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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

AMANDA SHORT and SARAH THOMAS,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

KIND LLC,

Defendant.

Case No. 15-cv-2214

**COMPLAINT**

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

Plaintiffs Amanda Short and Sarah Thomas (“Plaintiffs”), on behalf of themselves and all others similarly situated, allege, with personal knowledge as to their own actions, and upon information and belief as to those of others, the following against Defendant KIND LLC (“Defendant” or “KIND”):

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more than 100 class members; (2) Plaintiffs propose a nationwide class action, while Defendant KIND is a citizen of the State of New York; and (3) the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

2. Pursuant to 28 U.S.C. § 1391(d), venue is proper in this District because the transactions giving rise to the claims occurred in Kings and Queens Counties, New York.

### **SUMMARY OF THE ACTION**

3. This is a proposed class action complaint brought, first, on behalf of nationwide class, or in the alternative, a New York class, both defined below, of individuals who purchased Defendant KIND’s products containing the unnatural ingredient soy lecithin (the “KIND All-Natural Class”). Among Defendant KIND’s products containing soy lecithin, which are marketed and sold nationwide to consumers, are varieties of KIND “Fruit & Nut” Bars, KIND “Plus” Bars, KIND “Nuts & Spices” Bars, and KIND “Healthy Grains®” Bars (collectively, “KIND All-Natural Bars”).<sup>1</sup> Defendant KIND

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<sup>1</sup> The KIND All-Natural Bars include KIND “Plus” Peanut Butter Dark Chocolate + Protein, KIND “Plus” Almond Walnut Macadamia + Peanut Protein, KIND “Plus” Pomegranate Blueberry Pistachio + Antioxidants, KIND “Plus” Blueberry Pecan + Fiber, KIND “Plus” Dark Chocolate Cherry + Antioxidants, KIND “Plus” Peanut Butter Dark + Protein, KIND “Fruit & Nut” Fruit and Nut Delight, KIND “Fruit & Nut” Almond and Apricot, KIND “Fruit & Nut” Blueberry Vanilla Cashew, KIND “Fruit & Nut” Apple Cinnamon Pecan, KIND “Fruit & Nut” Almonds and Apricots in Yogurt, KIND “Fruit & Nut” Peanut Butter and Strawberry, KIND “Fruit & Nut” Almond and Coconut, KIND “Fruit & Nut” Fruit and Nuts in Yogurt, KIND “Nut & Spices” Cashew and Ginger Spice, KIND “Nut & Spices” Dark Chocolate Chili Almond, KIND “Nut & Spices” Maple Glazed Pecan and Sea Salt, KIND “Nut & Spices” Madagascar Vanilla Almond, KIND “Nut & Spices” Dark Chocolate Cinnamon Pecan, KIND “Nut & Spices” Chocolate Mocha Almond, KIND “Nut & Spices” Caramel Almond and Sea

prominently represents the KIND All-Natural Bars to be “all-natural.” In fact, however, the KIND All-Natural Bars are not all natural.

4. Labeling KIND All-Natural Bars as “all-natural” creates consumer deception and confusion. A reasonable consumer purchases KIND All-Natural Bars believing they are free from unnatural ingredients. Reasonable consumers, however, would not deem the KIND All-Natural Bars to be “all-natural” if they knew that the KIND All-Natural Bars contain the unnatural form of soy lecithin.

5. Defendant KIND has profited greatly from inducing consumers to buy KIND All-Natural Bars instead of other granola, snack, and nutrition bars not misleadingly labeled as “all-natural.” In fact, Defendant is able to charge a price premium for its bars because they are falsely labeled “all natural.” As a result, consumers are willing to, and do, pay more than other comparable products that are not falsely labeled.

