated
22 with the actions detailed above and give notice to all affected consumers within 30
23 days of the date of written notice pursuant to § 1782 of the Act, Plaintiff will amend
24 this Complaint to add claims for actual, punitive, and statutory damages as
25 appropriate.

26 52. Pursuant to § 1780 (d) of the Act, attached hereto as Exhibit C is the
27 affidavit showing that this action has been commenced in the proper forum.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Classes as requested herein;
- B. Issuing an order declaring that Defendant is in violation of the UCL and CLRA;
- C. Enjoining Defendant's conduct;
- D. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;
- E. Awarding attorneys' fees and costs; and
- F. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: December 7, 2018

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

/s/Patricia N. Syverson

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed the 7th day of December 2018.

/s/Patricia N. Syverson

Patricia N. Syverson

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

MASON KIEN, On Behalf of Himself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

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

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Patricia Syverson, Manfred Muecke

600 W. Broadway, Suite 900, San Diego, CA 92101, 619-798-4593

DEFENDANTS

KELLOGG CO., a Delaware corporation

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV2759 AJB MSB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§1332. Violation of Cal. Bus. & Prof. Code §17200 et seq and Cal. Civil Code §1750 et seq

Brief description of cause:

Recover damages sustained as a result of Defendant's sale of NutriGrain bars & Cracklin' Oat Bran cereal

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

12/07/2018

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

EXHIBIT A

Kellogg's®
**NUTRI
GRAIN**®
SOFT BAKED BREAKFAST BARS

Rise & Thrive

WITH REAL FRUIT AND SOFT WHOLE GRAINS,
NUTRI-GRAIN® GIVES YOU FAST, FEEL-GOOD ENERGY
TO HELP YOUR MORNINGS RUN SMOOTHER.

WAKE UP
TO OUR OTHER
GREAT BARS



apple cinnamon • mixed berry • blueberry



000

GROC

11 1100007



A 0003800035900

Kellogg's®

NUTRI GRAIN®

SOFT BAKED BREAKFAST BARS



8

1.3 OZ (37g) BARS NET WT 10.4 OZ (296g)

UD

130
CALORIES

0.5g
SAT FAT
3% DV

140mg
SODIUM
6% DV

PER BAR
12g
TOTAL
SUGARS

MORNING
ENERGY
WITH 8G WHOLE
GRAINS*

STRAWBERRY

NATURALLY FLAVORED WITH
OTHER NATURAL FLAVORS



MADE WITH
REAL FRUIT

NO ARTIFICIAL
FLAVORS

NO COLORS
FROM ARTIFICIAL
SOURCES



Nutrition Facts

8 servings per container

Serving size 1 Bar (37g)

Amount per serving

Calories 130

% Daily Value*

Total Fat 3.5g 4%

Saturated Fat 0.5g 3%

Trans Fat 0g

Cholesterol 0mg 0%**Sodium** 140mg 6%**Total Carbohydrate** 25g 9%

Dietary Fiber 1g 5%

Total Sugars 12g

Incl. 12g Added Sugars 24%

Protein 2g

Vitamin D 0mcg 0% • Calcium 130mg 10%

Iron 1.8mg 10% • Potassium 80mg 0%

Vitamin A 10% • Thiamin 10%

Riboflavin 10% • Niacin 10%

Vitamin B₆ 10% • Zinc 10%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: CRUST: WHOLE GRAIN OATS, ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, VITAMIN B1 [THIAMIN MONONITRATE], VITAMIN B2 [RIBOFLAVIN], FOLIC ACID), SOYBEAN OIL, WHOLE WHEAT FLOUR, SUGAR, DEXTROSE, FRUCTOSE, CALCIUM CARBONATE, VEGETABLE GLYCERIN, INVERT SUGAR, SALT, WHEY, SOLUBLE CORN FIBER, WHEAT BRAN, CELLULOSE, NATURAL FLAVORS, POTASSIUM BICARBONATE, MONO- AND DIGLYCERIDES, SOY LECITHIN, WHEAT GLUTEN, NIACINAMIDE, VITAMIN A PALMITATE, CARRAGEENAN, ZINC OXIDE, REDUCED IRON, GUAR GUM, VITAMIN B6 (PYRIDOXINE HYDROCHLORIDE), VITAMIN B1 (THIAMIN HYDROCHLORIDE), VITAMIN B2 (RIBOFLAVIN), FILLING: INVERT SUGAR, CORN SYRUP, STRAWBERRY PUREE CONCENTRATE, VEGETABLE GLYCERIN, SUGAR, MODIFIED FOOD STARCH, VEGETABLE JUICE FOR COLOR, SODIUM CITRATE, SODIUM ALGINATE, CITRIC ACID, NATURAL FLAVORS, DICALCIUM PHOSPHATE, METHYLCELLULOSE, MALIC ACID.

