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putative Classes

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**BRITTANY SEBASTIAN,**  
**individually, and on behalf of others**  
**similarly situated,**

**Plaintiff,**

**vs.**

**ONE BRANDS LLC, a Delaware**  
**Limited Liability Company, and**  
**THE HERSHEY COMPANY, a**  
**Delaware Corporation,**

**Defendants.**

**CASE NO. '20CV0009 L MDD**

**CLASS ACTION COMPLAINT FOR:**

- 1. UNFAIR AND UNLAWFUL  
BUSINESS ACTS AND PRACTICES  
(CAL. BUS & PROF. CODE §17200 ET  
SEQ.);**
- 2. DECEPTIVE ADVERTISING  
PRACTICES (CAL. BUS & PROF.  
CODE §§ 17500, ET SEQ.);**
- 3. CONSUMER LEGAL REMEDIES  
ACT (CAL. CIV. CODE § 1750, ET  
SEQ.);**
- 4. BREACH OF EXPRESS  
WARRANTY; AND**
- 5. QUASI-CONTRACT.**

**DEMAND FOR JURY TRIAL**

Plaintiff Brittany Sebastian on behalf of herself and others similarly situated, by  
and through her undersigned counsel, hereby files this Class Action Complaint against  
Defendants One Brands, LLC and The Hershey Company (collectively “Defendants”)  
and states as follows:

## **NATURE OF THE ACTION**

1  
2       1.       This case arises out of Defendants’ unlawful merchandising practices with  
3 respect to its ONE protein bars, which are sold in a variety of flavors (collectively, the  
4 “Product” or “Products”). Defendants market, advertise and label the Products as  
5 containing only 1 gram of sugar and 5 milligrams of cholesterol and as having 9 grams  
6 of dietary fiber (collectively, the “Representations”). These uniform, material  
7 Representations are false and misleading because the Products contain substantially  
8 more sugar and cholesterol than the listed amounts and virtually no dietary fiber (the  
9 “misrepresentations and omissions”).

10       2.       According to independent laboratory testing of the Birthday Cake flavor  
11 of the Products, for example, the Products contain on average 40% more sugar, 96%  
12 more cholesterol, and 96% less dietary fiber than the amounts represented on the  
13 Product labels.

14       3.       Due to the overage in sugar, the Product brand name “ONE” is also false  
15 and misleading, including because it is coupled with the statement on the Primary  
16 Display Panel (“PDP”), *i.e.* the front panel of the Products, that the Products contain  
17 just “1G SUGAR.”

18       4.       Reasonable consumers purchased the Products believing, among other  
19 things, that they were accurately represented, including because the Product packaging  
20 contained accurate label information. Reasonable consumers would not have  
21 purchased the Products if they had known about the misrepresentations and omissions,  
22 or would have purchased them on different terms.

23       5.       Plaintiff brings this action individually and on behalf of those similarly  
24 situated and seeks to represent a National Class and California Subclass (defined  
25 *infra.*). Plaintiff seeks damages, interest thereon, reasonable attorneys’ fees and costs,  
26 restitution, other equitable relief, and disgorgement of all benefits Defendants have  
27 enjoyed from their unlawful and/or deceptive business practices, as detailed herein. In  
28 addition, Plaintiff seeks injunctive relief to stop Defendants’ unlawful conduct in the

1 labeling and marketing of the Products. Plaintiff makes these allegations based on her  
2 personal knowledge as to herself and her own acts and observations and, otherwise, on  
3 information and belief based on investigation of counsel.

#### 4 **JURISDICTION AND VENUE**

5 6. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
6 § 1332(d) because this is a class action in which: (1) there are over 100 members in the  
7 proposed classes; (2) members of the proposed classes have a different citizenship  
8 from Defendant; and (3) the claims of the proposed class members exceed \$5,000,000  
9 in the aggregate.

10 7. This Court has personal jurisdiction over Defendants because Defendants'  
11 contacts with the forum are continuous and substantial, and Defendants intentionally  
12 availed themselves of the markets within California through their sales of the Products  
13 to California consumers.

14 8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because  
15 Defendants engage in continuous and systematic business activities within the State of  
16 California. Moreover, a substantial part of the events and omissions giving rise to the  
17 claims alleged herein occurred in this District. *See also* Declaration of Brittany  
18 Sebastian Regarding Venue Pursuant to Cal. Civ. Code § 1780(d), attached hereto as  
19 Exhibit A.

#### 20 **PARTIES**

21 9. Plaintiff Brittany Sebastian is a resident of San Diego, California, who  
22 purchased the Products during the class period, as described herein. Plaintiff's claim is  
23 typical of all Class members in this regard. In addition, the advertising and labeling on  
24 the package of the Products purchased by Plaintiff, including the Representations, is  
25 typical of the advertising and labeling of the Products purchased by members of the  
26 Classes.



16.



