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12 *Attorneys for Plaintiff and the Proposed Class*

13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 DANIELLE COOPER, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 KIND LLC,

20 Defendant.

NO.

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

DEMAND FOR JURY

21
22 Plaintiff, Danielle Cooper (hereinafter referred to as “Plaintiff”), on behalf of herself and
23 all others similarly situated, by her undersigned counsel, for this class action Complaint against
24 Defendant, KIND LLC, and its present, former, or future direct and indirect parent companies,
25 subsidiaries, affiliates, agents, and/or other related entities (hereinafter referred to as “Defendant”
26 or “KIND”), alleges as follows:
27

I. INTRODUCTION

1
2 1. This class action is brought, first, on behalf of all individuals who purchased
3 Defendant’s products containing the unnatural ingredient soy lecithin and/or modified citrus
4 pectin (the All Natural Class) within the four years prior to the filing of this Complaint (“Class
5 Period”).

6 2. Keenly aware of the enormous advantage to be gained from the marketing and
7 sale of all natural products, Defendant developed a marketing scheme designed to exploit the
8 natural foods market. Describing its scheme as a “philosophy” and a “movement,” Defendant
9 urges consumers to be “KIND” to their bodies by purchasing all natural products that contain
10 only natural ingredients consumers can “see & pronounce.” Defendant declares that it is as
11 “transparent” as its wrappers. “No secret ingredients and absolutely nothing artificial here” is
12 Defendant’s pitch. Defendant’s pitch, however, is untrue.

13 3. All of Defendant’s product labels are prominently adorned with the false
14 representation “all natural.” For years, Defendant has actively misled Class Members, and
15 omitted, concealed, and failed to disclose the material truth to consumers that some of its
16 products contain the following unnatural ingredients: soy lecithin—a solvent processed by-
17 product of soybean oil production, which is not natural to the reasonable consumer; and modified
18 citrus pectin—an acid treated, molecularly altered fiber, which is not natural to the reasonable
19 consumer.

20 4. Among Defendant’s products containing soy lecithin, which are marketed and
21 sold nationwide to consumers, are varieties of KIND “Fruit & Nut” Bars, KIND “Plus” Bars,
22 KIND “Nuts & Spices” Bars, and KIND “Healthy Grains®” Bars (collectively “KIND All
23 Natural Products”).

24 5. Defendant prominently represents the KIND All Natural Products to be all
25 natural. However, the KIND All Natural Products are not all natural.

26 6. Defendant has profited greatly from inducing consumers to buy KIND All Natural
27 Products instead of other granola, snack, and nutrition bars not misleadingly labeled as “all

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

4 7. This class action is brought, second, on behalf of all individuals who purchased
5 Defendant’s products that are represented to be healthy but that, in fact, contain unhealthy levels
6 of saturated fat (the Healthy Class) within the Class Period.

7 8. Defendant’s products represented to be healthy despite containing unhealthy
8 levels of saturated fat include at least the following, as determined by the federal Food & Drug
9 Administration (FDA): KIND Fruit & Nut Almond & Apricot, KIND Fruit & Nut Almond &
10 Coconut, KIND Plus Peanut Butter Dark Chocolate + Protein, and KIND Plus Dark Chocolate
11 Cherry Cashew + Antioxidants (collectively “KIND Healthy Products”). (The KIND All Natural
12 Products and KIND Healthy Products are hereinafter collectively referred to as “KIND
13 Products.”)

14 9. Defendant represents KIND Healthy Products to be healthy when, in fact, the
15 KIND Healthy Products are not healthy.

16 10. Defendant has profited greatly from inducing consumers to buy KIND Healthy
17 Products instead of other granola, snack, and nutrition bar options not misleadingly labeled as
18 “healthy.”

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

22 12. Labeling KIND Healthy Products as “healthy” is deceptive and confusing. A
23 reasonable consumer purchases the KIND Healthy Products believing they are healthy choices.
24 Reasonable consumers, however, would not deem the KIND Healthy Products to be healthy if
25 they knew that the KIND Healthy Products are not healthy.

26 13. While it is undeniable that KIND Products have been a marketing sensation and
27 an unmitigated financial success, Defendant’s success has been the result of fraudulent,

1 unlawful, and unfair business practices in the marketing and sale of KIND Products. These
2 practices are plainly improper and unacceptable—particularly for a company that touts that “one
3 foundational principle underpins it all: there’s more to business than just profits.”
4

5 **II. PARTIES**

6 14. Plaintiff, Danielle Cooper, is a citizen of California, residing in San Francisco
7 County, California.

8 15. Defendant, KIND LLC, is a Delaware limited liability company with its principal
9 place of business in New York, New York. Defendant, thus, is a citizen of New York.
10 Defendant does business in California and throughout the United States.

11 **III. JURISDICTION AND VENUE**

12 16. Subject Matter Jurisdiction. This Court has subject matter jurisdiction under the
13 Class Action Fairness Act, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more
14 than 1,000 class members; (2) Plaintiff proposes a nationwide class action, while Defendant is a
15 citizen of the State of New York; and (3) the amount in controversy exceeds the sum of
16 \$5,000,000, exclusive of interest and costs.

17 17. Personal Jurisdiction. This Court has personal jurisdiction over Defendant
18 because Defendant does business in and throughout the State of California through the
19 promotion, sale, marketing, and distribution of its products, and the wrongful acts alleged in this
20 Complaint were committed in California.

21 18. Venue. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2) in
22 that a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this
23 District; and (2) 28 U.S.C. § 1391(b)(3) in that Defendant is subject to personal jurisdiction in
24 this District.
25
26
27

IV. FACTUAL ALLEGATIONS

A. “Natural” Is A Highly Profitable Descriptor

19. Product packaging is a significant vehicle through which the purveyors of natural and organic food products communicate material which they believe, and reasonably expect to be important to consumers in making purchasing decisions. For example, United States Food and Drug Administration (“FDA”) Commissioner, Margaret Hamburg, observed, in a 2009 media briefing, “[s]tudies show that consumers trust and believe the nutrition fact information and...use it to help them build a healthy diet.”

20. The health food market is no longer a niche market. Consumers have become increasingly health conscious since the 1970s. They seek out and covet food products that are natural and look for labels that convey these qualities in the food they choose to purchase. According to *Natural Foods Merchandiser*, a leading information provider for the natural, organic, and health food industry, the natural food industry enjoyed over \$81 billion in total revenue in 2010, and grew over 7% in 2009. The market for all natural and organic foods grew 9% in 2010 to \$39 billion, and 2010 sales were 63% higher than sales in 2005. Consumer demand for all natural and organic foods is expected to grow 103% between 2010 and 2015, corresponding to projected natural food industry sales exceeding \$78 billion in 2015.

