

ORIGINAL

Patrick McNicholas, State Bar No. 125868  
David Angeloff, State Bar No. 272929  
McNICHOLAS & McNICHOLAS, LLP  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, California 90024  
Tel: (310) 474-1582  
Fax: (310) 475-7871

**FILED**  
Superior Court of California  
County of Los Angeles

NOV 27 2017

Sherri R. Carter, Executive Officer/Clerk  
By Spamya Bolden Deputy

Attorneys for Named Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

NEGIN YAMINI, on behalf of herself and all  
others similarly situated,

Plaintiff,

vs.

EDEN CREAMERY, LLC., and DOES 1  
through 50, inclusive,

Defendants.

Case No. **BC 6 8 4 7 3 6**

**CLASS ACTION COMPLAINT**

1. VIOLATION OF THE FALSE ADVERTISING LAW ("FAL"), CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
2. VIOLATION OF THE UNFAIR COMPETITION LAW ("UCL"), CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200 *et seq.*
3. BREACH OF EXPRESS WARRANTY
4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

**DEMAND FOR JURY TRIAL**

Plaintiff Negin Yamini, by and through her attorneys, bring this action on behalf of herself and all other similarly situated, against Eden Creamery, LLC ("Defendant") and Does 1 through 50. Plaintiff hereby alleges, on information and belief, except as to those allegations which pertain to the named Plaintiff, which allegations are based on personal knowledge, as follows:

11/27/17

CIT/CASE: BC684736  
LEA/DEF#:

RECEIPT #: CCH465980022  
DATE PAID: 11/27/17 10:02 AM  
PAYMENT: \$1,000.00 310  
RECEIVED:  
CHECK: \$1,000.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

CIT/CASE: BC684736  
LEA/DEF#:

RECEIPT #: CCH465980021  
DATE PAID: 11/27/17 10:02 AM  
PAYMENT: \$435.00 310  
RECEIVED:  
CHECK: \$435.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

## NATURE OF THE ACTION

1. To capitalize on the consumer demand for all natural food products, Defendant makes false and misleading representations about the ice creams and frozen desserts in its Halo Top Product line, which include thirty-two flavors: (1) vanilla bean, (2) chocolate, (3) lemon cake, (4) strawberry, (5) mint chip, (6) chocolate mocha chip, (7) birthday cake, (8) chocolate chip cookie dough, (9) peanut butter cup, (10) cookies and cream, (11) sea salt caramel, (12) s'mores, (13) pistachio, (14) oatmeal cookie, (15) chocolate almond crunch, (16) black cherry, (17) red velvet, (18) cinnamon roll, (19) pancake & waffles (20) chocolate covered banana, (21) mochi green tea, (22) rainbow swirl, (23) candy bar, (24) caramel macchiato (25) pumpkin pie, (26) dairy-free caramel macchiato, (27) dairy-free chocolate, (28) dairy-free chocolate covered banana, (29) dairy-free cinnamon roll, (30) dairy-free oatmeal cookie, (31) dairy-free peanut butter cup, and (32) dairy-free sea salt caramel. (the "Products"). See Exhibit One to Class Action Complaint.

2. Aware that consumers value all natural foods that lack artificial ingredients, Defendant consistently advertises its ice creams and frozen desserts as "all natural." Defendant deliberately makes false and misleading claims about the ingredients of the Products to increase profits at the expense of unsuspecting consumers and health-conscious individuals.

3. In reality, however, the Products contain multiple artificial ingredients, including *inter alia*, added colors, guar gum and alkalized cocoa. HALOTOP.COM, <https://www.halotop.com/flavors/> (last visited Nov. 10, 2017).

4. Defendant's labeling, advertising, marketing and packaging uniformly involves multiple false and misleading statements, as well as omissions of material fact, concerning the Products that have injured Plaintiff and the Class by tricking them into buying premium priced products.

5. Based on the fact that Defendant's advertising misled Plaintiff and all others like her, Plaintiff brings this class against Defendant to seek reimbursement of the premium they and the Class Members paid due to Defendant's false and deceptive representations about the ingredients of the Products.

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

6. Plaintiff seeks relief in this action individually and on behalf of all purchasers of the Products in California for violation of the California Bus. & Prof. Code §§17500, *et seq.*, California's False Advertising Law ("FAL"), Bus. & Prof. Code §§17200, *et seq.*, California's Unfair Competition Law ("UCL"). Plaintiff also seeks relief in this action individually and on behalf of all purchasers of the Products for breach of express and implied warranties.

### JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the California Constitution, Article XI, § 10 and California Code of Civil Procedure § 410.10, because Defendant transacted business and committed the acts alleged in California. The Named Plaintiff and Class Members are citizens and residents of the California.

2. Venue is proper in this Court because Defendant's principal place of business is in Los Angeles County, Defendant conducts business in Los Angeles County, Defendant receives substantial compensation from sales in Los Angeles County, and Defendant made numerous misrepresentations which had a substantial effect in Los Angeles County, including but not limited to radio and internet advertisements. Venue is also proper in this Court because Plaintiff Negin Yamini purchased units of the Products in said county from local supermarkets located in Los Angeles County.

### PARTIES

3. Negin Yamini resides in the city of Los Angeles, California.

4. Defendant Eden Creamery LLC is a limited liability corporation headquartered in California, with its principal place of business at 4470 West Sunset Boulevard, # 90182, Los Angeles, California 90027. Eden Creamery manufactures, mass markets, and distributes the Products throughout the United States.

5. The true names and capacities of Defendants sued herein under California Code of Civil Procedure § 474 as Does 1 through 50, inclusive, are presently unknown to Plaintiff, who therefore sues these Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained. Each of the Doe Defendants is responsible in some manner for the conduct alleged herein.

