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ADRIENNE FRASER

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 ADRIENNE FRASER on behalf of herself and all
16 others similarly situated,
17 Plaintiffs,
18 vs.
19 KIND, LLC; KIND FOODS, LLC; KIND, INC.;
20 and DOES 1-25, inclusive,
21 Defendants.

CASE NO. 3:16-cv-4766

CLASS ACTION COMPLAINT

AMOUNT DEMANDED EXCEEDS \$10,000

DEMAND FOR JURY TRIAL

CLASS ACTION

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23
24 **CLASS ACTION COMPLAINT**

25 This is a California statewide class action seeking redress for the mislabeling of snack bars.
26 Defendant Kind, LLC, Defendant Kind Foods LLC, and Defendant Kind Inc., (collectively “Kind”),
27 labeled its snack bars as “Made in USA,” when in fact certain ingredients are sourced from foreign
28 countries. This is a violation of the California Unfair Competition Law as well as the California Consumer

1 Legal Remedies Act. Plaintiff seeks, on her own behalf as well as on behalf of a statewide class of similarly
2 situated consumers, injunctive relief to stop Defendant's use of false country-of-origin labels, as well as
3 restitution under the UCL. Plaintiff also seeks injunctive relief under the CLRA. After the requisite thirty-
4 day notice, Plaintiff will amend her complaint to seek actual damages subject to the \$1,000 statutory
5 minimum for class action damages, restitution, punitive damages, and attorney's fees under the CLRA. In
6 support of this complaint, Plaintiff states as follows:

7 **PARTIES, JURISDICTION, AND VENUE**

8 1. Plaintiff Adrienne Fraser is an adult citizen of California residing in San Francisco County,
9 which is within this district. Plaintiff purchased Defendant's products, the marketing of which violates
10 California law, in this district and division.

11 2. Defendant KIND, LLC is a limited liability company formed under and existing pursuant
12 to the laws of the state of Delaware. Defendant's principal place of business is in New York, New York.

13 3. Defendant KIND FOODS, LLC is a limited liability company formed under and existing
14 pursuant to the laws of the state of Delaware. Defendant's principal place of business is in New York,
15 New York.

16 4. Defendant KIND INC. is a corporation formed under and existing pursuant to the laws of
17 the state of Delaware. Defendant's principal place of business is in New York, New York. Defendant
18 KIND INC. is a parent corporation to KIND, LLC and KIND FOODS, LLC.

19 5. Defendant Kind manufactures and sells snack bars such as Fruit & Nut, Plus, Nuts &
20 Spices, Strong & Kind, Kind Health Grains, Kind Breakfast, Kind Healthy Grains Clusters, Pressed By
21 Kind, and Kind Health Grains Popped.

22 6. This Court has diversity jurisdiction over this case under 28 U.S.C. § 1332, as modified by
23 the Class Action Fairness Act of 2005, because Plaintiff and Defendant are citizens of different states, and
24 in this class action the aggregate amount in controversy is greater than \$5,000,000.00 (five million dollars),
25 exclusive of interest and costs.

26 7. Venue is proper in this court because the purchases were made by, and deliveries were
27 made to, the Plaintiff in this district and division.

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FACTS RELATING TO THE SPECIFIC PLAINTIFF

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2 8. On multiple occasions prior to January 1, 2016, including, November of 2014 through
3 December of 2015, Plaintiff purchased Defendant’s snack bars from Starbucks Coffee Company and other
4 retailers in the San Francisco Country area. The specific items purchased by Plaintiff included, but are not
5 limited to, the following items:

- 6 - Kind Plus Cranberry Almond + Antioxidants with Macadamia Nuts
- 7 - Kind Plus Dark Chocolate Cherry Cashew + Antioxidants

8 9. All of the snack bars that Plaintiff purchased from Defendant were labeled with the words
9 “Made in USA.” Plaintiff chose these products because she is very concerned about the sources of the
10 foods she puts in her body and the ingredients in those foods. In this regard, Plaintiff is similar to other
11 American consumers who are willing to pay more for domestically-source goods, particularly when those
12 goods are food products. When an American consumer buys something to put in his or her mouth, that
13 consumer would prefer that all of the ingredients being consumed come from the U.S. rather than other
14 foreign countries.

15 10. Plaintiff is also a patriotic American who prefers to purchase goods sourced in the United
16 States rather than goods containing imported ingredients, and is willing to pay a premium for wholly
17 America-source goods.

18 11. The labels on all of Defendant’s snack bars listed in Paragraph 6 stating that they were
19 “Made in USA” were and remain false because the treats contain at least one foreign-sourced ingredient,
20 ascorbic acid (Vitamin C). Plaintiff believes the snack bars may contain other foreign-sourced ingredients.
21 Because vitamins in commercial products are normally purchased as “packs,” or groups of assorted
22 vitamins, there is a high degree of likelihood that any product containing vitamin C also contains other
23 foreign sourced vitamins in addition to the foreign sourced vitamin C. Because manufacturers normally
24 purchase various vitamin packs from the same supplier there is a high degree of likelihood that other
25 vitamin packs purchased from the same supplier contained foreign sourced vitamins. Therefore the use of
26 the phrase “made in the USA” on the labels is deceptive.