21. The designations “natural” and “organic” appeal to consumers not only for their health attributes but the fact that they are kind to a person’s body. These designations also appeal to reasonable consumers’ interests in protecting the environment, promoting sustainable living and local farming, and minimizing both people’s and the Earth’s exposure to pesticides and other toxins.

22. According to a 2008 article in *The Economist*, “natural” products are a fast growing market because of the power of “mother nature,” which conjures up images of heart-warming, healthy wholesomeness, and simplicity. According to *The Economist*, a chief selling point of the organic food industry is that no man-made chemicals are used in the production process.

1 23. Any doubt about the money generating power of natural foods is dispelled by the
2 entry and success of large conglomerates in the health food market. For example, the well-
3 known *Kashi* brand name is owned by *Kellogg's*. The *Odwalla* brand has flourished and
4 expanded significantly since its purchase by the *Coca-Cola Company* in 2001 for \$181 million
5 dollars.

6
7 **B. The KIND Marketing Scheme**

8 24. KIND was founded by Daniel Lubitsky in 2003. Frustrated that he could not find
9 the type of healthy, portable snack that he craved, Lubitsky started KIND with the mission to
10 produce tasty and attractive offerings with only ingredients that consumers could “see and
11 pronounce.”

12 25. In a December 15, 2011 interview with *The Wall Street Journal* entitled “Healthy
13 Cravings Feeds ‘Kind’ Bars,” Lubitsky offered the following marketing approach that separates
14 KIND Products from other health food makers:

15 The way we win in the marketplace is by being authentic and
16 transparent. It’s not just the transparent wrapper. It’s the process
17 we use, the ingredients we use, the names of our products. We
18 don’t come up with hokey names. We tell you exactly what the
19 products are that you get.

20 26. This marketing approach, which Defendant presents to consumers and others as
21 its “philosophy” and as a “movement,” permeates Defendant’s extensive self-promotion
22 designed to present Defendant as a transparent and responsible purveyor of snacks that
23 consumers can trust to be natural and healthy.

24 27. KIND’s website mission statement reads:

25 There’s healthy. There’s tasty. Then there’s healthy and tasty. At
26 KIND, we believe that you deserve both. That’s why you’ll find
27 that all of our snacks are pretty much the nirvana of healthful
tastiness. What began with just 8 bar varieties in 2004 has grown
to over 22 bars and 6 Healthy Grains snackable clusters, and a
multitude of new recipes being produced to delight your taste buds
and keep your body happy.

1 28. Defendant’s marketing, including its website, reiterates this core message:

2 Ingredients you can see & pronounce

3 We believe if you can’t pronounce an ingredient, it shouldn’t go in
4 your body. Actually, it shouldn’t even go in your pantry. That’s
5 why all KIND Healthy Snacks are made from all-natural whole
6 nuts, fruits and whole grains. No secret ingredients and absolutely
7 nothing artificial here. Just a delicious way of getting your body
essential nutrients like fiber, protein and antioxidants (to name a
few).

8 29. Echoing this sentiment on its website, Defendant asserts that “mysteries belong in
9 novels, not in your food.”

10 30. Furthermore, on its website, Defendant summarizes its core principle that “One
11 foundational belief underpins it all: There’s more to business than just profit.”

12 31. These marketing statements, and others, including its website content, underscore
13 and validate Defendant’s “philosophy” and “movement,” which implores consumers to be kind,
14 like Defendant, in all things, including what they put in their body. Defendant repeatedly
15 reference the terms “healthy,” “natural,” and “all natural” in describing its KIND Products.
16 Photographs of healthy looking people, doing healthy things, with depictions of “KIND Healthy
17 Snacks” on shirts and vans, are featured prominently. Consumers are asked to share their acts of
18 kindness with other KIND Product customers. Defendant undertakes “missions” and seeks out
19 consumer “pledges” that emphasize being kind, like Defendant, in all things. This marketing
20 scheme is designed to and does in fact promote Defendant, giving its alleged “philosophy” and
21 “movement” credibility as a trusted and transparent purveyor of natural health foods with the
22 utmost integrity.

23 32. Defendant’s marketing scheme has catapulted KIND founder, Lubitsky, to the
24 forefront of national media as a marketing genius. On the strength of this “philosophy” and
25 “movement,” Lubitsky and Defendant have succeeded in the creation of strategic alliances with
26 health conscious businesses such as Starbucks and Whole Foods, which have provided a massive
27 distribution network for KIND Products.

1 33. Defendant's financial performance reflects the enormous success of its marketing
2 scheme. In 2008, Defendant was able to attract a \$20 million dollar private equity investment by
3 VMG Capital. By 2010, Defendant's annual revenues were approximately \$50 million dollars.
4 In 2011, annual revenues were over \$100 million. In 2014, Defendant succeeded to the point
5 that it valued itself at \$728.5 million dollars based on 3.7 times its 2013 annual revenue of nearly
6 \$197 million. Lubitsky himself profited so much from Defendant's skyrocketing financial
7 success that, in early 2014, he was able to buy back VMG Capital's \$20 million minority
8 investment for \$220 million dollars, including \$200 million in cash.

9 34. Defendant's success has been awe-inspiring. This success would be laudable if
10 its core marketing representation of all natural and healthy KIND Products were actually
11 transparent and honest.

12 **C. KIND All Natural Products – “All Natural”?**

13 35. During the Class Period, Defendant has sold approximately 22 different KIND
14 Products, including the following fourteen (14), which are currently featured on its website:
15 Caramel Almond & Sea Salt, Dark Chocolate Cherry Cashew + Antioxidants, Pomegranate
16 Blueberry Pistachio + Antioxidants, Maple Glazed Pecan & Sea Salt, Dark Chocolate Cinnamon
17 Pecan, Almond & Coconut, Blueberry Pecan + Fiber, Dark Chocolate Chili Almond, Almond
18 Walnut Macadamia With Peanuts +Protein, Fruit & Nuts in Yogurt, Nut Delight, Dark Chocolate
19 Mocha Almond, Almonds & Apricots in Yogurt, and Apple Cinnamon & Pecan.

20 36. All KIND Products, including those identified immediately above, feature the
21 following prominent labelling representation and warranty on the front of the bar's packaging:
22 “ALL NATURAL” followed by a check mark.

23 37. All KIND Products, including those specifically identified above, contain the
24 ingredient soy lecithin.

25 38. Several KIND Products, including Fruit and Nut Delight and Almond and Apricot
26 contain the ingredient citrus pectin.