6. Plaintiff is informed and believes, and based thereon alleges that at all times relevant herein each of these individuals and/or entities was the agent, servant, employee, subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other representative of each of the remaining Defendants and was acting in such capacity in doing the things herein complained of and alleged.

### FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Defendant consistently advertises the Products as “all natural” ice creams that “sound too good to be true”. Defendant’s advertisements are partially correct; their ice cream products are too good to be true. The Products typically contain significant amounts of artificial ingredients and are anything but all natural.

### THE PRODUCTS ARE NOT “ALL NATURAL”

8. In 2016, Nielsen found that annual sales of food products labeled as “natural” grew by 7.5% in the U.S.<sup>1</sup> Furthermore, earlier this year, Nielsen found that that 52% of American consumers “actively try to avoid artificial sweeteners.”

9. The top lids and side panels of the Products prominently state “all natural,” This representation by Defendant is false and misleading because the Products contain at least six artificial ingredients: added color extract, erythritol, guar gum, milk protein concentrate, vegetable glycerin, and alkalized cocoa.



<sup>1</sup> NIELSEN INSIGHTS, *Reaching for Real Ingredients: Avoiding the Artificial* (Sep. 6, 2016), <http://www.nielsen.com/us/en/insights/news/2016/reaching-for-real-ingredients-avoiding-the-artificial.html>.

<sup>2</sup> NIELSEN INSIGHTS, *Sweet Inspiration: Spotlight on Added Sugar* (Feb. 8, 2017), <http://www.nielsen.com/us/en/insights/news/2017/sweet-inspiration-spotlight-on-added-sugar.html>.

10. The FDA explicitly restricts the use of the term “natural” if the food contains added color, artificial flavors, or synthetic substances. *See* 56 Fed. Reg. 60421, 60466, November 27, 1991; *see also* 58 Fed. Reg. 2302, 2407, January 6, 1993. In 1991, the FDA stated “natural” means “nothing artificial or synthetic (including colors regardless of source) is included in, or has been added to, the product that would normally be expected to be there. For example, the addition of beet juice to lemonade to make it pink would preclude the product being called “natural.” 56 Fed. Reg. 60421, 60466.

11. In 1993, after revisiting the issue, the FDA stated, “The agency will maintain its current policy (as discussed in the general principles proposal (56 FR 60421 at 60466)) not to restrict the use of the term “natural” except for added color, synthetic substances, and flavors as provided in § 101.22. Additionally, the agency will maintain its policy (Ref. 32) artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food.” 58 Fed. Reg. 2302, 2407.

12. Six flavors in Defendant’s Product line contain added colorants: (1) birthday cake, (2) pistachio, (3) black cherry, (4) red velvet, (5) mochi green tea, and (6) rainbow swirl. HALOTOP.COM, <https://www.halotop.com/flavors/> (last visited Nov. 10, 2017).

13. The ingredient list on the back panel of the pistachio, black cherry, mocha green tea, and rainbow swirl Products explicitly includes “natural plant extract (for color)” as a component. Similarly, Defendant’s birthday cake Product expressly lists “natural color” as an ingredient.

**INGREDIENTS:** Milk and cream, eggs, erythritol, prebiotic fiber, milk protein concentrate, dark sweet cherries, organic cane sugar, vegetable glycerin, natural plant extract (for color), sea salt, natural flavors, organic carob gum, organic guar gum, organic stevia.

**INGREDIENTS:** Milk and cream, eggs, erythritol, prebiotic fiber, milk protein concentrate, organic cane sugar, vegetable glycerin, natural plant extract (for color), sea salt, natural flavors, organic carob gum, organic guar gum, organic stevia.

14. Defendant itself affirms on the Products' website that the pistachio, black cherry, mochi green tea and rainbow swirl contain natural plant extracts that have been added in specifically for color. HALOTOP.COM, <https://www.halotop.com/flavors/> (last visited Nov. 10, 2017).

15. In addition to unequivocally declaring its stance that added colors constitute an artificial ingredient regardless of source, The FDA made its stance on added colors clear in a warning letter that it sent to Wonder Natural Food Corporation on July 13, 2015. The agency expressly stated in the letter "In fact, we note that any added color is artificially coloring a food."

16. "Red velvet" is defined as "chocolate cake that is colored red, usually with food dye." EN.OXFORDDICTIONARIES.COM, [https://en.oxforddictionaries.com/definition/red\\_velvet](https://en.oxforddictionaries.com/definition/red_velvet) (last visited Nov. 10, 2017). In one of its warning letters to a food manufacturer, the FDA acknowledged that a food identified as "red velvet" must contain added colorant. FDA.GOV, <https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm504848.htm> (last visited Nov. 10, 2017). The letter involved a "red velvet" cake mix that had failed to identify its color additives. *Id.* Even though its ingredient list did not mention any added colors, the FDA knew the cake mix had to contain some since it was "red velvet." *Id.* Similarly, here, Defendant's "red velvet" ice cream flavor must contain some source of added red coloring. Consequently, regardless of the source of the added red coloring, Defendant's "red velvet" Product is falsely labelled as "all natural."

17. The FDA has clarified that erythritol is a sugar alcohol that is only found naturally in fruits and vegetables. FDA.GOV, <https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/sugar-alcohol.html> (last visited Nov. 10, 2017). It has also explained that the erythritol used in ice cream is produced artificially through sugars and starch. *Id.* Further, the FDA has made clear that erythritol is added to ice cream products as a sweetener. *Id.* That is, the FDA considers erythritol a chemical that is added to food to intensify its flavor of sweetness.

18. Congress defines "synthetic," a commonly recognized synonym for "artificial" similarly to the FDA: "a substance that is formulated or manufactured by a chemical process or by

<sup>3</sup> FDA.GOV, <https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm460910.htm> (last visited Nov. 10, 2017).