CONTAINS WHEAT, MILK AND SOY INGREDIENTS.

Distributed by Kellogg Sales Co.
Battle Creek, MI 49016 USA



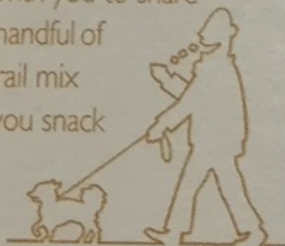


the JOY of delicious eating

begins with Kellogg's® Cracklin' Oat Bran® cereal! Each oven-baked, distinctly shaped 'O'-like cluster is packed with the unforgettable flavor of golden oats, coconut, and a touch of cinnamon!

The Cereal That Goes Beyond the Bowl!

Don't keep Kellogg's® Cracklin' Oat Bran® confined to the breakfast table – take it with you to share and enjoy wherever you go! A handful of Kellogg's® Cracklin' Oat Bran® trail mix is great for snacking. However you snack it or pack it, enjoy any time of the day.



Blaze New Flavor Trails!



Cracklin' Oat On-the-GO Trail Mix

INGREDIENTS

- 1 cup Cracklin' Oat Bran® cereal
- 1/2 cup coarsely chopped walnuts
- 1/2 cup slivered almonds, toasted
- 1/2 cup chopped dried apricots
- 1/2 cup chopped dried dates
- 1/2 cup golden raisins
- 1/2 cup semi-sweet chocolate morsels

IN MEDIUM BOWL COMBINE ALL INGREDIENTS.

STORE IN AIRTIGHT CONTAINER.
MAKES 8-1/2 CUP SERVINGS

For more great recipes, visit:
Kellogg.com



COLLECT POINTS. EARN REWARDS.

NO MORE CODES. TWO EASY WAYS TO COLLECT POINTS!

Go to KFR.com to learn more.

• LET'S TALK •

At Kellogg, we're working harder to earn a seat at your table. What can we do to make your mornings better?



OpenForBreakfast.com

Excellent Source of

FIBER



Made with

WHOLE GRAIN

7g total fat per serving

Kellogg's

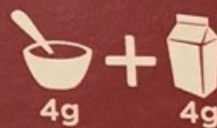
Cracklin' Oat Bran

KD

Crunchy, Sweet, Oven-Baked Oat Cereal



8g
PROTEIN



SERVING
SUGGESTION
ENLARGED TO
SHOW TEXTURE



PER 3/4 CUP SERVING

200
CALORIES

3g
SAT FAT
15% DV

135mg
SODIUM
6% DV

14g
SUGARS

SEE NUTRITION FACTS FOR "AS PREPARED" INFORMATION

CEREAL

NET WT 17 OZ (1 LB 1 OZ) (482g)



Kellogg's Cracklin' Oat Bran

Nutrition Facts

Serving Size $\frac{3}{4}$ Cup (49g)
Servings Per Container About 10

Amount Per Serving	Cereal	with $\frac{1}{2}$ cup skim milk
Calories	200	240
Calories from Fat	60	60

	% Daily Value**	
Total Fat 7g*	11%	11%
Saturated Fat 3g	15%	15%
Trans Fat 0g		
Polyunsaturated Fat 1.5g		
Monounsaturated Fat 2.5g		
Cholesterol 0mg	0%	0%
Sodium 135mg	6%	8%
Potassium 200mg	6%	11%
Total Carbohydrate 34g	11%	13%
Dietary Fiber 6g	25%	25%
Sugars 14g		
Protein 4g	5%	13%
Vitamin A	8%	10%
Vitamin C	25%	25%
Calcium	2%	15%
Iron	10%	10%
Vitamin D	10%	25%
Thiamin	25%	30%
Riboflavin	25%	35%
Niacin	25%	25%
Vitamin B ₆	25%	25%
Folic Acid	25%	25%
Vitamin B ₁₂	25%	35%
Pantothenic Acid	2%	6%
Phosphorus	10%	20%
Magnesium	15%	20%
Zinc	10%	15%