1 **D. KIND All Natural Products Are Not “All Natural”**

2 39. Defendant represents prominently on its consumer packaging that its KIND
3 Products are “all natural.” They are not.

4 40. The New Oxford American Dictionary defines “natural” as “existing in or caused
5 by nature; not made or caused by humankind.”¹ “All” is defined as “the whole quantity or extent
6 of a group or thing.”²

7 41. By labelling, Defendant represents that “the whole quantity [and] extent” of the
8 ingredients making up its KIND Products “[exist] in or [are] caused by nature; not made or
9 caused by humankind.”³

10 42. The presence of highly and severely processed soy lecithin and synthetic and
11 artificial modified citrus pectin, render Defendant’s description “all natural” false and misleading
12 under an objective reasonable consumer standard.

13 43. The FDA has not promulgated a regulation defining the term “natural” or “all
14 natural.” The FDA, however, has established a policy defining the outer boundaries of the use of
15 the term “natural” by clarifying that a product is not natural if it contains color, artificial flavors,
16 or synthetic substances. *See*

17 <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and

18 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>. Specifically, the FDA

19 states: “the agency will maintain its policy (Ref. 32) regarding the use of ‘natural,’ as meaning
20 that nothing artificial or synthetic (including all color activities regardless of source) has been

21 included in, or has been added to, a food that would not normally be expected to be in the food.”

22 58 Fed. Reg. 2302, 2407 (Jan. 6, 2003). Although this definition is not a regulation, it is the

23 “most definitive statement of the agency’s view.”

24
25
26 ¹ New Oxford American Dictionary 1167 (3d ed. 2010).

27 ² *Id.*

³ *Id.*

1 44. Courts and those in the food industry have requested that the FDA provide a
2 regulatory definition of “natural.” The FDA has thus far declined because the time required to
3 conduct a public hearing would take years to complete.

4 45. The United States Department of Agriculture (“USDA”), which regulates the
5 labeling of meat and poultry, has also set limits, offering instructive and helpful guidance on the
6 use of the term “natural.” The USDA’s Food Safety and Inspection Service dictates that the term
7 “natural” may be used on labeling of meat and poultry products so long as “(1) the product does
8 not contain any artificial flavor or flavorings, color ingredient, or chemical preservatives...or any
9 other artificial or synthetic ingredient, and (2) the product and its ingredients are not more than
10 minimally processed.”⁴

11 46. According to the USDA, “[m]inimal processing may include: (a) those traditional
12 processes used to make food edible or to preserve it or to make it safe for human consumption,
13 e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which
14 do not fundamentally alter the raw product and/or which only separate a whole, intact food into
15 component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits
16 to produce juices.” However, “[r]elatively severe processes, e.g., solvent extraction, acid
17 hydrolysis, and chemical bleaching would clearly be considered more than minimal
18 processing.”⁵

19 47. Under the USDA’s guidelines, if a product contains artificial or synthetic
20 ingredients, or is severely processed, the product can still be labeled “all natural” but only if: (1)
21 the ingredient would not significantly change the character of the product to the point that it
22 could no longer be considered a natural product; and (2) *“the natural claim [is] qualified to*
23

24 _____
25
26 ⁴ See United States Department of Agriculture Food Standards and Labeling Policy book
27 available at http://www/fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf
(last visited February 3, 2012).

⁵ *Id.*

1 *clearly and conspicuously identify the ingredient, e.g., all natural or all natural ingredients*
 2 *except dextrose, modified food starch, etc.*”⁶ (emphasis added).

3 48. Congress has elsewhere defined “synthetic” to mean “a substance that is
 4 formulated or manufactured by a chemical process or by a process that chemically changes a
 5 substance extracted from naturally occurring plant, animal, or mineral sources, except that such
 6 term shall not apply to substances created by naturally occurring biological processes.” 7 U.S.C.
 7 § 6502(21). *See also* 7 C.F.R. § 205.1, *et seq.* (defining, in USDA’s National Organic Program
 8 regulations, a “nonsynthetic” as “a substance that is derived from mineral, plant, or animal
 9 matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7
 10 U.S.C. § 6502(21)”).

11 49. The terms “synthetic” and “artificial” closely resemble each other and, in lay use,
 12 are considered synonymous. The scientific community defines “artificial” as something not
 13 found in nature, whereas “synthetic” is defined as something man-made, whether it merely
 14 mimics nature or is not found in nature.⁷ In the scientific community, “synthetic” includes
 15 substances that are also artificial, but a synthetic substance also can be artificial or non-artificial.⁸
 16 The lay understanding of “artificial” is consistent with the scientific community’s definition of
 17 “synthetic.” Oxford Dictionaries, at www.oxforddictionaries.com, defines “artificial” as “made
 18 or produced by human beings rather than occurring naturally.” The same reference source
 19 describes “synthetic” as a synonym of “artificial,” and separately defines “synthetic” as
 20 something “made by chemical synthesis.”

21 50. **Soy Lecithin.** Soy Lecithin is a processed by-product of soybean oil production.
 22 It is derived from the sludge left after crude oil undergoes a degumming process. More
 23

24
 25 ⁶ *Id.*

26 ⁷ Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue
 27 1 (July/August/September 2010), available at
<http://ncbi.nlm.nih.gov/pmc/articles/PMC3109441/>.

⁸ *Id.*

1 specifically, to produce soybean oil, soybeans are ground into small fragments and then flakes.
2 The flakes are then combined with hexane or other similar solvent. Because soybean oil is
3 soluble in hexane, this process removes the oil from the flakes—leaving crude soybean oil
4 containing gums or sludge—including a large quantity of hexane or similar solvent. The
5 resulting product is subjected to heat to remove the solvents. Clarified soybean oil is then
6 produced when the gum and water are mechanically separated from the crude soybean oil. The
7 waste sludge or gum left remaining is then dried to produce lecithin.

8 51. Federal Regulations list hexane as a “synthetic organic chemical manufacturing
9 industry chemical.” *See* 40 C.F.R. 63, Subpt. F, Tbl. 1. Hexane is a constituent of gasoline
10 derived from crude oil, natural gas liquids, or petroleum refinery processing. 40 C.F.R.
11 § 99.2155. The United States Occupational Safety and Health Administration (“OSHA”) defines
12 hexane as a narcotic and neurotoxic agent that can cause irritation to the eyes and upper
13 respiratory tract. Commercial hexane also contains benzene, a known hematologic poison linked
14 to leukemia. Hexane and hexane-processed ingredients cannot reasonably or responsibly
15 classified or described as “natural” or included as an ingredient in an “all natural” food product.