<sup>4</sup> EN.OXFORDDICTIONARIES.COM, <https://en.oxforddictionaries.com/thesaurus/synthetic> (last visited Nov. 10, 2017)

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.” 7 U.S.C. §6502(21).

19. Erythritol can be produced by fermenting glucose with the microorganism *trichosporonoides megachiliensis*. Ruth Winter, *A Consumer’s Dictionary of Food Additives* 218 (7th ed. 2009). Alternatively, erythritol can be made through the “Mitsubishi/Nikken” method or the “Cerestar” method. Eur. Comm’n Sci. Comm. on Food, *Opinion of the Scientific Committee on Food on Erythritol*, at 3 (Mar. 24, 2003), [https://ec.europa.eu/food/sites/food/files/safety/docs/sci-com\\_scf\\_out175\\_en.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/sci-com_scf_out175_en.pdf). The Mitsubishi/Nikken method involves fermenting glucose that is derived from the enzymatic hydrolysis of wheat or corn with *trichosporonoides megachiliensis*. *Id.* The Cerestar Method entails the fermentation of glucose derived from the from the enzymatic hydrolysis of wheat or corn with the yeast-like fungus *moniliella pollinis*. *Id.* In either method, once the fermentation process is completed, the fermentation broth is heated to “kill the production organism” and dead cells are filtered out. *Id.* After the erythritol is separated from the fermentation broth, is purified by “ion exchange resin, activated charcoal, ultrafiltration and crystallization”, to create a fine crystalline version of erythritol. *Id.*

20. The FDA has explicitly identified glycerins as a synthetic ingredient. 7 C.F.R. §205.605(b). Hence, the FDA unequivocally considers glycerin, including vegetable glycerin, an artificial ingredient.

21. Alkalizing chemicals are optional ingredients that do not naturally occur in cocoa. 21 C.F.R. § 163.112(b). The FDA has identified specific alkalizing ingredients for cocoa, including ammonium, potassium, sodium bicarbonate, carbonate, hydroxide, magnesium carbonate or oxide. *Id.* These compounds are mixed in with cocoa to artificially alter the flavor and darkness of the cocoa. Alice Medrich, *Dutch-Process vs. Natural Cocoa Power (+ When to Use Them)*, food52 blog (Jan. 1, 2014, 1:46 PM), [www.huffingtonpost.com/food-52/dutch-process-vs-natural-b-4602852.html](http://www.huffingtonpost.com/food-52/dutch-process-vs-natural-b-4602852.html). Manufacturers alkalize cocoa to reduce its acidity and harsh taste. *Id.* Alkalized cocoa has substantially less flavanol antioxidants and health benefits compared to natural cocoa.



1 Miller, K.B. *et al.*, *Impact of Alkalization on the Antioxidant and Flavanol Content of Commercial*  
2 *Cocoa Powders*, 56 (18) J. AGRIC. FOOD CHEM. 8527, 8527-8533 (Sep. 24, 2008).

3 22. On May 27, 2016, the FDA issued a final "Nutrition and Supplement Facts" label rule  
4 that explicitly named guar gum as a source of fiber that the agency considers artificial<sup>5</sup>. The FDA  
5 has identified guar gum as an "isolated or synthetic non-digestible carbohydrate" that is distinct  
6 from dietary fibers that are "intrinsic and intact in plants." 21 C.F.R. § 101.9(c)(6)(i).

7 23. Milk protein concentrate ("MPC") is made by "forcing milk through a porous  
8 membrane that allows some of the water, lactose and minerals to pass through" and drying the  
9 leftover particles that do not pass through the membrane with a special spray drying process. Jerry  
10 Cesna, *Milk Protein Products and Related Government Issues*, USDA AGRICULTURAL AND  
11 MARKETING SERVICE (Feb. 2004), [https://www.ams.usda.gov/sites/default/files/media/](https://www.ams.usda.gov/sites/default/files/media/Milk%20Protein%20Products.pdf)  
12 [Milk%20Protein%20Products.pdf](https://www.ams.usda.gov/sites/default/files/media/Milk%20Protein%20Products.pdf). The filtration process to make MPC allows producers to  
13 manipulate the concentration of nutrients in the MPC powder on their own. *Id.*

14 24. Milk protein concentrate can be manufactured by combining different dairy products,  
15 or through the process of ultrafiltration. S., Agrawal *et al.*, *Innovative Uses of Milk Protein*  
16 *Concentrates in Product Development*, 80 (S1) J. FOOD SCI. A23, A23-A29 (Mar. 10, 2015). MPC  
17 producers typically prefer the ultrafiltration method. *Id.* Still they can make MPC by "precipitating  
18 the proteins out of milk or by dry blending the milk proteins with other milk components." *Id.*

19 25. The absence of key ingredients in some of the Products further belies the "all natural"  
20 claims that Defendant systematically advertises about the Products. Specifically, the "pistachio,"  
21 "chocolate covered bananas," and "mint chip" flavors in the Products' line all lack ingredients that  
22 are explicitly included in their standards of identity. The "pistachio" flavor in the Products' line  
23 does not contain any pistachios. HALOTOP.COM, [https://www.halotop.com/ flavors/](https://www.halotop.com/flavors/) (last visited  
24 Nov. 10, 2017). The "chocolate covered banana" Product does not have any bananas, even though  
25 bananas are expressly named in its title. *Id.* Similarly, the "mint chip" ice cream in the Products'  
26 line does not have any mint. *Id.*

27  
28 <sup>5</sup> FDA.GOV, <https://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm528582.htm> (last visited  
Jun. 1, 2017).