Nutrition Facts	
Serving Size	1 bar (60g)
Amount per serving	210
Calories	
% Daily Value*	
Total Fat	7g 9%
Saturated Fat	5g 25%
Trans Fat	0g
Polyunsaturated Fat	1g
Monounsaturated Fat	1g
Cholesterol	5mg 2%
Sodium	140mg 6%
Total Carbohydrate	22g 7%
Dietary Fiber	9g 32%
Total Sugars	1g
Includes 0g Added Sugars	0%
Sugar Alcohol	5g
Protein	20g 40%
Vitamin D	0mcg 0%
Calcium	90mg 8%
Iron	0mg 0%
Potassium	83mg 2%
Phosphorus	50mg 4%

17. Among other things, Defendants prominently feature the “ONE” brand name on the PDP of the Products coupled with the statement that the Products contain just “1G SUGAR”.

18. In addition, on the Nutrition Facts panel, Defendants make the false and misleading factual representations that a 1 bar serving contains 1g Total Sugars, 5mg Cholesterol, and 9g Dietary Fiber.

**B. Independent Testing Shows the Products Contain More Sugar and Cholesterol and Less Fiber than Represented on the Product Labels**

19. According to independent laboratory testing, the Products contain more sugar and cholesterol and less dietary fiber than represented on the Product labels.

1           20. **Sugar**. According to the World Health Organization, “[c]onsuming free  
2 sugars increases the risk of dental caries (tooth decay). Excess calories from foods and  
3 drinks high in free sugars also contribute to unhealthy weight gain, which can lead to  
4 overweight and obesity. Recent evidence also shows that free sugars influence blood  
5 pressure and serum lipids, and suggests that a reduction in free sugars intake reduces  
6 risk factors for cardiovascular diseases.”

7           21. Contrary to the Representations and statements on the PDP and the  
8 Nutrition Facts that the Products contain just one gram of sugar, the Birthday Cake  
9 flavor of the Products on average contain 1.4 grams of sugar, or 40% more than the  
10 listed amount.

11           22. **Cholesterol**. According to the Mayo Clinic, “high levels of cholesterol  
12 can increase your risk of heart disease. With high cholesterol, you can develop fatty  
13 deposits in your blood vessels. Eventually, these deposits grow, making it difficult for  
14 enough blood to flow through your arteries. Sometimes, those deposits can break  
15 suddenly and form a clot that causes a heart attack or stroke.”

16           23. Contrary to the Representation that the Products contain 5 milligrams of  
17 cholesterol, the Birthday Cake flavor of the Products contain on average 9.8 milligrams  
18 of cholesterol, or approximately 96% more than the listed amount.

19           24. **Fiber**. According to the Mayo Clinic, foods containing fiber can help to  
20 maintain a healthy weight and lower the risk of diabetes, heart disease and some types  
21 of cancer. Among other things, fiber can: (i) help lower cholesterol levels by lowering  
22 bad cholesterol levels; (ii) control blood sugar by slowing the absorption of sugar and  
23 helping to improve blood sugar levels; and (iii) aid in achieving a healthy weight  
24 because foods high in fiber tend to be more filling and energy dense, meaning they  
25 have fewer calories in the same volume of food.

26           25. Contrary to the Representation that the Products contain 9 grams of  
27 dietary fiber, the Birthday Cake flavor of the Products contain on average only .36  
28 grams of dietary fiber, or 96% less than the listed amount.



26. Additional lab results conducted by a third-party further confirm that the Products contain more sugar and cholesterol than the represented amounts.

27. In January 2017, an independent company that tests supplements to “find out whether products have what they claim” purchased the Products at retail and conducted 64 analytical tests of the Birthday Cake flavor of the Products by “send[ing] a sample of each product to an FDA-registered laboratory for a detailed chemical analysis, which includes measurements of active ingredients and potential contaminants.” The company determined that the Birthday Cake flavor of the Products contained substantially more sugar and cholesterol than the listed amounts. The company does not appear to have tested the Products for dietary fiber.

**C. Defendants Violate Identical Federal and State Regulations**

28. The FDA oversees the regulation and labeling of food pursuant to the Federal Food, Drug and Cosmetic Act (“FDCA”).

29. California’s Sherman Food, Drug and Cosmetic Law, Cal. Heath & Saf. Code § 110765 *et seq.* (the “Sherman Law”), incorporates all food labeling regulations promulgated by the FDA under the FDCA. *See e.g.*, Cal. Heath & Saf. Code § 110100(a) (“All food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling regulations of this state.”), § 110380 and § 110505.

**Regulations Governing Labeling of the Products**

30. 21 U.S.C. § 343 addresses misbranded food and states that a “food shall be deemed to be misbranded – (a) If (1) its labeling is false or misleading in any particular, or (2) in the case of a food to which section 350 of this title applies, its advertising is false or misleading in a material respect or its labeling is in violation of section 350(b)(2) of this title.” *See* 21 U.S.C. § 343(a).