16 52. Soy lecithin is not minimally processed, but rather heavily and severely
17 processed, using volatile solvents found in gasoline and other fuels. It is made or produced by
18 humans through the processes described above and is therefore not “natural” to the reasonable
19 consumer of food products.

20 53. **Modified Citrus Pectin (“MCP”).** Citrus pectin is a fiber plentiful in citrus fruit
21 rind. It is undigestible in the human body. MCP is a form of pectin that has been altered through
22 human controlled processes so that it can be more easily absorbed in the human digestive tract.
23 MCP is made when naturally occurring citrus pectin’s pH is altered, generally through treatment
24 with sodium hydroxide and hydrochloric acid. The resulting breakdown or depolymerization of
25 the natural pectin creates a substance with shorter molecular strands comprised predominantly of
26 D-polygalacturonates, which makes MCP more easily digestible to humans.

1 54. Because it is not minimally processed, but rather heavily and severely processed,
2 using acids like hydrochloric acid, which break down the naturally occurring molecular chains to
3 create resulting smaller molecular chains, which are more easily digestible to humans, and is
4 produced by humans through the processes described which are not naturally occurring, MCP is
5 not natural to the reasonable consumer of food products.

6
7 **E. KIND Healthy Products – “Healthy”?**

8 55. During the Class Period, Defendant has sold numerous products represented to be
9 healthy, including KIND Fruit & Nut Almond & Apricot, KIND Fruit & Nut Almond &
10 Coconut, KIND Plus Peanut Butter Dark Chocolate + Protein, and KIND Plus Dark Chocolate
11 Cherry Cashew + Antioxidants.

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

16 57. Should any consumers further research their purchasing options, Defendant’s
17 online marketing confirms the representations made on the packaging of the KIND Healthy
18 Products (“There’s healthy. There’s tasty. Then there’s healthy and tasty. At KIND, we believe
19 you deserve both—we call it our brAND philosophy. That’s why you’ll find all of our snacks
20 are pretty much the nirvana of healthful tastiness.”⁹). Thus, Defendant’s marketing and website
21 confirm its intent to create consumer belief KIND Healthy Products are superior choices useful
22 in maintaining a healthy diet. Reasonable consumers would believe these representations, but
23 they would be wrong.

24
25
26
27 ⁹ KIND LLC / KIND Healthy Snacks, <http://www.kindsnacks.com/about/> (last visited April 17, 2015).

1 **F. KIND Healthy Products Are Not “Healthy”**

2 58. None of the KIND Products meet the requirements for use of the term “healthy”
3 that are set forth in 21 CFR 101.65(d)(2).

4 59. Defendant’s marketing of KIND Healthy Products as healthy and useful in
5 maintaining healthy dietary practices is false and misleading. In fact, KIND Healthy Products
6 have numerous unhealthy facets, including that:

7 • All KIND Healthy Products contain excessive levels of saturated fats—as much
8 as 5 grams of saturated fats per 40 grams of food;

9 • All KIND Healthy Products are labeled as good sources of fiber, but their high
10 content of saturated fats do not make them superior sources of fiber in comparison to available
11 options lower in saturated fats;

12 • KIND “Plus” Peanut Butter Dark Chocolate + Protein bar, a KIND Healthy
13 Product, advertises that it has some added degree of protein benefits, when in fact it contains just
14 7 grams of protein, approximately what would be expected for a bar of this type and ingredients;
15 and

16 • KIND “Plus” Dark Chocolate Cherry Cashew + Antioxidants bar, a KIND
17 Healthy Product, advertises that it has some added degree of antioxidant benefit, when in fact it
18 contains no special antioxidant benefit beyond what would be expected from a bar of this type
19 and ingredients.

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

22 61. Defendant’s packaging of KIND Healthy Products unequivocally demonstrates its
23 intent to persuade consumers that KIND Healthy Products are healthy choices that impart
24 various general and specific health benefits.

25 62. Reasonable consumers, including Plaintiff, purchased KIND Healthy Products
26 based on the belief that they are healthy and superior to less-healthy options available.

27 Reasonable consumers, however, would not deem KIND Healthy Products healthy if they knew

1 that KIND Healthy Products are high in saturated fat and do not impart the additional benefits
2 implied on the labeling.

3 63. In fact, the FDA recently concluded that Defendant's health claims are misleading
4 and in direct contravention of FDA regulations. On March 17, 2015, the FDA issued a Warning
5 Letter to Defendant. After reviewing the labels on the KIND Healthy Products, the FDA
6 determined that the labels are in violation of Section 403 of the Federal Food, Drug, and
7 Cosmetic Act, 21 U.S.C. § 343.

8 64. In particular, the FDA concluded that the KIND Healthy Products are mislabeled
9 because they make false nutrient health claims. The FDA stated that "the labels of the
10 aforementioned products bear the claim 'Healthy and tasty, convenient and wholesome' in
11 connection with statements such as:

- 12 • 'good source of fiber,'
- 13 • 'no trans fats,'
- 14 • 'very low sodium' [Kind Fruit & Nut Almond & Apricot, Kind Fruit & Nut
15 Almond & Coconut, and Kind Plus Dark Chocolate Cherry Cashew +
16 Antioxidants],
- 17 • 'low sodium' [Kind Plus Peanut Butter Dark Chocolate + Protein],
- 18 • '+ antioxidants' [Kind Plus Dark Chocolate Cherry Cashew + Antioxidants],
- 19 • '50% DV antioxidants vitamins A, C and E' [Kind Plus Dark Chocolate Cherry
20 Cashew + Antioxidants],
- 21 • '+ protein' [Kind Plus Peanut Butter Dark Chocolate + Protein], and
- 22 • '7g protein' [Kind Plus Peanut Butter Dark Chocolate + Protein]."

23 The FDA concluded that "none of [Defendant's] products listed above meet the requirements for
24 use of the nutrient content claim "healthy" that are set forth in 21 CFR 101.65(d)(2)." In
25 particular, the FDA noted that the identified KIND Products should not be labeled as "healthy"
26 due to the substantial amount of saturated fat in the KIND Products. The FDA also found that
27 the use of the terms "+ Antioxidants" was misleading as the KIND Products are not in fact rich

1 in antioxidants. The FDA also found that the use of the phrase “good source of fiber” was
 2 misleading because they are not a good source of fiber in light of the large amount of fat in the
 3 KIND Products. The FDA Warning Letter is attached hereto as Exhibit 1.

4 **G. Plaintiff’s Purchase of KIND Products**

5 65. Over the past year, Plaintiff regularly purchased KIND Products in California
 6 including San Francisco, California. Plaintiff regularly purchased these KIND Products at
 7 Whole Foods. The cost of each KIND Product Plaintiff purchased was approximately \$1.75.