26. Defendant discloses the ingredients on the Products' side panel. This admission of actual ingredients does not defeat Plaintiff's standing. As the Ninth Circuit has held, "[R]easonable consumers should [not] be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box." *Williams v. Gerber Prods. Co.*, 523 F.3d 934, 939-40 (9th Cir. 2008). Or, in this case, reasonable consumers should not be expected to discover the truth from a miniscule, minimally legible ingredient list that is buried on the side of an ice cream carton, especially when the carton's side panel exhibits "All natural" statements in writing that is significantly more prominent than the ingredient list.

### CLASS ACTION ALLEGATIONS

27. Plaintiff brings this class action on behalf of herself individually and all others similarly situated, pursuant to California Code of Civil Procedure § 382.

28. The proposed class consists of all consumers who purchased the Products in the State of California for personal use and not for resale, during the time period November 22, 2013, through the present. Excluded from the Class are Defendant, its affiliates, employees, officers and directors, any individual who received remuneration from Defendant in connection with that individual's use or endorsement of the Products, the Judge(s) assigned to this case, and the attorneys of record in this case. Plaintiff reserves the right to amend the Class definitions if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

29. This action is properly brought as a class action for the following reasons:

- (a) the proposed class is so numerous that joinder would be impracticable and disposition of the class members' claims in a class action is in the best interests of the parties and judicial economy.;
- (b) the claims of the Plaintiff and relief herein sought are typical of the claim and relief that could generally be sought by each member of this proposed class;
- (c) Plaintiff stands on equal footing with and can fairly and adequately protect the interests of all members of the proposed class. The Products all bear the misleading "all natural" labeling and are falsely advertised as "all natural.";
- (d) Prosecution of separate actions by individual members of the proposed class would create

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

a risk of inconsistent or varying adjudications with respect to individual members of the class and thus establish incompatible standards of conduct for the party or parties opposing the class. Further, individual cases would be so numerous as to inefficiently consume judicial resources.;

(e) Plaintiff's attorneys have the experience, knowledge, and resources to adequately and properly represent the interests of the proposed class.;

(f) there are questions of law and fact common to the proposed class which predominate over any questions that may affect particular class members. Such common questions of law and fact include, but are not limited to:

- i. Whether Defendant breached an express warranty made to Plaintiff and the Class;
- ii. Whether Defendant breached the implied warranty of fitness for a particular purpose;
- iii. Whether Defendant's marketing of the Products is false, misleading, and/or deceptive;
- iv. Whether Defendant's marketing of the Products is an unfair business practice;
- v. Whether Defendant was unjustly enriched by its conduct;
- vi. Whether Defendant's advertising is untrue or misleading in violation of Business and Professions Code Section 17500, *et seq.*;
- vii. Whether Defendant knew or by the exercise of reasonable care should have known that its advertising was and is untrue or misleading in violation of Business and Professions Code Section 17500, *et seq.*;
- viii. Whether Defendant's conduct is an unfair business practice within the meaning of Business and Professions Code Section 17200, *et seq.*;
- ix. Whether Defendant's conduct is a fraudulent business practice within the meaning of Business and Professions Code Section 17200, *et seq.*;

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

- x. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code Section 17200, *et seq.*;
- xi. Whether Class Members suffered an ascertainable loss as a result of Defendant's misrepresentations; and
- xii. Whether, as a result of Defendant's misconduct as alleged herein, Plaintiff and the Class Members are entitled to restitution, injunctive relieve and/or monetary relief, and if so, the amount and natural of such relief.

(g) Plaintiff's claims are typical of the claims of the members of the proposed class. Plaintiff and all class members have been injured by the same wrongful practices of Defendant. Plaintiff's claims arise from the same practices and conduct that give rise to the claims of all class members and are based on the same legal theories;

(h) Plaintiff will fairly and adequately protect the interests of the proposed class in that she has no interests antagonistic to those of other proposed class members, and Plaintiff has retained attorneys experienced in consumer class actions and complex litigation as counsel;

30. Defendant has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this class action. Further, the class definition itself describes a set of common characteristics sufficient to allow a prospective plaintiff or class member to identify himself or herself as having a right to recover based on the description. Defendant's false statements and "all natural" labeling occur on the packaging of the units of Product itself, and thus every individual consumer who purchases the Product is exposed to the false advertising.

31. Plaintiff seeks damages and equitable relief on behalf of the proposed class on grounds generally applicable to the entire proposed class.

### FIRST CAUSE OF ACTION

(Violation of California Business & Professions Code § 17500, *et seq.*)

32. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

33. Plaintiff seeks to represent a Class consisting of "All persons who purchased the

Products in the State of California for personal use and not for resale during the time period November 22, 2013, through the present. Excluded from the Class are Defendant's officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual's use or endorsement of the Product."

34. California's False Advertising Law, California Business and Professions Code Section 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

35. Throughout the Class Period, Defendant committed acts of false advertising, as defined by the FAL, by using false and misleading statements to promote the sale of the Products, as described above, and including, but not limited to, that the Products are all natural.

36. Defendant maintains its false and misleading advertising consistently throughout its social media campaigns. The Products' twitter handle clearly refers to the ice creams as "all natural." See Exhibit Two to Class Action Complaint. Similarly, the "story" tab on the Products' Facebook page describes the ice creams as "all natural." *Id.* The Products are unequivocally advertised as "all natural" on their Instagram page. *Id.* Defendant even perpetuates its blatant deception throughout the vacancies it posts online, and describes the Products as "all natural" in its job openings on LinkedIn. LINKEDIN.COM, <https://www.linkedin.com/jobs/view/508520921/> (last visited Nov. 21, 2017); See also LINKEDIN.COM, <https://www.linkedin.com/jobs/view/512084886/> (last visited Nov. 21, 2017).

37. Defendant controlled the production, labeling, marketing and advertising of the Products. Defendant knew or should have known, through the exercise of reasonable care that their representations about the ingredients of the Products were untrue and misleading.

38. Defendant's actions in violation of the FAL were false and misleading such that the general public is and was likely to be deceived.