* Amount in cereal. A serving of cereal plus skim milk provides 7g total fat, 0mg cholesterol, 200mg sodium, 400mg potassium, 40g total carbohydrate (20g sugars) and 8g protein.

** 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
Sat. 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: Whole grain oats, sugar, wheat bran, vegetable oil (palm, palm kernel and/or soybean oil with TBHQ for freshness), oat bran, corn syrup, wheat starch, coconut, contains 2% or less of molasses, malt flavor, cinnamon, salt, baking soda, soy lecithin, natural and artificial flavor, nutmeg.

Vitamins and Minerals: Vitamin C (sodium ascorbate and ascorbic acid), niacinamide, vitamin B₆ (pyridoxine hydrochloride), vitamin B₁ (thiamin hydrochloride), vitamin B₂ (riboflavin), vitamin A palmitate, zinc oxide, calcium pantothenate, vitamin B₁₂, reduced iron, folic acid, vitamin D.

CONTAINS WHEAT, COCONUT AND SOY INGREDIENTS.

Distributed by Kellogg Sales Co.
Battle Creek, MI 49016 USA
©, TM, © 2015 Kellogg NA Co.

Produced with Genetic Engineering.

Questions or Comments?

VISIT kelloggs.com

CALL 1-800-962-1413
(SE HABLA ESPAÑOL)

PROVIDE PRODUCTION CODE ON PACKAGE.

Kellogg's® Cracklin' Oat Bran® 17 oz.

AUG 09 2019 GA 08:16

BETTER
IF USED
BEFORE



NO CODE INSIDE.
LEARN MORE AT KFR.COM

LIFT TAB TO OPEN

Kellogg's®

**Cracklin'
Oat Bran®**



EXHIBIT B



WILLIAM G. FAIRBOURN
VAN BUNCH
ELAINE A. RYAN
KIMBERLY C. PAGE
WILLIAM F. KING
CARRIE A. LALIBERTE
NADA DJORDJEVIC⁴

ANDREW S. FRIEDMAN
ROBERT J. SPURLOCK
ANDREW Q. EVERROAD
CHRISTINA L. HANISCH
T. BRENT JORDAN²
LISA T. HAUSER
ANDREA M. WRIGHT

FRANCIS J. BALINT, JR.
C. KEVIN DYKSTRA
PATRICIA N. SYVERSON
MANFRED P. MUECKE¹
TY D. FRANKEL
DANIEL R. LEATHERS³

MICHAEL N. WIDENER, Of Counsel

¹ Admitted Only in California
² Admitted Only in Pennsylvania
³ Admitted Only in New Jersey, New York
and Pennsylvania
⁴ Admitted Only in Illinois

December 7, 2018

VIA CERTIFIED MAIL
(RECEIPT NO. 7014 1200 0001 5814 2093)

Kellogg Co.
General Counsel
1 Kellogg Sq.
Battle Creek, MI 49017

Re: *Mason Kien v. Kellogg Co.*

Dear Sir or Madam:

Our law firm together with Siprut PC represents Mason Kien (“Plaintiff”) and all other consumers similarly situated in an action against Kellogg Co. (“Kellogg’s” or “Defendant”), arising out of, *inter alia*, misrepresentations and material omissions by Defendant that lead reasonable consumers to believe that your Products¹ will foster their good health and not potentially harm their health.

Plaintiff and others similarly situated purchased Defendant’s Products unaware that the Products contained or likely contained glyphosate, a probable carcinogen. Because Defendant does not disclose this fact on its Product packages, the healthy attribute representations Defendant makes on its Product packages are misleading half-truths reasonably likely to deceive the public. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Defendant’s misleading half-truths and material omissions are misleading and constitute unfair methods of competition and unlawful practices, undertaken by Defendant with the intent to induce the consuming public to purchase the Products. The misleading half-truths and material omissions do not assist consumers; they simply mislead them.