31. Pursuant to the FDCA “a food with a label declaration of calories, total sugars, added sugars . . . total fat . . . cholesterol, or sodium shall be deemed to be misbranded under section 403(a) of the act if the nutrient content of the composite is

greater than 20 percent in excess of the value for that nutrient declared on the label.”

21 C.F.R. § 101.9(g)(5).

32. In addition, “[a] food with a label declaration of a vitamin, mineral, protein, total carbohydrate, dietary fiber, soluble fiber, insoluble fiber, polyunsaturated or monounsaturated fat shall be deemed to be misbranded under section 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) unless it meets the following requirements: (i) When a vitamin, mineral, protein, or dietary fiber meets the definition of a Class I nutrient, the nutrient content of the composite must be formulated to be at least equal to the value for that nutrient declared on the label. (ii) When a vitamin, mineral, protein, total carbohydrate, polyunsaturated or monounsaturated fat, or dietary fiber meets the definition of a Class II nutrient, the nutrient content of the composite must be at least equal to 80 percent of the value for that nutrient declared on the label.” *See* 21 C.F.R. § 101.9(g)(4).

33. Class I nutrients are “[a]dded nutrients in fortified or fabricated foods” and Class II nutrients are “[n]aturally occurring (indigenous) nutrients. When a nutrient is naturally occurring (indigenous) in a food or an ingredient that is added to a food, the total amount of such nutrient in the final food product is subject to class II requirements, except that when an exogenous source of the nutrient is also added to the final food product, the total amount of the nutrient in the final food product (indigenous and exogenous) is subject to class I requirements.” 21 C.F.R. § 101.9(g)(3).

34. 21 C.F.R. § 101.9(c)(3)(ii) defines sugar labeling requirements as follows: “A statement of the number of grams of sugar in a serving, except that the label declaration of sugars content is not required for products that contain less than 1 gram of sugar in a serving if no claims are made about sweeteners, sugars, or sugar alcohol content.”



1           35. 21 C.F.R. § 101.9(c)(3) defines cholesterol labeling requirements as  
2 follows: “[a] statement of the cholesterol content in a serving expressed in milligrams  
3 to the nearest 5-milligram increment . . . .”

4           36. In addition, the FDCA requires that the amount of “dietary fiber in a  
5 serving” be “expressed to the nearest gram” unless the product contains less than one  
6 gram of dietary fiber. *See* 21 C.F.R. § 101.9(c)(6)(i).

7           37. Furthermore, the FDA defines the types of dietary fiber, *e.g.* “isolated or  
8 synthetic non-digestible carbohydrates (with 3 or more monomeric units)” “determined  
9 by FDA to have physiological effects that are beneficial to human health.” *Id.*

10           38. In addition, the FDA requires that a “manufacturer must make and keep  
11 records in accordance with paragraphs (g)(10) and (11) of this section to verify the  
12 declared amount of dietary fiber in the label and labeling of food when a mixture of  
13 dietary fiber, and added nondigestible carbohydrate(s) that does not meet the definition  
14 of dietary fiber, is present in the food.” *See* 21 C.F.R. § 101.10.

15           39. Furthermore, a manufacturer must make and keep “records of all relevant  
16 scientific data and information relied upon by the manufacturer that demonstrates the  
17 amount of added sugars in the food after non-enzymatic browning and/or  
18 fermentation” including a narrative explanation, and make and keep records of the  
19 amount of sugars added to the food before and during the processing of the food. *Id.*

20           40. Failure to keep the records as required by paragraph (g)(11) “would result  
21 in the food being misbranded under section 403(a)(1) of the act.” *See* 21 C.F.R. §  
22 101.11.

23           41. Section 343(r) discusses express and implied nutrient claims.

24           42. An express nutrient content claim is defined as a direct statement about  
25 the level or range of a nutrient in a food, such as “100 calories.” *See* 21 C.F.R. §  
26 101.13. An express nutrient content claim may only be included if it “does not in any  
27 way implicitly characterize the level of the nutrient in the food and is not false or  
28 misleading in any respect.” 21 C.F.R. § 101.13(i)(3).

43. An implied nutrient content claim describes food or an ingredient in a manner that suggests that a nutrient is absent or present in a certain amount, such as “high in fiber.” 21 C.F.R. § 101.13(b). The section prohibits the use of terms such as “free” or “low,” which characterize the level or range of a nutrient in food, unless they confirm to certain established definitions. *Id.*

**The Products Are Misbranded Under the Regulations**

44. **Sugar.** As described herein, the Products are misbranded under the FDCA and Sherman Law in that the amount of sugar contained in the Products is more than 20% greater than the value declared on the Product labels.

45. In addition, the express nutrient claims that the Products contain just one gram of sugar are false and misleading due to the overage in sugar.

46. Furthermore, the implied nutrient claims that the Products are low in sugar, including by use of the brand name “ONE” coupled with the statement that the Products contain “1G SUGAR” on the PDP, are false and misleading due to the overage in sugar.