8 66. The packaging on the KIND Products that Plaintiff purchased represented and
 9 promised that the KIND Products were prominently labelled “all natural.” Plaintiff specifically
 10 relied on this labelling, which represented the product as a healthy, natural food product. These
 11 facts were material and important to her in making the decision to purchase KIND Products.
 12 Had Defendant not misrepresented, but rather disclosed the truth that KIND Products cannot be
 13 reasonably or responsibly described as all natural, Plaintiff would not have purchased the KIND
 14 Products. Furthermore, Plaintiff relied on Defendant’s misrepresentation that the KIND
 15 Products were healthy. Plaintiff would not have purchased the KIND Products had she known
 16 the KIND Products were not, in fact, healthy.

17 **V. CLASS ACTION ALLEGATIONS**

18 67. Class Definition. Pursuant to CR 23(b)(2) and (b)(3), Plaintiff brings this case as
 19 a class action on behalf of National Classes and California Sub-Classes defined as follows:
 20

21 All Natural Class: All persons in the United States who purchased
 22 KIND All Natural Products for their personal use at any time in the
 23 period that begins four years before the date of filing this
 24 Complaint to trial.

25 Healthy Class: All persons in the United States who purchased
 26 KIND Healthy Products for their personal use at any time in the
 27 period that begins four years before the date of filing this
 28 Complaint to trial.

California All Natural Sub-Class: All persons in the State of
 California who purchased KIND All Natural Products for their

1 personal use at any time in the period that begins four years before
2 the date of filing this Complaint to trial.

3 California Healthy Sub-Class: All persons in the State of
4 California who purchased KIND Healthy Products for their
5 personal use at any time in the period that begins four years before
6 the date of filing this Complaint to trial.

7 Excluded from the All Natural Class, Healthy Class, California All Natural Sub-Class, and
8 California Healthy Sub-Class (collectively referred to as the “Classes”) are Defendant, any entity
9 in which Defendant has a controlling interest or that has a controlling interest in Defendant, and
10 Defendant’s legal representatives, assignees, and successors. Also excluded are the judge to
11 whom this case is assigned and any member of the judge’s immediate family.

12 68. Numerosity. The Classes are each so numerous that joinder of all members is
13 impracticable. On information and belief, the Classes each have more than 1,000 members.
14 Moreover, the disposition of the claims of the Classes in a single action will provide substantial
15 benefits to all parties and the Court.

16 69. Commonality. There are numerous questions of law and fact common to Plaintiff
17 and Class Members. These common questions of law and fact include, but are not limited to, the
18 following:

19 a. Whether Defendant materially misrepresented to Class Members that
20 KIND All Natural Products are all natural and free from unnatural ingredients;

21 b. Whether Defendant materially misrepresented to Class Members that
22 KIND Healthy Products are healthy choices that are helpful in maintaining healthy dietary
23 choices;

24 c. Whether Defendant’s misrepresentations and omissions were material to
25 reasonable consumers;

26 d. Whether Defendant’s labeling, marketing, and sale of KIND All Natural
27 Products and/or KIND Healthy Products constitutes deceptive conduct;

e. Whether Defendant’s conduct described above constitutes a breach of
warranty;

1 f. Whether Defendant was unjustly enriched due to its iniquitous conduct;

2 g. Whether Defendant's conduct injured consumers and, if so, the extent of
3 the injury; and

4 h. The appropriate remedies for Defendant's conduct.

5 70. Typicality. Plaintiff's claims are typical of the claims of the Classes. Plaintiff
6 suffered the same injury as Class Members—*i.e.*, Plaintiff purchased KIND All Natural Products
7 and KIND Healthy Products based on Defendant's misleading representations about the quality
8 and nature of those products.

9 71. Adequacy. Plaintiff will fairly and adequately protect the interests of the Classes.
10 Plaintiff has retained competent and capable attorneys with significant experience in complex
11 and class action litigation, including consumer class actions. Plaintiff and her counsel are
12 committed to prosecuting this action vigorously on behalf of the Classes and have the financial
13 resources to do so. Neither Plaintiff nor her counsel have interests that are contrary to or that
14 conflict with those of the proposed Classes.

15 72. Predominance. Defendant has engaged in a common course of conduct toward
16 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff
17 and Class Members predominate over any individual issues. Adjudication of these common
18 issues in a single action has important and desirable advantages of judicial economy.

19 73. Superiority. A class action is the superior method for the fair and efficient
20 adjudication of this controversy. In this regard, the Class Members' interests in individually
21 controlling the prosecution of separate actions is low given the magnitude, burden, and expense
22 of individual prosecutions against large corporations such as Defendant. It is desirable to
23 concentrate this litigation in this forum to avoid burdening the courts with individual lawsuits.
24 Individualized litigation presents a potential for inconsistent or contradictory judgments, and also
25 increases the delay and expense to all parties and the court system presented by the legal and
26 factual issues of this case. By contrast, the class action procedure here will have no management
27 difficulties. Defendant's records and the records available publicly will easily identify the Class

1 Members. The same common documents and testimony will be used to prove Plaintiff's claims
2 as well as the claims of Class Members. Finally, proceeding as a class action provides the
3 benefits of single adjudication, economies of scale, and comprehensive supervision by a single
4 court.

5 74. Injunctive and Declaratory Relief Appropriate. A class action is appropriate
6 under Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds that
7 apply generally to Class Members, so that final injunctive relief or corresponding declaratory
8 relief is appropriate as to all Class Members.

9
10 **VI. FIRST CLAIM FOR RELIEF**
11 **(Breach of Express Warranty –All Natural Class, Healthy Class, California All Natural**
12 **Sub-Class & California Healthy Sub-Class)**

13 75. Plaintiff realleges and incorporates by reference each and every allegation set
14 forth in the preceding paragraphs.

15 76. Defendant provided Plaintiff and the Class Members with written express
16 warranties including, but not limited to, warranties that the KIND All Natural Products were all
17 natural and the KIND Healthy Products were healthy.

18 77. These representations became part of the basis of the bargain between Plaintiff
19 and Class Members, on the one hand, and Defendant, on the other.

20 78. Defendant represented and warranted that the KIND All Natural Products were all
21 natural, but Defendant breached that warranty because the KIND Products contain unnatural soy
22 lecithin and MCP.

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

26 80. Defendant made the above-described representations to induce Plaintiff and Class
27 Members to purchase KIND Products, and Plaintiff and Class Members relied on the
representations in purchasing KIND Products.