Defendant’s misleading half-truths and material omissions violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

¹ The products include Kellogg’s Nutrigrain Soft Baked Breakfast Bars – Strawberry and Cracklin’ Oat Bran oat cereal (the “Products”).

December 7, 2018
Page 2

- (5) Representing that [the Products have] . . . characteristics, . . . uses [or] benefits. . . which [they do] not have.

* * *

- (7) Representing that [the Products] are of a particular standard, quality, or grade . . . if they are of another.

California Civil Code §§ 1770(a)(5) and (7).

Defendant's misleading half-truths and material omissions also constitute violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that Kellogg's immediately correct and rectify this violation of California Civil Code § 1770 by ceasing the misleading marketing campaign and ceasing dissemination of misleading and deceptive information as described in the enclosed Complaint. In addition, Kellogg's should offer a refund to all consumer purchasers of the Products plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, file a further amended Complaint as permitted by California Civil Code § 1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Kellogg's address these violations immediately.

Kellogg's must undertake all of the following actions to satisfy the requirements of California Civil Code § 1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the Products;
2. Notify all such purchasers so identified that upon their request, Kellogg's will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Product purchasers who so request; and
4. Cease from representing to consumers that the Products provide the healthy

December 7, 2018
Page 3

attributes identified on the Product packages, without also disclosing that the Products contain or likely contain glyphosate, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Patricia N. Syverson". The signature is fluid and cursive, with the first name "Patricia" being more prominent.

Patricia N. Syverson
For the Firm

PNS:td
Enclosures

EXHIBIT C

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
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BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
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mmuecke@bffb.com
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SIPRUT PC
STEWART M. WELTMAN (*To be Admitted Pro Hac Vice*)
TODD L. MCLAWHORN (*To be Admitted Pro Hac Vice*)
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tmclawhorn@siprut.com
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Telephone: (312) 236-0000

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MASON KIEN, On Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

v.

KELLOGG CO.,

Defendant.

Case No.: '18CV2759 AJB MSB

CLASS ACTION

**DECLARATION OF PATRICIA N.
SYVERSON PURSUANT TO
CALIFORNIA CIVIL CODE §
1780(d)**

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of
3 the State of California. I am a shareholder of the law firm of Bonnett, Fairbourn,
4 Friedman & Balint, P.C., the counsel of record for Plaintiffs in the above-entitled
5 action.

6 2. Defendant Kellogg Co. has done and is doing business in the
7 Southern District of California. Such business includes the distributing,
8 marketing, labeling, packaging and sale of Kellogg's Nutrigrain Soft Baked
9 Breakfast Bars – Strawberry and Kellogg's Cracklin' Oat Bran oat cereal.
10 Furthermore, Plaintiff Mason Kien purchased the Kellogg's Nutrigrain Soft Baked
11 Breakfast Bars – Strawberry product in San Diego, California.

12 3. I declare under penalty of perjury under the laws of the State of
13 California that the foregoing is true and correct.

14 Executed this 7th day of December 2018, at San Diego, California.

15 BONNETT, FAIRBOURN, FRIEDMAN
16 & BALINT, P.C.

17 /s/Patricia N. Syverson

18 Patricia N. Syverson (203111)
19 Manfred P. Muecke (222893)
20 600 W. Broadway, Suite 900
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psyverson@bffb.com
mmuecke@bffb.com
Telephone: (619) 798-4593

21 BONNETT, FAIRBOURN, FRIEDMAN
22 & BALINT, P.C.

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24 Carrie A. Laliberte (*To be Admitted Pro Hac Vice*)
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26 SIPRUT PC

27 Stewart M. Weltman (*To be Admitted Pro Hac Vice*)
28 Todd L. McLawhorn (*To be Admitted Pro Hac Vice*)
Michael Chang (*To be Admitted Pro Hac Vice*)
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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 7, 2018.

/s/Patricia N. Syverson

Patricia N. Syverson (203111)

BONNETT FAIRBOURN FRIEDMAN
& BALINT, P.C.

600 W. Broadway, Suite 900

San Diego, CA 92101

Telephone: (619) 798-4593