47. **Cholesterol.** As described herein, the Products are misbranded under the FDCA and Sherman Law in that the amount of cholesterol contained in the Products is more than 20% greater than the value declared on the Product labels.

48. In addition, the express nutrient claim that the Products contain just five milligrams of cholesterol are false and misleading due to the overage in cholesterol.

49. **Dietary Fiber.** As described herein, the Products are misbranded under the FDCA and Sherman Law in that the label declaration of dietary fiber does not meet the Class I nutrient requirement because it is not at least equal to the value of the dietary fiber declared on the Product label.

50. In addition, or in the alternative, the Products are misbranded under the FDCA and Sherman Law in that the label declaration of dietary fiber does not meet the Class II nutrient requirement because the nutrient content is not at least equal to 80 percent of the value of dietary fiber declared on the label.

1           51. In addition, the express nutrient claim that the Product contains 9 grams of  
2 dietary fiber is false and misleading because the Products contain less dietary fiber than  
3 the represented amount.

4           52. The overages and underage described herein are unreasonable and are not  
5 acceptable within current good manufacturing practice.

6           53. In addition, on information and belief, the Products are misbranded  
7 because Defendants have not complied with the record-keeping requirements set forth  
8 in 21 C.F.R. § 101.9(g), including as they relate to substantiation of declared amounts  
9 of nutrients.

10          54. To be clear, Plaintiff does not allege any claims pursuant to the FDCA and  
11 Sherman Law and relies on these regulations only to the extent they provide a  
12 predicate basis for liability under state and common law, as set forth herein.

13           **D. Plaintiff and Consumers Purchased the Products to Their Detriment**

14          55. Based on Defendants' uniform material misrepresentations and omissions,  
15 Plaintiff and consumers purchased the Products to their detriment.

16          56. Plaintiff Brittany Sebastian purchased the ONE Products multiple times  
17 during the class period, including from a Trader Joes store located in Encinitas,  
18 California on November 23, 2018. Plaintiff purchased the Products for personal and  
19 family use.

20          57. Defendants labeled and sold the Products with the Representations, which  
21 are false and misleading.

22          58. Defendants knew or should have known that reasonable consumers would  
23 consider the Representations material in deciding to purchase the Products.  
24 Accordingly, Defendants' Representations are false, misleading and reasonably likely  
25 to mislead reasonable consumers.

26          59. Defendants made the material misrepresentations and omissions with the  
27 intent to defraud consumers in that, among other things, consumers would be less  
28

likely to purchase the Products if they knew the truth, *e.g.*, that the Representations were false and/or misleading.

60. Plaintiff relied on the Product labels and Defendants' Representations in making the decision to purchase the Products.

61. At the time Plaintiff purchased the Products, Plaintiff did not know, and had no reason to know, that the Representations were misleading, deceptive and unlawful. Plaintiff would not have purchased the Products, or would have purchased them on different terms, if she had known the truth.

62. It is possible, however, that Plaintiff would purchase the Products in the future if the Representations were truthful.

### **CLASS DEFINITION AND CLASS ALLEGATIONS**

63. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself, on behalf of all others similarly situated, and as a member the Classes defined as follows (collectively, the "Class"):

All citizens of the United States who, within the relevant statute of limitations periods, purchased Defendants' Products ("Nationwide Class");

All citizens of California who, within four years prior to the filing of the initial Complaint, purchased Defendants' Products ("California Subclass").

64. Excluded from the Class are: (i) Defendants, their assigns, successors, and legal representatives; (ii) any entities in which Defendants have controlling interest; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (v) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

65. Plaintiff reserves the right to amend or otherwise alter the class definition

1 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in  
2 response to facts learned through discovery, legal arguments advanced by Defendants,  
3 or otherwise.

4 66. This action is properly maintainable as a class action pursuant to Federal  
5 Rule of Civil Procedure 23 for the reasons set forth below.

6 67. **Numerosity**: Members of the Class are so numerous that joinder of all  
7 members is impracticable. Upon information and belief, the Nationwide Class consists  
8 of hundreds of thousands of purchasers dispersed throughout the United States, and the  
9 California Subclass likewise consists of hundreds of thousands of purchasers  
10 throughout the State of California. Accordingly, it would be impracticable to join all  
11 members of the Class before the Court.

12 68. **Common Questions Predominate**: There are numerous and substantial  
13 questions of law or fact common to all members of the Class that predominate over any  
14 individual issues. Included within the common questions of law or fact are:

- 15 • Whether the Product Representations and omissions are, or any single  
16 Representation or omission is, false, misleading and/or deceptive;
- 17 • Whether Defendants engaged in unlawful, unfair or deceptive business  
18 practices by advertising and selling the Products;
- 19 • Whether Defendants violated California Bus. & Prof. Code § 17200, *et*  
20 *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and/or the Consumers  
21 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 22 • Whether Defendants committed a breach of express warranty;
- 23 • Whether Plaintiff and the Class are entitled to equitable and/or  
24 injunctive relief;
- 25 • Whether Plaintiff and the Class have sustained damage as a result of  
26 Defendants' unlawful conduct;
- 27 • The proper measure of damages sustained by Plaintiff and the Class;
- 28 and

- Whether Defendants were unjustly enriched by their unlawful practices.