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

39. As a direct and proximate result of these acts, consumers have been and continue to be harmed. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's false representations. Plaintiff purchased units of the Products in reliance upon the claims by Defendant regarding the Products' ingredients. Plaintiff would not have purchased the Products if she had known that the claims and advertising as described herein were false. Plaintiff and the Class would not have purchased the Products if they had known the true facts regarding the Products' ingredients. Plaintiff and the Class paid an increased price due to the misrepresentations about the Products and the Products lacked the quality, effectiveness and value Defendant promised.

40. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage in, use, or employ misleading labeling and false advertising of the Products. Plaintiff and the Class are therefore entitled to an order requiring Defendant to cease the acts of unfair competition alleged herein, full restitution of all monies paid to Defendant as a result of their deceptive practices, interest at the highest rate allowable by law and the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Civil Code Procedure §1021.5. Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff and the Class restitution of the money wrongfully acquired by Defendant by means of responsibility attached to Defendant's failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

## SECOND CAUSE OF ACTION

### (Violation of Business & Professions Code § 17200, *et seq.*)

41. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

42. Plaintiff seeks to represent a Class consisting of "All persons who purchased the Products in the State of California for personal use and not for resale during the time period November 22, 2013, through the present. Excluded from the Class are Defendant's officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual's use or endorsement of the Product."

1           43. The UCL prohibits “any unlawful, unfair... or fraudulent business act or practice.”  
2 Cal. Bus. & Prof. Code § 17200.

3                                   **A. “Unfair” Prong**

4           44. Under California’s False Advertising Law, Cal. Bus. & Prof. Code Section 17200, *et*  
5 *seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided  
6 to consumers and the injury is one that the consumers themselves could not reasonably avoid.”  
7 *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

8           45. Defendant’s action of engaging in false and deceptive advertising, marketing,  
9 labeling, and of the Products does not confer any benefit to consumers.

10          46. Defendant’s action of advertising, marketing, labeling, and the Products in a false,  
11 deceptive and misleading manner causes injuries to consumers because they do not receive a quality  
12 of ice cream commensurate with their reasonable expectation.

13          47. Defendant’s action of advertising, marketing, labeling, and the Products in a false,  
14 deceptive and misleading manner causes injuries to consumers because they do not receive the  
15 benefits they reasonably expect from the Products.

16          48. Defendant’s actions of advertising, marketing, labeling and packaging the Products in  
17 a false, deceptive and misleading manner causes injuries to consumer because they end up  
18 consuming artificial ingredients they were reasonably expecting to avoid when eating the product.

19          49. Defendant’s action of advertising, marketing, labeling, and packaging the Products in  
20 a false, deceptive and misleading manner causes injuries to consumers because they end up  
21 overpaying for the Products and receiving a quality of ice cream product less than what they  
22 expected to receive.

23          50. Consumers cannot avoid any of the injuries caused by Defendant’s false, misleading  
24 and deceptive labeling, advertising, and marketing of the products.

25          51. Accordingly, the injuries caused by Defendant’s activity of advertising, marketing,  
26 and labeling, the Products in a false, deceptive and misleading manner outweighs any benefits.

27          52. Some courts conduct a balancing test to decide if a challenged activity amounts to  
28 unfair conduct under California Business and Professions Code Section 17200. They “weigh the

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

1 utility of the defendant's conduct against the gravity of the harm to the alleged victim." *Davis v.*  
2 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

3 53. Here, Defendant's conduct of advertising, labeling, packaging and marketing the  
4 Products' in a false, deceptive, and misleading manner has no utility and financially harms  
5 purchasers. Thus, the utility of Defendant's conduct is vastly outweighed by the gravity of harm.

6 54. Defendant's labeling, marketing, advertising and packaging of the Products, as  
7 alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and  
8 constitutes unfair conduct.

9 55. Defendant knew or should have known of its unfair conduct.

10 56. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed  
11 above constitute an unfair business practice within the meaning of California Business and  
12 Professions Code Section 17200.

13 57. There were reasonably available alternatives to further Defendant's legitimate  
14 business interests, other than the conduct described herein. Defendant could have marketed, labeled,  
15 advertised and packaged the Products truthfully, without any dishonest claims about the Products'  
16 ingredients and nutrients.

17 58. All of the conduct alleged herein occurs and continues to occur in Defendant's  
18 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct  
19 repeated on thousands of occasions daily.

20 59. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiff and  
21 the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ  
22 its practice of advertising, labeling, marketing and packaging the Products in an untruthful manner.  
23 Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such  
24 misrepresentations, and additionally request an order awarding Plaintiff restitution of the money  
25 wrongfully acquired by Defendant by means of responsibility attached to Defendant's failure to  
26 disclose the existence and significance of said misrepresentations in an amount to be determined at  
27 trial. Plaintiff and the Class Members also seek full restitution of all monies paid to Defendant as a  
28 result of Defendant's deceptive practices, interest at the highest rate allowable by law and the



1 payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Civil Code  
 2 Procedure §1021.5.

3 60. As a direct and proximate result of these acts, consumers have been and continue to  
 4 be harmed. Plaintiff and the Class Members have suffered injury and actual out-of-pocket losses as  
 5 a result of Defendant's violation of the unfair prong of the UCL because Plaintiff and the Class  
 6 would not have bought the Products if they had known the truth regarding the ingredients of the  
 7 Products. Plaintiff and the Class paid an increased price due to the misrepresentations about the  
 8 Products and the Products did not have the promised quality, effective, or value..

9 **B. "Fraudulent" Prong**

10 61. California Business and Professions Code Section 17200, *et seq.*, considers conduct  
 11 fraudulent and therefore prohibits said conduct if it is likely to deceive members of the public. *Bank*  
 12 *of W v. Superior Court*, 2 Cal. 4th 1254, 553 (1992).