27 12. Plaintiff desires to purchase Defendant’s snack bars in the future, but cannot do so because
28 of concerns over foreign-sourced ingredients and trust issues based on Defendant’s false country-of-origin

1 representations.

2 13. The value of the product received by Plaintiff was less than the value she paid, because the
3 “Made in USA” labeling was untrue.

4 14. All of the snack bars listed above were made, manufactured, marketed, and/or sold by
5 Defendant Kind or its predecessor in interest.

6 **FACTUAL ALLEGATIONS COMMON TO THE STATEWIDE CLASS**

7 15. Defendant manufactures and sells snack bars in stores all over the United States, including
8 California. Defendant also markets and sells its snack bars over the internet through numerous online
9 retailers.

10 16. Defendant’s snack bars prominently display the words “Made in USA.”

11 17. These labels stating that Defendant’s snacks bars are made in the United States are false
12 because Defendant’s snack bars contain ingredients that are sourced from foreign countries. Specifically,
13 but without limitation as to other foreign-sourced ingredients, the vitamin C in defendant’s products
14 comes from Non-USA sources.

15 18. Defendant continues to sell snack bars bearing the label “Made in USA.”

16 19. The Plaintiff and the Class received products from Defendant that were worth less than
17 what the Plaintiff and the Class paid for the products.

18 20. The Plaintiff and the Class continue to be injured as the Defendant’s products continue to
19 be sold to unwitting customers, and the customers who are aware of the foreign sourced ingredients either
20 cannot purchase the products for fear of potential dangers with foreign sourced ingredients or cannot
21 know which of Defendant’s many products labeled “Made in USA” actually contain foreign ingredients.

22 **CLASS ACTION REQUIREMENTS**

23 21. Plaintiff brings this case on her own behalf, and on behalf of all others similarly situated,
24 pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Class consists of all residents of the state
25 of California who, within the applicable statute of limitations period, bought snack bars from Defendant
26 that were sold with labels bearing “Made in USA.” Excluded from the Class are Plaintiff’s counsel and any
27 employee of the court.

28 22. Pursuant to Rule 23(a)(1), numerosity is satisfied because the members of the Class are so

1 numerous and geographically dispersed that joinder of all Class members is impracticable. There are
2 thousands of members of the Class located in the State of California.

3 23. Common questions of fact and law exist here, satisfying the requirement of Rule 23(a)(2),
4 including but not limited to:

- 5 a. whether Defendant participated in or committed the wrongful conduct alleged herein;
- 6 b. whether Defendant's acts, transactions, or course of conduct constitute the violations
7 of law alleged herein;
- 8 c. whether the members of the Class sustained and/or continue to sustain injury by
9 reason of Defendant's conduct, and, if so, the proper measure and appropriate formula
10 to be applied in determining restitution for such injury; and
- 11 d. whether the members of the Class are entitled to injunctive or other equitable or
12 monetary relief.

13 24. Plaintiff's claims are typical of the claims of all other members of the Class and involve the
14 same violations of law by Defendant as other Class members' claims. The product purchased by Plaintiff is
15 substantially similar to other products of Defendant purchased by class members with the same "Made in
16 USA" claim made on their label while containing foreign sourced ingredients. Plaintiffs and members of
17 the Class also sustained injury arising out of Defendant's common course of conduct complained of
18 herein. Accordingly, Plaintiff satisfies the "typicality" requirements of Fed. R. Civ. P. 23(a)(3) with respect
19 to the Class.

20 25. Plaintiff will fairly and adequately protect the interests of the other members of the Class,
21 and have no interests that are antagonistic to those of the Class, pursuant to Rule 23(a)(4). Plaintiff is
22 interested in vigorously prosecuting claims on behalf of the Class, and Plaintiff has retained experienced
23 and competent class action counsel to represent them and the Class.

24 26. Plaintiff seeks to certify a statewide class pursuant to Rule 23(b)(2) and 23(b)(3).

25 27. Pursuant to Rule 23(b)(2), Defendant has "acted or refused to act on grounds that apply
26 generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate
27 respecting the class as a whole."