69. **Typicality**: Plaintiff's claims are typical of the claims of the members of the Class she seeks to represent because Plaintiff, like the Class members, purchased Defendants' misbranded Products. Defendants' unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendants' conduct. Plaintiff's and Class Member's claims arise from the same practices and course of conduct and are based on the same legal theories.

70. **Adequacy**: Plaintiff is an adequate representative of the Class she seeks to represent because her interests do not conflict with the interests of the members of the Class Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

71. **Superiority and Substantial Benefit**: A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their ill-gotten gains;



- c. Given the size of individual Class members' claims, few, if any, members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendants have been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

72. Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

73. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

74. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are also met as questions of law or fact common to Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

75. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Unfair and Unlawful Business Acts and Practices (Business and Professions Code § 17200, *et seq.*) (for the California Subclass)**

76. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

77. Defendants' conduct constitutes an unfair business act and practice pursuant to California Business & Professions Code §§ 17200, *et seq.* (the "UCL"). The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising . . . ."

78. Plaintiff brings this claim seeking equitable and injunctive relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein.

79. Defendants' knowing conduct, as alleged herein, constitutes an "unfair" and/or "fraudulent" business practice, as set forth in California Business & Professions Code §§ 17200-17208.

80. Defendants' conduct was and continues to be unfair and fraudulent because, directly or through its agents and employees, Defendants made uniform materially false representations and omissions.

81. As described herein, Defendants made Representations that the Products contain 1 gram of sugar and 5 milligrams of cholesterol per serving. Defendants also represented that the Products contain 9 grams of dietary fiber. These Representations are false and misleading because the Products contain more sugar and cholesterol and less dietary fiber than represented.

82. Defendants also made materially false representations and omissions by failing to disclose the actual amounts of sugar, cholesterol and dietary fiber in the

1 Products.

2 83. Defendants' conduct also constitutes an unfair and unlawful business act  
3 and practice because, as alleged herein and on information and belief, Defendants  
4 failed to comply with record-keeping requirements, including as they relate to  
5 substantiation of declared amounts of nutrients.

6 84. Defendants are aware that the representations and omissions they have  
7 made about the Products were and continue to be false and misleading.

8 85. Defendants had an improper motive—to derive financial gain at the  
9 expense of accuracy or truthfulness—in their practices related to the labeling and  
10 advertising of the Products.

11 86. There were reasonable alternatives available to Defendants to further  
12 Defendants' legitimate business interests, other than the conduct described herein.

13 87. Defendants' misrepresentations of material facts, as set forth herein, also  
14 constitute an "unlawful" practice because they violate California Civil Code §§ 1572,  
15 1573, 1709, 1710, 1711, and 1770 and the laws and regulations cited herein, as well as  
16 the common law.

17 88. Defendants' conduct in making the Representations and omissions  
18 described herein constitutes a knowing failure to adopt policies in accordance with  
19 and/or adherence to applicable laws, as set forth herein, all of which are binding upon  
20 and burdensome to their competitors. This conduct engenders an unfair competitive  
21 advantage for Defendants, thereby constituting an unfair business practice under  
22 California Business & Professions Code §§ 17200-17208.

23 89. In addition, Defendants' conduct was, and continues to be, unfair in that  
24 their injury to countless purchasers of the Products is substantial, and is not  
25 outweighed by any countervailing benefits to consumers or to competitors.

26 90. Moreover, Plaintiff and members of the California Subclass could not  
27 have reasonably avoided such injury. Defendants' uniform, material  
28 misrepresentations and omissions regarding the Products were likely to deceive, and

1 Defendants knew or should have known that their misrepresentations and omissions  
 2 were untrue and misleading. Plaintiff purchased the Products in reliance on the  
 3 Representations made by Defendants, including that the Product labeling was accurate  
 4 as alleged herein, and without knowledge of Defendants' misrepresentations and  
 5 omissions.

6 91. Plaintiff and members of the California Subclass have been directly and  
 7 proximately injured by Defendants' conduct in ways including, but not limited to, the  
 8 monies paid to Defendants for the Products, interest lost on those monies, and  
 9 consumers' unwitting support of a business enterprise that promotes deception and  
 10 undue greed to the detriment of consumers, such as Plaintiff and California Subclass  
 11 members.