1 81. All conditions precedent to Defendant's liability under the above-referenced
2 contract have been performed by Plaintiff and Class Members, who paid the asking price for the
3 KIND Products in question.

4 82. Defendant's breach resulted in damages to Plaintiff and Class Members, who
5 bought the products but did not receive the goods as warranted.

6 83. As a result of Defendant's breaches of express warranty, Plaintiff and Class
7 Members were damaged in the amount of the purchase price they paid for KIND Products.
8 Plaintiff and Class Members were deprived of the benefit of their bargain and spent money on
9 KIND Products that did not have any value or had less value than warranted. Alternatively,
10 Plaintiff and Class Members would not have purchased and the KIND Products had they known
11 the true facts about them.

12
13 **VII. SECOND CLAIM FOR RELIEF**
14 **(Breach of Implied Warranty of Merchantability –All Natural Class, Healthy Class,**
15 **California All Natural Sub-Class & California Healthy Sub-Class)**

16 84. Plaintiff realleges and incorporates by reference each and every allegation set
17 forth in the preceding paragraphs.

18 85. In designing, packaging, marketing, distributing, and/or selling the KIND
19 Products, Defendant warranted that the KIND Products were fit for their intended purpose in that
20 the KIND Products were all natural and healthy as labelled.

21 86. Defendant breached the warranty implied in the contract for the sale of the KIND
22 Products because the KIND Products could not pass without objection in the trade under the
23 label descriptions, the goods were not of fair or average quantity within the description, and the
24 goods were unfit for their intended and ordinary purpose. Accordingly, Plaintiff and Class
25 Members did not receive merchantable goods as impliedly warranted by Defendant.

26 87. Plaintiff and Class Members purchased the KIND Products in reliance on
27 Defendant's skill and judgment and the implied warranties of fitness for their intended purpose.

88. The KIND Products were not altered by Plaintiff or Class Members.

1 89. The KIND Products were defective when they left the exclusive control of the
2 Defendant.

3 90. Defendant knew that the KIND Products would be purchased and consumed
4 without additional testing by Plaintiff and Class Members.

5 91. The KIND Products were defectively designed and unfit for their intended
6 purpose, and Plaintiff and Class Members did not receive the goods as warranted by Defendant.

7 92. As a direct and proximate cause of Defendant's breach of the implied warranty,
8 Plaintiff and Class Members have been injured and harmed because (1) they would not have
9 purchased the KIND Products on the same terms if they had known the products' true contents;
10 (2) they paid a price premium for the KIND Products based on Defendant's representations that
11 they were all natural and healthy; and (3) the KIND Products did not have the characteristics,
12 ingredients, uses, benefits, or quantities promised.

13
14 **VIII. THIRD CLAIM FOR RELIEF**
15 **(Unjust Enrichment/Common Law Claim for Restitution – All Natural Class, Healthy**
16 **Class, California All Natural Sub-Class & California Healthy Sub-Class)**

17 93. Plaintiff realleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraphs.

19 94. Because of their wrongful acts and omissions, Defendant charged a higher price
20 for the KIND Products than the products' true value and Defendant obtained monies that
21 rightfully belong to Plaintiff and Class Members.

22 95. Defendant enjoyed the benefit of increased financial gains, to the detriment of
23 Plaintiff and Class Members. It would be inequitable and unjust for Defendant to retain these
24 wrongfully obtained profits.

25 96. Plaintiff, therefore, seeks an order requiring Defendant to make restitution to her
26 and Class Members.

1 **IX. FOURTH CLAIM FOR RELIEF**
2 **(Negligent Misrepresentation –All Natural Class, Healthy Class, California All Natural**
3 **Sub-Class & California Healthy Sub-Class)**

4 97. Plaintiff realleges and incorporates by reference each and every allegation set
5 forth in the preceding paragraphs.

6 98. Defendant made representations to Plaintiff and Class Members regarding the
7 contents and healthiness of the KIND Products that were untrue.

8 99. Defendant had no reasonable grounds for believing these representations were
9 true when they made them, yet they intended that Plaintiff and Class Members would rely on
10 these representations.

11 100. Plaintiff and Class Members reasonably relied on Defendant’s representations and
12 as a result Plaintiff and Class Members were harmed.

13 **X. FIFTH CLAIM FOR RELIEF**
14 **(Violation of New York General Business Law § 349 – All Natural Class & Healthy Class)**

15 101. Plaintiff realleges and incorporates by reference each and every allegation set
16 forth in the preceding paragraphs.

17 102. G.B.L. § 349 prohibits “deceptive acts or practices in the conduct of any business,
18 trade or commerce or in the furnishing of any service in [New York].”

19 103. As fully alleged above, by advertising, marketing, distributing, and/or selling the
20 KIND All Natural Products and KIND Healthy Products with claims that they were all natural
21 and/or healthy to Plaintiff and All Natural Class Members and Healthy Class Members
22 (collectively referred to as “National Class Members”), Defendant engaged in, and continues to
23 engage in, deceptive acts and practices because the KIND All Natural Products in fact contain
24 unnatural synthetic ingredients and the KIND Healthy Products are not healthy.

25 104. Plaintiff and National Class Members believed Defendant’s representations that
26 the KIND All Natural Products were all natural and that the KIND Healthy Products were
27 healthy, and they would not have purchased the products at a premium price had they known the
truth.

1 105. Plaintiff and National Class Members were injured in fact and lost money as a
2 result of Defendant's conduct of improperly describing the products at issue. Plaintiff and the
3 National Class Members paid for all natural and/or healthy products but did not receive such
4 products.

5 106. The products Plaintiff and National Class Members received were worth less than
6 the products for which they paid. Plaintiff and National Class Members paid a price premium on
7 account of Defendant's misrepresentations that KIND All Natural Products were all natural
8 and/or the KIND Healthy Products were healthy.

9 107. The foregoing acts and practices were directed at consumers.

10 108. The foregoing deceptive acts and practices are misleading in a material way
11 because the fundamentally misrepresent the ingredients in the KIND Products.

12 109. Plaintiff and National Class Members were injured as a direct and proximate
13 result of Defendant's violation of G.B.L. § 349 because they paid for the Product, which they
14 would not have purchased had they known the true facts.