13 62. Defendant's marketing, labeling, advertising and packaging of the Products, as  
 14 alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and  
 15 constitutes fraudulent conduct.

16 63. Defendant knew or should have known of its fraudulent conduct.

17 64. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed  
 18 above constitute a fraudulent business practice in violation of California Business & Professions  
 19 Code Section 17200.

20 65. There were reasonably available alternatives to further Defendant's legitimate  
 21 business interests, other than the conduct described herein. Defendant could have labeled,  
 22 advertised, marketed and packaged the Products accurately.

23 66. All of the conduct alleged herein occurs and continues to occur in Defendant's  
 24 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct  
 25 repeated on thousands of occasions daily.

26 67. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiff and  
 27 the Class seek an order of this Court requiring Defendant to cease the acts of fraudulent competition  
 28 alleged herein. Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such

misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendant by means of responsibility attached to Defendant's failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial. Plaintiff and the Class Members also seek full restitution of all monies paid to Defendant as a result of their deceptive practices, interest at the highest rate allowable by law and the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Civil Code Procedure §1021.5.

68. As a direct and proximate result of these acts, consumers have been and continue to be harmed. Plaintiff and the Class Members have suffered injury and actual out-of-pocket losses as a result of Defendant's violation of the fraudulent prong of the UCL because Plaintiff and the Class would not have bought the Products if they had known the truth regarding the ingredients and nutritional value of the Products. Plaintiff and the Class paid an increased price due to the misrepresentations about the Products and the Products did not have the promised quality, effectiveness, or value.

### C. "Unlawful" Prong

69. California Business and Professions Code Section 17200, *et seq.*, identifies violations of other laws as "unlawful practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

70. The Food, Drug and Cosmetic Act ("the FDCA") expressly defines food as misbranded if "its labeling is false or misleading in any particular." 21 U.S.C §343 (a). Similarly, California's Sherman Food, Drug and Cosmetic Law (hereinafter "Sherman Law") states "any food is misbranded if its labeling is false or misleading in any particular." Cal. Health & Safety Code § 110660.

71. Defendant's packaging of the Products, as alleged in the preceding paragraphs, violates California Business and Professions Code Section 17500, *et. seq.*, California's Sherman Law, and the FDCA.

72. Defendant's packaging of the Products, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unlawful conduct. Defendant has violated the "unlawful prong" by violating the FAL, and also by breaching the express and implied

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

warranties of merchantability.

73. Defendant knew or should have known of its unlawful conduct.

74. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed above constitute an unlawful business practice within the meaning of California Business and Professions Code Section 17200.

75. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Defendant could have refrained from displaying untruthful and "all natural" claims on the Products' label and packaging. Furthermore, Defendant could have avoided falsely advertising the Products as "all natural" throughout its social media campaigns.

76. All of the conduct alleged herein occurred and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

77. As a direct and proximate result of these acts, consumers have been and continue to be harmed. Plaintiff and the Class Members have suffered injury and actual out-of-pocket losses as a result of Defendant's violation of the unlawful prong of the UCL because Plaintiff and the Class would not have bought the Products if they had known the truth regarding the ingredients of the Products. Plaintiff and the Class paid an increased price due to the misrepresentations about the Products and the Products did not have the promised quality, effectiveness, or value.

78. Pursuant to Bus. & Prof. Code §§ 17203 and 17535, Plaintiff and the Class are therefore entitled to an order requiring Defendant to cease the acts of unfair competition alleged herein, full restitution of all monies paid to Defendant as a result of its deceptive practices, interest at the highest rate allowable by law and the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Civil Code Procedure §1021.5.

### THIRD CAUSE OF ACTION

#### (Breach of Express Warranty)

79. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

1           80. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or  
2 promise, including a description of goods, becomes part of the basis of the bargain and creates an  
3 express warranty that the goods shall conform to the promise and to the description.

4           81. At the time Plaintiff, and each Class Member purchased the Products, they formed a  
5 contract with Defendant. The terms of that contract include the promises and affirmations of fact  
6 made by Defendant on the Products' labels and through Defendant's marketing campaign, as  
7 described above. Defendant expressly warranted that the Products, amongst other things, were made  
8 of all natural ingredients, and Plaintiff placed importance on Defendant's claims. Defendant's  
9 claims constitute an affirmation of fact that became a part of the basis of the bargain and created an  
10 express warranty that the goods would conform to the stated promise. The Products' labeling and  
11 advertising constitute an express warranty, because they are part of the basis of that bargain, and  
12 are part of a standardized contract between Plaintiff and The Class Members on one hand, and  
13 Defendant on the other.

14           82. At all times, California has codified and adopted the provisions of the Uniform  
15 Commercial Code governing the express warranties of merchantability. Cal. Comm. Code § 2313.

16           83. All conditions precedent to Defendant's liability under this contract have been  
17 performed by Plaintiff and the Class.

18           84. Defendant breached the terms of this contract, including the express warranties, with  
19 Plaintiff and the Class by failing to provide Products that can perform as advertised.

20           85. Defendant is in privity with Plaintiff and the Class Members by selling directly to  
21 members of the public, and by warranting the Products to them directly or through the doctrine of  
22 agency.

23           86. Plaintiff and The Class Members were injured as a direct and proximate result of  
24 Defendant's breach because Plaintiff and the Class would not have bought the Products if they had  
25 known the truth regarding the ingredients of the Products. Plaintiff and the Class paid for the  
26 Products in reliance on Defendant's mislabeling and the Products did not have the promised quality,  
27 effectiveness, or value. Consequently, Plaintiff and the Class have been damaged.