12 92. As a result of the business acts and practices described above, Plaintiff  
 13 and members of the California Subclass, pursuant to § 17203, are entitled to an Order  
 14 enjoining such future wrongful conduct on the part of Defendants and such other  
 15 Orders and judgments that may be necessary to disgorge Defendants' ill-gotten gains  
 16 and to restore to any person in interest any money paid for the Products as a result of  
 17 the wrongful conduct of Defendants.

18 93. Pursuant to Civil Code § 3287(a), Plaintiff and the California Subclass are  
 19 further entitled to pre-judgment interest as a direct and proximate result of Defendants'  
 20 unfair and fraudulent business conduct. The amount on which interest is to be  
 21 calculated is a sum certain and capable of calculation, and Plaintiff and the California  
 22 Subclass are entitled to interest in an amount according to proof.

23 **SECOND CAUSE OF ACTION**  
 24 **Deceptive Advertising Practices**  
 25 **(California Business & Professions Code §§ 17500, *et seq.*)**  
 26 ***(for the California Subclass)***

27 94. Plaintiff re-alleges and incorporates by reference the allegations contained  
 28 in the preceding paragraphs of this complaint, as though fully set forth herein.

95. California Business & Professions Code § 17500 prohibits "unfair,

1 deceptive, untrue or misleading advertising . . . .”

2 96. Defendants violated § 17500 when they represented, through their false  
3 and misleading Representations and omissions, that Defendants’ Products possessed  
4 characteristics and value that they did not actually have. As described herein,  
5 Defendants made Representations that the Products contain 1 gram of sugar and 5  
6 milligrams of cholesterol per serving. Defendants also represented that the Products  
7 contain 9 grams of dietary fiber. These Representations are false and misleading  
8 because the Products contain more sugar and cholesterol and less dietary fiber than  
9 represented.

10 97. Defendants’ deceptive practices were designed to induce reasonable  
11 consumers like Plaintiff to purchase the Products. Defendants’ uniform, material  
12 misrepresentations and omissions regarding the Products were likely to deceive, and  
13 Defendants knew or should have known that their uniform misrepresentations and  
14 omissions were untrue and/or misleading. Plaintiff purchased the Products in reliance  
15 on the Representations made by Defendants, including that the Product labeling was  
16 accurate as alleged herein, and without knowledge of Defendants’ misrepresentations  
17 and omissions.

18 98. Plaintiff and members of the California Subclass have been directly and  
19 proximately injured by Defendants’ conduct in ways including, but not limited to, the  
20 monies paid to Defendants for the Products, interest lost on those monies, and  
21 consumers’ unwitting support of a business enterprise that promotes deception and  
22 undue greed to the detriment of consumers, such as Plaintiff and Subclass members.

23 99. The above acts of Defendants were and are likely to deceive reasonable  
24 consumers in violation of § 17500.

25 100. In making the statements and omissions alleged herein, Defendants knew  
26 or should have known that the statements and representations were untrue or  
27 misleading, and acted in violation of § 17500.

28 101. Defendants continue to engage in unlawful, unfair and deceptive practices

1 in violation of §17500.

2 102. As a direct and proximate result of Defendants' unlawful conduct in  
3 violation of § 17500, Plaintiff and members of the California Subclass, pursuant to §  
4 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on  
5 the part of Defendants, and requiring Defendants to disclose the true nature of their  
6 misrepresentations and omissions.

7 103. Plaintiff and members of the California Subclass also request an Order  
8 requiring Defendants to disgorge their ill-gotten gains and/or award full restitution of  
9 all monies wrongfully acquired by Defendants by means of such acts of false  
10 advertising, plus interests and attorneys' fees.

11 **THIRD CAUSE OF ACTION**  
12 **Consumer Legal Remedies Act**  
13 **(Cal. Civ. Code § 1750, *et seq.*)**  
**(for the California Subclass)**

14 104. Plaintiff re-alleges and incorporates by reference the allegations contained  
15 in the preceding paragraphs of this complaint, as though fully set forth herein.

16 105. Plaintiff brings this action pursuant to California's Consumer Legal  
17 Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

18 106. The CLRA provides that "unfair methods of competition and unfair or  
19 deceptive acts or practices undertaken by any person in a transaction intended to result  
20 or which results in the sale or lease of goods or services to any consumer are  
21 unlawful."

22 107. The Products are "goods," as defined by the CLRA in California Civil  
23 Code §1761(a).

24 108. Defendants are a "person," as defined by the CLRA in California Civil  
25 Code §1761(c).

26 109. Plaintiff and members of the California Subclass are "consumers," as  
27 defined by the CLRA in California Civil Code §1761(d).

28 110. Purchase of the Products by Plaintiff and members of the California



1 Subclass are “transactions,” as defined by the CLRA in California Civil Code  
2 §1761(e).

3 111. Defendants violated Section 1770(a)(5) by representing that the Products  
4 have “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the  
5 Products are falsely and misleadingly labeled and represented, as described herein.

6 112. Similarly, Defendants violated section 1770(a)(7) by representing that the  
7 Products “are of a particular standard, quality, or grade . . . if they are of another” by  
8 making the Representations and omissions concerning the amount of sugar, cholesterol  
9 and dietary fiber in the Products.