6. This is a proposed class action brought, second, on behalf of a nationwide class, or in the alternative, a New York Class, both defined below, of individuals who purchased Defendant KIND’s products that are represented to be healthy but that in fact contain unhealthy levels of saturated fat (the “KIND Healthy Class”). Defendant KIND’s products represented to be healthy despite containing unhealthy levels of saturated fat include at least the following, as determined by the federal Food & Drug Administration (FDA): KIND Fruit & Nut Almond & Apricot, KIND Fruit & Nut Almond & Coconut, KIND Plus Peanut Butter Dark Chocolate + Protein, and KIND Plus Dark Chocolate Cherry Cashew + Antioxidants (collectively, “KIND Healthy Bars”). Defendant KIND represents the KIND Healthy Bars to be “healthy” when, in fact, the KIND Healthy Bars are not healthy.

7. Defendant KIND has profited greatly from inducing consumers to buy KIND Healthy Bars instead of other granola, snack, and nutrition bar options not misleadingly labeled as “healthy.” In

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Salt, KIND “Nut & Spices” Dark Chocolate Nuts and Sea Salt, KIND “Healthy Grains®” Dark Chocolate Chunk, and KIND “Healthy Grains®” Peanut Butter Dark Chocolate.

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

8. Labeling KIND Healthy Bars as “healthy” creates consumer deception and confusion. A reasonable consumer purchases the KIND Healthy Bars believing they are healthy choices. Reasonable consumers, however, would not deem the KIND Healthy Bars to be “healthy” if they knew that the KIND Healthy Bars are not in fact healthy.

### **PARTIES**

9. Plaintiff Amanda Short resides in Brooklyn, New York. Since November 2012, Plaintiff Short has purchased, at drug stores in Manhattan and Starbucks locations in New York City, a variety of KIND products, including KIND “Fruit & Nut” Almond & Apricot Bars, KIND “Plus” Dark Chocolate Cherry Cashew + Antioxidants Bars, and KIND “Nuts & Spices” Dark Chocolate Nuts & Sea Salt Bars. Plaintiff Short made these purchases in reliance on the representations on the product labels that the products were “all-natural” and had various specified health characteristics. Plaintiff Short would not have purchased the KIND products had she known that the products were neither all-natural or healthy.

10. Plaintiff Sarah Thomas resides in Astoria, New York. Since January 2014, Plaintiff Thomas has purchased, at markets in Brooklyn and Queens, and at a yoga studio in Manhattan, a variety of KIND products, including KIND “Fruit & Nut” Almond & Coconut Bars, KIND “Plus” Peanut Butter Dark Chocolate + Protein Bars, KIND “Nuts & Spices” Dark Chocolate Nuts Chili Almond Bars, KIND “Nuts & Spices” Cashew & Ginger Spice, and KIND “Nuts & Spices” Dark Chocolate Nuts & Sea Salt Bars. Plaintiff Thomas made these purchases in reliance on the representations on the product labels that the products were “all-natural” and had various specified health characteristics. Plaintiff Thomas would not have purchased the KIND products had she known that the products were neither all-natural or healthy.

11. Defendant KIND is a LLC organized, on information and belief, under the laws of New York, with its principal place of business in New York, New York. KIND manufactures and distributes more than 20 varieties of snack bars, and also what it describes as “snackable clusters.” Defendant KIND purposefully avails itself to the New York consumer market and to consumer markets nationwide, marketing its products in all 50 States and the District of Columbia.

### **SUBSTANTIVE ALLEGATIONS**

12. Defendant KIND has recognized a growing consumer desire for products that are both healthier and made without unnatural ingredients. To capitalize on this rising demand, Defendant KIND labels and markets KIND All-Natural Bars as “all-natural,” and the KIND Healthy Products as “Healthy,” thereby distinguishing them from other competing nutrition, health, and snack bars.

13. On the front of KIND All-Natural Product packaging, Defendant KIND makes prominent representations about the benefits of the products, including the representation that the products are “all-natural.” Thus, the labeling of KIND All-Natural Bars is designed to create consumer belief that they are, among other benefits, free from unnatural ingredients.