15 110. Application of G.B.L. § 349 to all National Class Members, regardless of their
16 state or residence, is appropriate because, *inter alia*:

17 a. Defendant's nationwide sales operations are controlled, directed, and
18 originate from New York;

19 b. Defendant's marketing operations, including the decisions regarding how
20 to advertise, promote, and sell the KIND Products, are made in New York, and internal
21 marketing personnel and external marketing consultants all are based there;

22 c. Defendant's sales force, customer service, and Internet website and
23 advertising operations are controlled, directed and originate in New York;

24 d. Defendant's principal place of business is in New York;

25 e. All significant employees of Defendant are based in New York;

1 f. The facts and circumstances of this case include such numerous contacts
2 with the State of New York as to create a state interest in applying New York's consumer laws to
3 Defendant, making application of New York law to National Class Members appropriate.

4 111. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes
5 deceptive acts and practices in violation of G.B.L. § 349, and Defendant is liable to Plaintiff and
6 National Class Members for the actual damages that they have suffered as a result of
7 Defendant's actions. The amount of such damages is to be determined at trial, but will not be less
8 than \$50.00 per violation. N.Y. Gen. Bus. Law § 349(h).

9 112. Plaintiff and National Class Members seek to enjoin such unlawful deceptive acts
10 and practices described above. Each National Class Member will be irreparably harmed unless
11 the Court enjoins Defendant's unlawful, deceptive actions in that Defendant will continue to
12 falsely and misleadingly advertise the products, as detailed herein.

13 113. Plaintiff and National Class Members seek declaratory relief, restitution for
14 monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief
15 prohibiting Defendant from continuing to disseminate its false and misleading statements, and
16 other relief allowable under G.B.L. § 349.

17
18 **XI. SIXTH CLAIM FOR RELIEF**
(Violation of New York General Business Law § 350 – All Natural Class & Healthy Class)

19 114. Plaintiff realleges and incorporates by reference each and every allegation set
20 forth in the preceding paragraphs.

21 115. By the acts and conduct alleged herein, Defendant committed false advertising in
22 the conduct of business, trade, or commerce in the state of New York.

23 116. G.B.L. § 350-a defines "false advertising" as "advertising, including labeling, of a
24 commodity, or of the kind, character, terms or conditions of any employment opportunity if such
25 advertising is misleading in a material respect."
26
27

1 117. The foregoing false advertisements are misleading in a material way because they
2 fundamentally misrepresent the nature of the ingredients in the KIND Products to induce
3 consumers to purchase the products.

4 118. Plaintiff and National Class Members were injured as a direct and proximate
5 result of Defendant's violation of G.B.L. § 350 because they paid for the KIND Products, which
6 they would not have purchased had they known the true facts.

7 119. Application of G.B.L. § 350 to National Class Members, regardless of their state
8 or residence, is appropriate because, *inter alia*:

9 a. Defendant's nationwide sales operations are controlled, directed and
10 originate from New York;

11 b. Defendant's marketing operations, including the decisions regarding how
12 to advertise, promote, and sell the KIND Products, are made in New York, and internal
13 marketing personnel and external marketing consultants all are based there;

14 c. Defendant's sales force, customer service, and Internet website and
15 advertising operations are controlled, directed, and originate in New York;

16 d. Defendant's principal place of business is in New York;

17 e. All significant employees of Defendant are based in New York;

18 f. The facts and circumstances of this case include such numerous contacts
19 with the State of New York as to create a state interest in applying New York's consumer laws to
20 Defendant, making application of New York law to the entire Class appropriate.

21 120. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes
22 false advertising in violation of G.B.L. § 350, and Defendant is liable to Plaintiff and National
23 Class Members for the actual damages that they have suffered as a result of Defendant's actions.
24 The amount of such damages is to be determined at trial, but will be consistent with the damages
25 prescribed in G.B.L. § 350(e).

26 121. Plaintiff and National Class Members seek to enjoin such unlawful acts and
27 practices described above. Each National Class Member will be irreparably harmed unless the

1 Court enjoins Defendant's unlawful, deceptive actions in that Defendant will continue to falsely
2 and misleadingly advertise the products, as detailed herein.

3 122. Plaintiff and National Class Members seek declaratory relief, restitution for
4 monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief
5 prohibiting Defendant from continuing to disseminate its false and misleading statements, and
6 other relief allowable under G.B.L. § 350.

7
8 **XII. SEVENTH CLAIM FOR RELIEF**
9 **(Violation of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et. seq. – California**
10 **All Natural Sub-Class & California Healthy Sub-Class)**

11 123. Plaintiff realleges and incorporates by reference each and every allegation set
12 forth in the preceding paragraphs.

13 124. Plaintiff and each member of the California All Natural Sub-Class and California
14 Healthy Sub-Class (collectively referred to as "Sub-Class Members") is a "Consumer" as that
15 term is defined by Cal. Civ. Code §1761(d).

16 125. KIND All Natural Products and KIND Healthy Products are each a "Good" as
17 that term is defined by Cal. Civ. Code §1761(a).

18 126. Defendant is a "Person" as defined by Cal. Civ. Code §1761(c).

19 127. The transaction(s) involved here are "Transaction(s)" as defined by Cal. Civ.
20 Code §1761(e).

21 128. Plaintiff and Sub-Class Members are Consumers who purchased KIND Products
22 for personal use within the applicable statute of limitations period.

23 129. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered
24 injury-in-fact and has lost money or property as a result of Defendant's action as set forth herein.

25 130. Plaintiff and Sub-Class Members purchased KIND Products in reliance on
26 Defendant's marketing claims that they were all natural and/or healthy.

27 131. Defendant has used deceptive representations with respect to KIND Products in
violation of Cal. Civ. Code §1770(a)(4).

1 132. Defendant has misrepresented the sponsorship, approval, characteristics, or
2 ingredients of KIND Products in violation of Cal. Civ. Code §1770(a)(5).

3 133. Defendant has misrepresented the standard, quality, or grade of KIND Products in
4 violation of Cal. Civ. Code §1770(a)(7).

5 134. Defendant advertised KIND Products as all natural and/or healthy when, in fact,
6 the KIND All Natural Products contain an unnatural synthetic ingredient and the KIND Healthy
7 Products are not healthy, in violation of Cal. Civ. Code §1770(a)(9).

8 135. Defendant represented that KIND Products were supplied in accordance with a
9 previous representation when they were not, in violation of Cal. Civ. Code §1770(a)(16).

10 136. Defendant knew or should have known that its representations of fact concerning
11 the ingredients and healthiness of KIND Products are material and likely to mislead Consumers.

12 137. Defendant's practices, acts, and course of conduct in marketing and selling KIND
13 Products are likely to mislead a reasonable consumer acting reasonably under the circumstances
14 to his or her detriment. Like Plaintiff, Sub-Class Members would not have purchased KIND
15 Products had they know they were not all natural or healthy.

16 138. Plaintiff and Sub-Class Members have been directly and proximately damaged by
17 Defendant's actions.