28 28. Pursuant to Rule 23(b)(3), questions of law or fact common to class members predominate

1 over any questions affecting only individual members, and a class action is superior to other available
2 methods for fairly and efficiently adjudicating the controversy. Given the relatively small amount of
3 damages suffered by each class member, it is unlikely that any of the class members are interested in
4 individually controlling the prosecution or defense of separate actions. Plaintiff is not aware of any other
5 litigation against Defendant asserting these claims, and doubts any other litigation outside of the class
6 action device will be initiated against Defendant. It is desirable to hear all of these claims in one forum so
7 that the class members can receive a full recovery, which they would not outside of a class action because
8 of the relatively small amount of damages suffered by each class member, such that it would make no
9 economic sense for individual class members to pursue individual claims in different forums. Plaintiff does
10 not anticipate that there will be significant difficulties in managing this class action that are any more
11 serious than other consumer class actions.

12 **CLAIMS FOR RELIEF**

13 **COUNT ONE – CALIFORNIA UNFAIR COMPETITION LAW**

14 29. All preceding paragraphs are incorporated by reference.

15 30. The foregoing fraudulent and unfair conduct violates the California Unfair Competition
16 Law, codified at Business and Professions Code §§ 17200, et seq. (“UCL”).

17 31. Among other provisions, the foregoing conduct violates Business & Professions Code §
18 17533.7 dealing with “Made in the U.S.A.” product labeling.

19 32. The named Plaintiff and the Class suffered injury as a result of Defendant’s violation of the
20 law because they paid more for the product than its actual value.

21 33. As a result, Plaintiff is entitled to an injunction against continuing violations of the UCL
22 and restitution of monies obtained.

23 **COUNT TWO – CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

24 34. All preceding paragraphs are incorporated by reference.

25 35. Pursuant to Cal. Civ. Code § 1780(d), Plaintiff is filing an affidavit of proper venue and
26 attaching it to this complaint as Attachment 1.

27 36. The foregoing conduct by Defendant violates the Consumers Legal Remedies Act, codified
28 at California Civil Code §§ 1750, et seq.

1 37. Defendant's snack bars are "goods" as defined in Civil Code Section 1761(a).

2 38. Plaintiff, and each of the Class members, is a "Consumer" as defined in Civil Code Section
3 1761(d).

4 39. Each of Plaintiff's and Class members' purchases of Defendant's products constituted a
5 "transaction" as defined in Civil Code Section 1761(e).

6 40. Plaintiff and each class member suffered an injury in fact because they received a product
7 from Defendant that had less value than they paid for it, due to the false labeling.

8 41. Defendant's violations of the Consumer's Legal Remedies Act set forth herein were done
9 with awareness of the fact that the conduct alleged was wrongful and were motivated solely for increased
10 profit. Defendant did these acts knowing the harm that would result to Plaintiff and similarly situated
11 persons, and Defendant continues to commit these acts notwithstanding that knowledge.

12 **COUNT THREE – RESTITUTION BASED ON QUASI-CONTRACT**

13 42. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

14 43. Defendants' deceitful conduct in labeling its products as made in the use is unlawful
15 because the statements contained on the labels are untrue. Defendants received money from Plaintiff and
16 the class for products that were promised to be made in the USA, even though those products contained
17 foreign-sourced ingredients.

18 44. Defendants have been unjustly enriched at the expense of Plaintiffs and the Class as a
19 result of their unlawful activities alleged herein, thereby creating a quasi-contractual obligation for
20 Defendant do restore these ill-gotten gains to Plaintiff and the Class.

21 45. As a direct and proximate result of Defendants' breach of its quasi-contractual obligation
22 by unjustly enriching themselves at Plaintiff's and the Class's expense, Plaintiffs and the class are entitled
23 to restitution or disgorgement in an amount to be proved at trial.

24 **PRAYER FOR RELIEF**

25 Based on the foregoing, Plaintiff prays for the following relief:

26 A. An order certifying this as a California statewide class action pursuant to Rule 23 of the
27 Federal Rules of Civil Procedure;

28 B. An order appointing Plaintiff's counsel as Class Counsel to represent the interests of the

1 Class;

2 C. After trial, an injunction ordering Defendant to stop its violations of California law as
3 alleged herein;

4 D. An award of monetary relief for the Class in the amount by which Defendant has been
5 unjustly enriched by its illegal conduct as alleged herein;

6 E. An award of costs, including reasonable attorneys' fees;

7 F. Pre and post judgment interest in the highest amount permitted by law; and

8 G. Such further or different relief as the Court may deem appropriate.

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10 Dated: August 18, 2016

Respectfully submitted,

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RAINS LUCIA STERN, PC

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/s/ Eustace de Saint Phalle

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By: Eustace de Saint Phalle

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Attorneys for Plaintiff ADRIENNE FRASER

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DEMAND FOR JURY TRIAL

As to the matters complained of herein against Defendants Kind, LLC, Kind Foods LLC, Kind Inc. and DOES 1-25, and each of them, Plaintiff ADRIENNE FRASER demands a trial by jury.

Dated: August 18, 2016

Respectfully submitted,

RAINS LUCIA STERN, PC

/s/ Eustace de Saint Phalle

By: Eustace de Saint Phalle

Attorney for Plaintiff ADRIENNE FRASER