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

15. Should any consumers further research their purchasing options, Defendant KIND’s online marketing confirms the representations made on the packaging of the KIND All-Natural Bars (“We believe if you can’t pronounce an ingredient, it shouldn’t go into your body. Actually, it shouldn’t even go into your pantry. That’s why KIND Healthy Snacks are made from all-natural whole nuts,

fruits and whole grains.”<sup>2</sup>) and the KIND Healthy Bars (“There’s healthy. There’s tasty. Then there’s healthy and tasty. At KIND, we believe you deserve both—we call it our brAND philosophy. That’s why you’ll find all of our snacks are pretty much the nirvana of healthful tastiness.”<sup>3</sup>). Thus, Defendant KIND’s marketing and website confirm its intent to create consumer belief that KIND All-Natural Bars are superior choices free from unnatural ingredients and KIND Healthy Bars are superior choices useful in maintaining a healthy diet. Reasonable consumers would believe these representations, but they would be wrong.

16. Defendant KIND’s marketing of KIND Healthy Bars as healthy and useful in maintaining healthy dietary practices is false and misleading, as KIND Healthy Bars in fact have numerous unhealthy facets, including that:

- All KIND Healthy Bars contain excessive levels of saturated fats, as much as 5 grams of saturated fats per 40 grams of food;
- All KIND Healthy Bars are labeled as good sources of fiber, when in fact their high content of saturated fats does not make them a superior source of fiber in comparison with available options lower in saturated fats;
- KIND “Plus” Peanut Butter Dark Chocolate + Protein bar, a KIND Healthy Bar, indicates that it has some degree of added protein benefits, when in fact it contains just 7 grams of protein, approximately what would be expected for a bar of this type and ingredients; and
- KIND “Plus” Dark Chocolate Cherry Cashew + Antioxidants bar, a KIND Healthy Bar, indicates that it has some degree of added antioxidant benefit, when in fact it contains no special antioxidant benefit beyond what would be expected from a bar of this type and

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<sup>2</sup> KIND LLC / KIND Healthy Snacks, <http://www.kindsnacks.com/about/> (last visited 17 April 2015).

<sup>3</sup> *Id.*

ingredients.

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

17. Defendant KIND’s packaging of KIND Healthy Bars unequivocally demonstrates its intent to persuade consumers that KIND Healthy Bars are healthy choices, which impart various general and specific health benefits.

18. Reasonable consumers, including Plaintiffs, purchased KIND Healthy Bars based upon the belief that they are healthy and superior to less-healthy available options. Reasonable consumers, however, would not deem KIND Healthy Bars healthy if they knew that KIND Healthy Bars are high in saturated fat and do not impart the additional benefits implied on the labeling.

19. In fact, the Food and Drug Administration recently concluded that Defendant’s health claims are misleading and in direct contravention of FDA regulations. On March 17, 2015, the FDA issued a Warning Letter to KIND. After reviewing the labels on the KIND Healthy Bars, the FDA determined that the labels are in violation of section 403 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343.

20. In particular, the FDA concluded that the KIND Healthy Bars are mislabeled because they make false nutrient health claims. The FDA stated that “the labels of the aforementioned products bear the claim ‘Healthy and tasty, convenient and wholesome’ in connection with statements such as:

- ‘good source of fiber,’
- ‘no trans fats,’
- ‘very low sodium’ [Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut Almond & Coconut, and Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],
- ‘low sodium’ [Kind Plus Peanut Butter Dark Chocolate + Protein],
- ‘+ antioxidants’ [Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],

- ‘50% DV antioxidants vitamins A, C and E’ [Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],
- ‘+ protein’ [Kind Plus Peanut Butter Dark Chocolate + Protein], and
- ‘7g protein’ [Kind Plus Peanut Butter Dark Chocolate + Protein].”

The FDA concluded that “none of [KIND’s] products listed above meet the requirements for use of the nutrient content claim “healthy” that are set forth in 21 CFR 101.65(d)(2).” In particular, the FDA noted that the identified KIND bars should not be labeled as “healthy” owing to the substantial amount of saturated fat in the bars. The FDA also found that the use of the terms “+ Antioxidants” was misleading as the bars are not in fact rich in antioxidants. The FDA also found that the use of the phrase “good source of fiber” was misleading because they are not a good source of fiber in light of the large amount of fat in the bars. The FDA warning letter is attached hereto as Exhibit 1.