18 139. In conjunction with filing this Complaint, Plaintiff's Counsel mailed to
19 Defendant, by certified mail, return receipt requested, the written notice required by Civil Code
20 §1782(a). Should Defendant fail to respond within thirty days, Plaintiff will amend to seek
21 damages under the Consumer Legal Remedies Act.

22 140. Defendant has engaged in, and continues to engage in, business practices in
23 violation of the Consumer Legal Remedies Act, Civ. Code §1750, *et seq.*, by continuing to make
24 false and deceptive representations concerning the ingredients contained in KIND Products.
25 These business practices are misleading and/or likely to mislead consumers and should be
26 enjoined.
27

XIII. EIGHTH CLAIM FOR RELIEF

(Violation of False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* – California All Natural Sub-Class & California Healthy Sub-Class)

141. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

142. Plaintiff and Sub-Class Members have standing to pursue a cause of action for false advertising under Bus. & Prof. Code §17500, *et seq.*, because Plaintiff and Sub-Class Members have suffered an injury-in-fact and lost money as a result of Defendant’s actions as set forth herein.

143. Defendant advertised, marketed, and otherwise disseminated information to the public through advertising mediums including the Internet statements to the effect that KIND All Natural Products were all natural and that the KIND Healthy Products were healthy.

144. Defendant’s statements were and are false.

145. Defendant knows and knew that these statements were false, or could have discovered their falsity with the exercise of reasonable care.

146. Defendant’s false statements were part of a scheme or plan to sell KIND Products to the public at a premium without disclosing that they contained unnatural ingredients and were not healthy.

147. Plaintiff and Sub-Class Members relied on Defendant’s marketing, labeling, and other product literature that claimed KIND All Natural Products were all natural and that the KIND Healthy Products were healthy.

148. Defendant’s actions violate Cal. Bus. & Prof. Code § 17500, *et seq.*

149. As a direct and proximate result of Defendant’s actions, as set forth herein, Defendant has received ill-gotten gains and/or profits, including but not limited to money from Plaintiff and Sub-Class Members who paid a premium for KIND Products. Therefore, Defendant has been unjustly enriched.

150. Plaintiff and Sub-Class Members seek injunctive relief, restitution, and disgorgement of Defendant’s ill-gotten gains as provided for by Cal. Bus. & Prof. Code § 17535.

1 151. Plaintiff and Sub-Class Members seek injunctive relief to compel Defendant from
2 continuing to advertise KIND All Natural Products as all natural and that the KIND Healthy
3 Products are healthy and to prevent Defendant from engaging in these wrongful practices in the
4 future. No other adequate remedy at law exists. If an injunction is not ordered, Plaintiff and
5 Sub-Class Members will suffer irreparable harm and/or injury.
6

7 **XIV. NINTH CLAIM FOR RELIEF**
8 **(Violation of the Unfair Competition Act, Cal. Bus. & Prof. Code § 17200, et seq. –**
9 **California All Natural Sub-Class & California Healthy Sub-Class)**

10 152. Plaintiff realleges and incorporates by reference each and every allegation set
11 forth in the preceding paragraphs.

12 153. Plaintiff and Sub-Class Members have standing to pursue a cause of action for
13 false advertising under Bus. & Prof. Code §17200, *et seq.* because Plaintiff and Sub-Class
14 Members have suffered an injury-in-fact and lost money as a result of Defendant's actions as set
15 forth herein.

16 154. Defendant's actions as described herein constitute unfair competition within the
17 meaning of Bus. & Prof. Code §17200, in that Defendant has engaged in unlawful, unfair, or
18 fraudulent business practices by violating the federal FDCA, California's Sherman Food Drug &
19 Cosmetic Act, and California's Consumer Legal Remedies Act.

20 155. Defendant's actions as described herein constitute unfair competition within the
21 meaning of Bus. & Prof. Code § 17200, on the additional grounds that Defendant has failed to
22 properly label KIND Products in accordance with 21 C.F.R. 101, *et seq.*

23 156. Defendant's actions also constitute unfair competition within the meaning of Bus.
24 & Prof. Code § 17200, in that Defendant has made unfair, deceptive, untrue, or misleading
25 statements in advertising mediums, including the Internet, in violation of Bus. & Prof. Code
26 § 17500.
27

1 157. Defendant's actions have caused economic injury to Plaintiff and Sub-Class
2 Members. Plaintiff and Sub-Class Members would not have purchased KIND Products at a
3 premium had they known they were neither all natural nor healthy.

4 158. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and Sub-Class Members seek an
5 injunction enjoining Defendant from continuing to market, advertise, and sell KIND Products
6 without first complying with federal law and to prevent Defendant from continuing to engage in
7 unfair competition or any other act prohibited by law.

8 159. Plaintiff and Sub-Class Members also seek an order requiring Defendant to make
9 full restitution and disgorgement of their ill-gotten gains of all money wrongfully obtained from
10 Plaintiff and Sub-Class Members as permitted by Bus. & Prof. Code § 17203.

11 **XV. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on her own behalf and on behalf of Class Members, prays for
13 judgment against Defendant as follows:

- 14 A. Certification of the proposed Classes;
- 15 B. Appointment of Plaintiff as representative of the Classes;
- 16 C. Appointment of the undersigned counsel as counsel for the Classes;
- 17 D. A declaration that Defendant's actions complained of herein violate the Consumer
18 Legal Protection Act, Civ. Code §1750, *et seq.*; Bus. & Prof. Code §17500, and Bus. & Prof.
19 Code §17500;
- 20 E. An order enjoining Defendant and/or its affiliates, agents, and/or other related
21 entities, as provided by law, from engaging in the unlawful conduct set forth herein;
- 22 F. An order compelling Defendant to engage in a corrective advertising campaign to
23 inform the public concerning the true nature of the KIND Products, including a recall of the
24 falsely and deceptively labeled KIND Products.
- 25 G. An order requiring Defendant to disgorge and make restitution of all monies
26 Defendant acquired by means of the unlawful practices set forth herein;
- 27

1 H. An award to Plaintiff and the Classes of damages, as allowed by law;

2 I. An award to Plaintiff and the Classes of attorneys' fees and costs, as allowed by
3 law and/or equity;

4 J. Leave to amend this Complaint to conform to the evidence presented at trial; and

5 K. Orders granting such other and further relief as the Court deems necessary, just,
6 and proper.

7
8 **XVI. DEMAND FOR JURY**

9 Plaintiff demands a trial by jury for all issues so triable.

10 RESPECTFULLY SUBMITTED AND DATED this 21st day of January, 2014.

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