28 //

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

#### FOURTH CAUSE OF ACTION

##### (Breach of Implied Warranty of Fitness for a Particular Purpose)

87. Plaintiff re-alleges and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

88. The Uniform Commercial Code § 2-314 provides that, unless excluded and modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

89. Defendant is in the business of manufacturing, marketing and selling food products to consumers for profit.

90. By placing the Products in the stream of commerce, Defendant impliedly warranted that the Products are effective and reasonably safe for their intended use, i.e. for consumption.

91. Defendant's Products are not merchantable. In breach of their implied warranty, Defendant's Products are not usable as intended.

92. Defendant's Products were not reasonably safe for their intended use when they left Defendant's control and entered the market.

93. The Products' defects were not open or obvious to consumers.

94. The Products include artificial ingredients, and thus have not been proven effective for their intended use, and are not effective for their intended use.

95. At all times, California has codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability. Cal. Comm. Code § 2314.

96. The Products are "goods" as defined in the California Commercial Code.

97. As designers, manufacturers, producers, marketers and sellers of the Products, Defendant is "merchant" within the meaning of the California Commercial Code.

98. As merchant of the Products, Defendant knew that purchasers relied upon it to design, manufacture, and sell products that were fit for their intended use.

99. As a result of Defendant's breach of implied warranties, Plaintiff and The Class Members have sustained damages in an amount to be determined at trial. Plaintiff and the Class Members were injured as a direct and proximate result of Defendant's breach because they would

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

1 not have bought the Products if they had known the truth regarding the ingredients and nutrients of  
2 the Products. Plaintiff and the Class paid an increased price for the Products based on Defendant's  
3 misrepresentations and the Products did not have the promised quality, effectiveness, or value. As  
4 a result, Plaintiff and the Class Members have suffered damages.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the Class defined herein, prays for judgment and relief on all Causes of Action as follows:

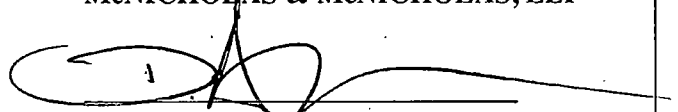
- A. This action be certified and maintained as a class action and certify the proposed class as defined, appointing Plaintiff as representatives of the Class, and appointing the attorneys and law firms representing Plaintiff as counsel for the Class;
- B. Awards compensatory, statutory and/or punitive damages as to all Causes of Action where such relief is permitted;
- C. Awards Plaintiff and proposed class members the costs of this action, including reasonable attorneys' fees and expenses;
- D. An order enjoining Defendant from continuing to engage in the unlawful conduct and practices described herein;
- E. Awards equitable monetary relief, including restitution and disgorgement of all ill-gotten gains, and the imposition of a constructive trust upon, or otherwise restricting the proceeds of Defendant's ill-gotten gains, to ensure that Plaintiff and proposed class members have an effective remedy;
- F. Awards pre-judgment and post-judgment interest at the legal rate;
- G. Orders appropriate declaratory relief; and
- H. Granting such other and further as may be just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: November 22, 2017