21. Defendant KIND’s marketing of KIND All-Natural Bars as free from unnatural ingredients is false and misleading, as they contain unnatural soy lecithin. In most cases, and on information and belief, in this case, soy lecithin (an emulsifier and preservative) is not natural. As part of its laboratory manufacturing process, soybeans are immersed in hexane, a byproduct of petroleum refining. Hexane is a highly explosive neurotoxic chemical. In fact, the Environmental Protection Agency lists hexane as a hazardous air pollutant that may cause cancer and other serious health problems.<sup>4</sup> No reasonable consumer would believe that an ingredient subject to this chemical manufacturing process is “all-natural.”

22. By claiming that KIND All-Natural Bars are all natural and free from unnatural

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<sup>4</sup> An alternative and much less frequently used, more natural soy lecithin can be produced by an expeller-pressing process, at many times the expense of hexane-produced soy lecithin. Because of the desirability, and increased cost, of more naturally produced soy lecithin, those few products that use it specify that it is “expeller-pressed soy lecithin.” None of the KIND All-Natural Bars lists “expeller-pressed s lecithin” as an ingredient. Instead the KIND All-Natural Bars contain “soy-lecithin,” which is typically hexane-produced.

ingredients, Defendant KIND has deceived and misled reasonable consumers.

23. In fact, reasonable consumers, including Plaintiffs, purchased KIND Natural Products based upon the belief that they are natural choices and free from ingredients that are not natural. Reasonable consumers, however, would not deem KIND Natural Products natural or free from ingredients that are not natural if they knew that KIND Natural Products contain soy lecithin processed with toxic hexane.

24. Defendant KIND's false representations about KIND All-Natural Bars and KIND Healthy Bars are material in that they induced Plaintiffs and the class members to purchase KIND All-Natural Bars and KIND Healthy Bars instead of other, lower-priced or genuinely healthy or natural alternatives. Plaintiffs and the class members would not have purchased KIND All-Natural Bars and KIND Healthy Bars at all or at the price offered had they known the true facts about KIND All-Natural Bars and KIND Healthy Bars. Defendant's deceptive labeling allows it to charge a price premium as compared to other comparable products that are not mislabeled.

25. Plaintiffs and other members of the classes will continue to suffer injury if Defendant KIND's deceptive conduct is not enjoined. To prevent future injury to Plaintiffs and the class members, Defendant KIND must change the KIND All-Natural Bars and KIND Healthy Bars labels to remove all deceptive and misleading statements, or take such other actions as the Court deems just and proper.

### **CLASS ALLEGATIONS**

26. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure

23. Plaintiffs seek to represent the following classes (collectively, the "Classes"):

- A. The "KIND All-Natural Class" consists of all consumers in the United States who purchased KIND All-Natural Bars during the applicable liability period for their personal use, rather than for resale or distribution. In the alternative, should the Court conclude that certification of a nationwide class is not warranted, Plaintiffs will seek the certification of an "All-Natural Class" consisting of only New York residents.
- B. The "KIND Healthy Class" consists of all consumers in the United States

who purchased KIND Healthy Bars during the applicable liability period for their personal use, rather than for resale or distribution. In the alternative, should the Court conclude that certification of a nationwide class is not warranted, Plaintiffs will seek the certification of a “KIND Healthy Class” consisting of only New York residents.

27. The requirements of Federal Rule of Civil Procedure 23 are satisfied:

A. Numerosity: The members of each class are so numerous that joinder of all members is impracticable. While the exact number of class members is currently unknown to Plaintiffs, based on Defendant KIND’s volume of sales, Plaintiffs estimate that each class numbers in the thousands.