10 113. In addition, Defendants violated section 1770(a)(9) by advertising the  
11 Products “with intent not to sell them as advertised” in that the Products are  
12 misrepresented and misbranded as described herein.

13 114. Defendants’ uniform, material, misrepresentations and omissions  
14 regarding the Products were likely to deceive, and Defendants knew or should have  
15 known that their misrepresentations and omissions were untrue and misleading.

16 115. Plaintiff and members of the California Subclass could not have  
17 reasonably avoided injury. Plaintiff and members of the California Subclass were  
18 unaware of the existence of facts that Defendants suppressed and failed to disclose and  
19 Plaintiff and members of the California Subclass would not have purchased the  
20 Products and/or would have purchased them on different terms had they known the  
21 truth.

22 116. Plaintiff and members of the California Subclass have been directly and  
23 proximately injured by Defendants’ conduct. Such injury includes, but is not limited  
24 to, the purchase price of the Products and/or the price of the Products at the prices at  
25 which they were offered.

26 117. Given that Defendants’ conduct violated § 1770(a)(5), Plaintiff and  
27 members of the California Subclass are entitled to seek and seek injunctive relief to put  
28 an end to Defendants’ violations of the CLRA.

118. Moreover, Defendants' conduct is malicious, fraudulent, and wanton in that Defendants intentionally misled and withheld material information from consumers to increase the sale of the Products.

119. Pursuant to California Civil Code § 1782(a), on November 26, 2018, Plaintiff on her own behalf, and on behalf of members of the California Subclass, notified Defendants of the alleged violations of the Consumer Legal Remedies Act by letter setting forth Plaintiff's claims. Despite giving Defendants far more than 30-days from the date of the notification letter to provide appropriate relief for violations of the CLRA, Defendants have failed to provide any such relief. As such, Plaintiff also seeks compensatory, monetary and punitive damages, in addition to equitable and injunctive relief, and requests that this Court enter such Orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief as is provided in California Civil Code § 1780 and in the Prayer for Relief.

120. Plaintiff further requests that the Court enjoin Defendants from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to § 1780(a)(2).

**FOURTH CAUSE OF ACTION**  
**Breach of Express Warranty**  
*(for the Nationwide Class and California Subclass)*

121. Plaintiff re-alleges and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint, as though fully set forth herein.

122. By advertising and selling the Products at issue, Defendants made promises and affirmations of fact on the Products' packaging and labeling, as described herein. This labeling and advertising constitutes express warranties and became part of the basis of the bargain between Plaintiff and members of the Class, and Defendants.

123. Defendants, through their advertising and labeling, created express warranties that the Products comport with the Representations. Specifically,

1 Defendants created express warranties that the Products contain the represented  
2 amount of sugar, cholesterol, and dietary fiber.

3 124. The express warranties appear on all Product labels and specifically relate  
4 to the goods being sold.

5 125. Despite Defendants' express warranties about the nature of the Products,  
6 the Products do not comply with the Representations. Thus, the Products were and are  
7 not what Defendants represented them to be.

8 126. Accordingly, Defendants breached express warranties about the Products  
9 and their qualities because the Products do not conform to Defendants' affirmations  
10 and promises.

11 127. Plaintiff provided Defendants with pre-suit notice of the breach of  
12 warranty, including by letter dated November 26, 2018.

13 128. Plaintiff and members of the Class purchased the Products.

14 129. As a direct and proximate result of Defendants' breach of express  
15 warranty, Plaintiff and members of the Class were harmed in the amount of the  
16 purchase price they paid for the Products. Further, Plaintiff and members of the Class  
17 have suffered and continue to suffer economic losses and other general and specific  
18 damages including, but not limited to, the amounts paid for the Products, and any  
19 interest that would have accrued on those monies, in an amount to be proven at trial.

20 **FIFTH CAUSE OF ACTION**

21 **QUASI-CONTRACT**

22 *(for the Nationwide Class and California Subclass)*

23 130. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs  
24 as if fully set forth herein.

25 131. By purchasing the Products, Plaintiff and members of the Class conferred  
26 a benefit on Defendants in the form of the purchase price of the Products.

27 132. Defendants had knowledge of such benefits.  
28

1 133. Defendants appreciated the benefit because, were consumers not to  
 2 purchase the Products, Defendants would not generate revenue from the sales of the  
 3 Products.

4 134. Defendants' acceptance and retention of the benefit is inequitable and  
 5 unjust because the benefit was obtained by Defendants' fraudulent and misleading  
 6 Representations and omissions and unlawful conduct.