B. Commonality: There are questions of law and fact that are common to the class members and that predominate over individual questions (and therefore the requirements of Rule 23(b)(3) are met). These include the following:

- i. Whether Defendant KIND materially misrepresented to the class members that KIND All-Natural Bars are all-natural and free from unnatural ingredients;
- ii. Whether Defendant KIND materially misrepresented to the class members that KIND Healthy Bars are healthy choices that are helpful in maintaining healthy dietary choices;
- iii. Whether Defendant KIND’s misrepresentations and omissions were material to reasonable consumers;
- iv. Whether Defendant KIND’s labeling, marketing, and sale of KIND All-Natural Bars and/or KIND Healthy Bars constitutes deceptive conduct;
- v. Whether Defendant KIND’s conduct described above constitutes a breach of warranty;
- vi. Whether Defendant was unjustly enriched owing to its iniquitous conduct;

vii. Whether Defendant KIND's conduct injured consumers and, if so, the extent of the injury; and

viii. The appropriate remedies for Defendant KIND's conduct.

C. Typicality: Plaintiffs' claims are typical of the claims of the class because Plaintiffs suffered the same injury as the class members—*i.e.*, Plaintiffs purchased KIND All-Natural Bars and KIND Healthy Bars based on Defendant KIND's misleading representations about the qualities of those products.

D. Adequacy: Plaintiffs will fairly and adequately represent and protect the interests of the members of each class. Plaintiffs do not have any interests that are adverse to those of the class members. Plaintiffs have retained competent counsel experienced in class action litigation and intend to prosecute this action vigorously.

E. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Since the damages suffered by individual class members are relatively small, the expense and burden of individual litigation make it virtually impossible for the class members to seek redress for the wrongful conduct alleged, while an important public interest will be served by addressing the matter as a class action.

28. The prerequisites for maintaining a class action for injunctive or equitable relief under Federal Rule of Civil Procedure 23(b)(2) are met because Defendant KIND has acted or refused to act on grounds generally applicable to each class, thereby making appropriate final injunctive or equitable relief with respect to each class as a whole.

**FIRST CAUSE OF ACTION**  
**(Breach of Express Warranty)**

29. Plaintiffs incorporate by reference the allegations set forth above.

30. Defendant provided Plaintiffs and the members of the Classes with written express warranties including, but not limited to, warranties that the KIND All Natural Bars were all natural and the KIND Healthy Bars were healthy.

31. These representations became part of the basis of the bargain between Plaintiffs and members of the Classes, on the one hand, and Defendant KIND, on the other.

32. Defendant represented and warranted that the KIND All Natural Bars were all natural, but Defendant breached that warranty because the bars contain unnatural soy lecithin.

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

34. Defendant KIND made the above-described representations to induce Plaintiffs and members of the Classes to purchase KIND All-Natural Bars and/or KIND Healthy Bars, and Plaintiffs and members of the Classes relied on the representations in purchasing KIND All-Natural Bars and/or KIND Healthy Bars.

35. All conditions precedent to Defendant KIND's liability under the above-referenced contract have been performed by Plaintiffs and members of Classes, who paid the asking price for the KIND bars in question.

36. KIND's breach resulted in damages to Plaintiffs and the members of the Classes who bought the products but did not receive the goods as warranted.

37. As a result of Defendant KIND's breaches of express warranty, Plaintiffs and members of the Classes were damaged in the amount of the purchase price they paid for KIND All-Natural Bars and/or KIND Healthy Bars, and they were deprived of the benefit of their bargain and spent money on

bars that did not have any value or had less value than warranted, or products that they would not have purchased and used had they known the true facts about them.

38. Within a reasonable time after they knew or should have known of such breach, Plaintiffs, on behalf of herself and the other members of the Classes placed Defendant KIND on notice thereof.

39. THEREFORE, Plaintiffs prays for relief as set forth below.

**SECOND CAUSE OF ACTION**  
**(Violation Of New York General Business Law § 349)**

40. Plaintiffs incorporate by reference the allegations set forth above.

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

42. As fully alleged above, by advertising, marketing, distributing, and/or selling the KIND All-Natural Bars and KIND Healthy Bars with claims that they were “All Natural” and/or “Healthy” to Plaintiffs and members of the Classes, Defendant KIND engaged in, and continues to engage in, deceptive acts and practices because the KIND All-Natural Bars in fact contain an unnatural synthetic ingredient and the KIND Healthy Bars are not healthy.