7 135. Equity cannot in good conscience permit Defendants to be economically  
 8 enriched for such actions at the expense of Plaintiff and members of the Class, and  
 9 therefore restitution and/or disgorgement of such economic enrichment is required

### 10 **PRAYER**

11 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
 12 situated, prays for judgment against Defendants as follows:

13 A. For an order certifying the Nationwide Class and the California Subclass  
 14 under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiff as  
 15 representative of the nationwide Class and California Subclass; and naming Plaintiff's  
 16 attorneys as Class Counsel to represent the Class and California Subclass;

17 B. For an order declaring that Defendants' conduct violates the statutes and  
 18 laws referenced herein;

19 C. For an order awarding, as appropriate, compensatory and monetary  
 20 damages, restitution or disgorgement to Plaintiff and the Class for all causes of action;

21 D. For an order requiring Defendants to immediately cease and desist from  
 22 selling their misbranded Products in violation of law; enjoining Defendants from  
 23 continuing to label, market, advertise, distribute, and sell the Products in the unlawful  
 24 manner described herein; and ordering Defendants to engage in corrective action;

25 E. For an order awarding attorneys' fees and costs;

26 F. For an order awarding punitive damages;

27 G. For an order awarding pre-and post-judgment interest; and

28 H. For such other and further relief as the Court deems just and proper.

1 DATED: January 2, 2020

**KAMBERLAW, LLP**

2 By: /s/ Naomi B. Spector  
3 Naomi B. Spector, Esq.

4 *Attorneys for Plaintiff and the putative Classes*  
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## 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.)

20CV0009 L MDD

**I. (a) PLAINTIFFS**

BRITTANY SEBASTIAN, individually, and on behalf of 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)

Naomi B. Spector, KAMBERLAW LLP, 1501 San Elijo Road South,  
Ste.104, San Marcos, CA 92078, (310) 400-1053

**DEFENDANTS**

ONE BRANDS LLC, a Delaware Limited Liability Company, and THE  
HERSHEY COMPANY, a Delaware Corporation,

County of Residence of First Listed Defendant Delaware

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 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 checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

Brief description of cause:

Consumer Class Action

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

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

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/02/2020

SIGNATURE OF ATTORNEY OF RECORD

s/ Naomi B. Spector

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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

### Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

# **EXHIBIT A**

## **Declaration of Brittany Sebastian**

1 Naomi Spector (SBN 222573)  
2 Email: nspector@kamberlaw.com  
3 **KAMBERLAW, LLP**  
4 1501 San Elijo Road South, Ste.104  
5 San Marcos, CA 92078  
6 Phone: 310.400.1053  
7 Fax: 212.202.6364

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10 Counsel for Plaintiff Brittany Sebastian, and the  
11 putative Classes  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

BRITTANY SEBASTIAN,  
individually, and on behalf of others  
similarly situated,

Plaintiff,

vs.

ONE BRANDS LLC, a Delaware  
Limited Liability Company, and THE  
HERSHEY COMPANY, a Delaware  
Corporation,

Defendants.

Case No.: '20CV0009 L MDD

**DECLARATION OF PLAINTIFF  
BRITTANY SEBASTIAN  
REGARDING VENUE PURSUANT  
TO CAL. CIVIL CODE § 1780(d)**

1 I, Brittany Sebastian, hereby declare:

2 1. I am a named-plaintiff and a prospective class member in the above-entitled  
3 action.

4 2. I am an adult, over 18 years old. I have personal knowledge of the facts stated  
5 herein and could competently testify thereto if called upon to do so.

6 3. I am currently a resident of San Diego County, California. The Complaint filed  
7 in this matter contains causes of action for violations of: (1) Unfair and Unlawful  
8 Business Acts and Practices, Cal. Business & Professions Code §§ 17200 *et seq.* (the  
9 “UCL”); (2) Deceptive Advertising Practices, Cal. Business & Professions Code §§  
10 17500 *et seq.* (the “FAL”); (3) California’s Consumer Legal Remedies Act, Cal. Civil  
11 Code §§ 1750 *et seq.* (the “CLRA”); (4) Breach of Express Warranty; and (5) Quasi  
12 Contract. These causes of action arise out of Defendant One Brand LLC’s and  
13 Defendant The Hershey Company’s deceptive, unfair, and false merchandising  
14 practices with respect to their ONE protein bars (“Products” or “Product”).

15 4. California Civil Code § 1780(d) provides that a plaintiff seeking to bring a claim  
16 under Section 1780(a) of the California Consumer Legal Remedies Act may  
17 commence that action “in the county in which the person against whom it is brought  
18 resides, has his or her principal place of business, or is doing business, or in the county  
19 where the transaction or any substantial portion thereof occurred.”

20 5. I purchased the Products at issue, ONE protein bars, in San Diego, California.

21 6. Accordingly, the Complaint filed in the above-entitled action is filed in the  
22 proper venue pursuant to Civil Code § 1780(d).

23 ///

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1 I declare under the penalty of perjury under laws of the State of California that the  
2 foregoing is true and correct to the best of my knowledge.

3 Executed on December 27, 2019, in San Diego, California.

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