43. Plaintiffs and the members of the Classes believed Defendant KIND’s representations that the KIND All-Natural Bars were “all natural” and that the KIND Healthy Bars were healthy and they would not have purchased the products at a premium price had they known the truth.

44. Plaintiffs and members of the Classes were injured in fact and lost money as a result of Defendant KIND’s conduct of improperly describing the products at issue. Plaintiffs and the members of the Classes paid for “all natural” and/or “healthy” products but did not receive such products.

45. The products Plaintiffs and members of the Classes received were worth less than the products for which they paid. Plaintiffs and the members of the Classes paid a premium price on account of Defendant KIND’s misrepresentations that KIND All-Natural Bars were “all natural” and/or

the KIND Healthy Bars were healthy.

46. By reason of the foregoing, Defendant KIND's conduct, as alleged herein, constitutes deceptive acts and practices in violation of GBL § 349, and Defendant is liable to Plaintiffs and members of the KIND All Natural Class and the KIND Healthy Class for the actual damages that they have suffered as a result of Defendant's actions. The amount of such damages is to be determined at trial, but will not be less than \$50.00 per violation. N.Y. Gen. Bus. Law § 349(h).

47. There is a strong nexus between the deceptive conduct at issue and the sales of KIND All Natural Bars and KIND Healthy Bars, as the products and labels are designed and disseminated from New York, the decision to use Defendant KIND's deceptive labels comes from New York, and Defendant KIND received payments from sales in New York. As a result, part of the transaction occurred in New York.

48. Plaintiffs and members of the KIND All Natural Class and the KIND Healthy Class seek to enjoin such unlawful deceptive acts and practices described above. Each of the members of the KIND All Natural Class and the KIND Healthy Class will be irreparably harmed unless the Court enjoins Defendant KIND's unlawful, deceptive actions in that Defendant KIND will continue to falsely and misleadingly advertise the products, as detailed herein.

49. Plaintiffs and members of the KIND All Natural Class and the KIND Healthy Class seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief prohibiting Defendant KIND from continuing to disseminate its false and misleading statements, and other relief allowable under GBL § 349.

50. THEREFORE, Plaintiffs prays for relief as set forth below.

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment)**

51. Plaintiffs incorporate by reference the allegations set forth above.

52. Plaintiffs assert this claim in the alternative.

53. As a result of Defendant KIND's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of KIND All-Natural Bars and/or KIND Healthy Bars, Defendant KIND was enriched at the expense of Plaintiffs and the other members of the Classes through the payment of the purchase price for KIND All-Natural Bars and/or KIND Healthy Bars.

54. Under the circumstances, it would be against equity and good conscience to permit Defendant KIND to retain the ill-gotten benefits that it received from Plaintiffs and the other members of the Classes, in light of the fact that the KIND All-Natural Bars and/or KIND Healthy Bars purchased by Plaintiffs and the other members of the Classes were not what Defendant KIND purported them to be. Thus, it would be unjust or inequitable for Defendant KIND to retain the benefit without restitution to Plaintiffs and the other members of the Classes for the monies paid to Defendant KIND for such KIND All-Natural Bars and/or KIND Healthy Bars.

THEREFORE, Plaintiffs pray for relief as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant KIND as follows:

- A. For an order enjoining Defendant KIND from continuing the unlawful practices set forth above;
- B. For an order requiring Defendant KIND to disgorge and make restitution of all monies Defendant KIND acquired by means of the unlawful practices set forth above;
- C. For compensatory damages according to proof;
- D. For statutory and punitive damages according to proof;
- E. For reasonable attorney fees and costs of suit;
- F. For pre-judgment and post-judgment interest; and

G. For such other relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial by jury on all claims so triable.

Date: April 17, 2015

**FINKELSTEIN, BLANKINSHIP,  
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*/s/ Todd S. Garber*

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