**McNICHOLAS & McNICHOLAS, LLP**



Patrick McNicholas  
David Angeloff  
Attorneys for Plaintiff

McNICHOLAS & McNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024



11/27/2017

EXHIBIT 1

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

EXHIBIT ONE

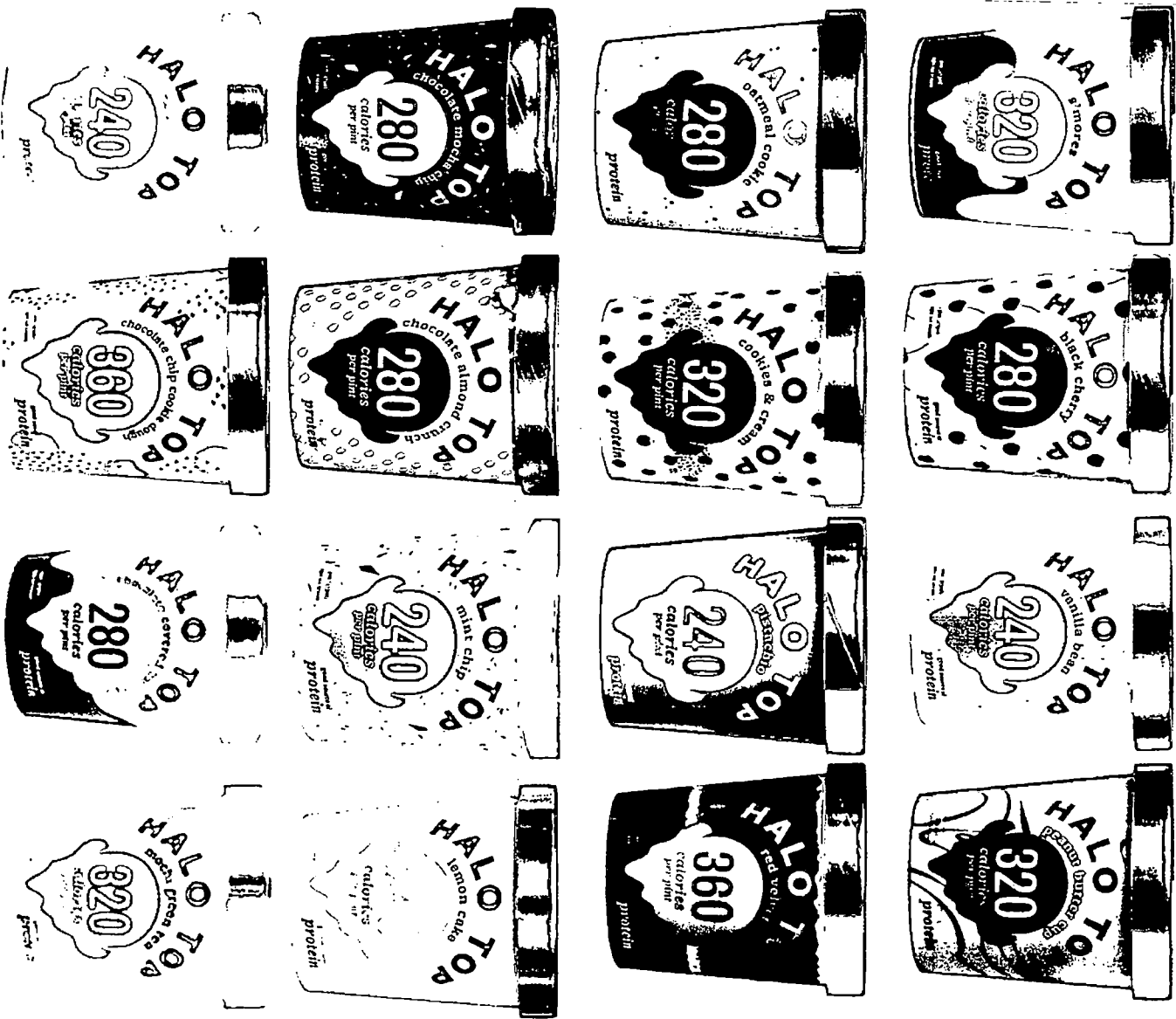


EXHIBIT ONE TO CLASS ACTION COMPLAINT

2

EX-1

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



11/27/2017

EXHIBIT 2

MCNICHOLAS & MCNICHOLAS, LLP.  
10866 Wilshire Blvd., Ste. 1400  
Los Angeles, CA 90024

## EXHIBIT TWO

### ADDITIONAL CONTACT INFO

✉ info@halotop.com

🌐 <http://www.halotop.com>

### STORY

Ice cream you can feel good eating! All natural, low-calorie, low-sugar, protein-packed and made with the world's best ingredients. [www.halotop.com](http://www.halotop.com)

### MORE INFO

#### 📘 About

Decadent ice cream - for less than 300 calories per pint!  
All natural, high-protein and low-sugar. [www.halotop.com](http://www.halotop.com)



**Halo Top** 🍦

@HaloTopCreamery

Decadent ice cream - for less than 300  
calories per pint! All natural, high-protein  
and low-sugar.



halotopcreamery

Follow

**Halo Top Creamery** The world's first all-natural light ice cream: around 250-350 calories per PINT, protein-rich, sugar-poor, only the best ingredients, & tastes GREAT! 🍦 [www.halotop.com](http://www.halotop.com)

1,067  
posts

594k  
followers

3,938  
following

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>McNicholas &amp; McNicholas, LLP</b> Patrick McNicholas (SBN 125868) / David Angeloff (SBN 272929) 10866 Wilshire Blvd., Suite 1400 Los Angeles, CA 90024 TELEPHONE NO.: (310) 474-1582 FAX NO.: (310) 475-7871 ATTORNEY FOR (Name): <b>Named Plaintiff and the Proposed Class</b>		<b>ORIGINAL</b> FOR COURT USE ONLY <b>FILED</b> Superior Court of California County of Los Angeles <b>NOV 27 2017</b> Sherri R. Carter, Executive Officer/Clerk By: <i>[Signature]</i> Deputy Spayma Borden
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Los Angeles</b> STREET ADDRESS: <b>111 N. Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles, CA 90012</b> Central District BRANCH NAME:		CASE NUMBER: <b>BC 684736</b> JUDGE: DEPT:
CASE NAME: <b>YAMINI, etc. v. EDEN CREAMERY, LLC, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)           </div> <div style="width: 30%;"> <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)           </div> <div style="width: 35%;"> <b>Complex Case Designation</b>  <input type="checkbox"/> <b>Counter</b>   <input type="checkbox"/> <b>Joinder</b>              Filed with first appearance by defendant              (Cal. Rules of Court, rule 3.402)           </div> </div>		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
---	--

3. Remedies sought (check all that apply): a. ☐ monetary   b. ☐ nonmonetary; declaratory or injunctive relief   c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

 Date: November 22, 2017  
 David Angeloff

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**CIVIL CASE COVER SHEET**

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

ORIGINAL

SHORT TITLE: Yamin, et al. v. Eden Creamery, LLC, et al.

CASE NUMBER

BC 684736

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

**Step 1:** After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

**Step 2:** In Column B, check the box for the type of action that best describes the nature of the case.

**Step 3:** In Column C, circle the number which explains the reason for the court filing location you have chosen.

**Applicable Reasons for Choosing Court Filing Location (Column C)**

- |  |  |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. | 7. Location where petitioner resides.  |
| 2. Permissive filing in central district.  | 8. Location wherein defendant/respondent functions wholly.   |
| 3. Location where cause of action arose.   | 9. Location where one or more of the parties reside.   |
| 4. Mandatory personal injury filing in North District.                           | 10. Location of Labor Commissioner Office.   |
| 5. Location where performance required or defendant resides.                     | 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
| 6. Location of property or permanently garaged vehicle.                          |  |

Auto  
TortOther Personal Injury/Property  
Damage/Wrongful Death Tort

110272711

<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11



SHORT TITLE: <b>Yamin, et al. v. Eden Creamery, LLC, et al.</b>	CASE NUMBER
---	-------------

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
<b>Non-Personal Injury/ Property Damage/ Wrongful Death Tort</b>	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
<b>Employment</b>	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
<b>Contract</b>	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
<b>Real Property</b>	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
<b>Unlawful Detainer</b>	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE: <b>Yamin, et al. v. Eden Creamery, LLC, et al.</b>	CASE NUMBER
---	-------------

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Judicial Review</b>	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
<b>Provisionally Complex Litigation</b>	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
<b>Enforcement of Judgment</b>	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
<b>Miscellaneous Civil Petitions</b>	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case		2, 3, 9	
<input type="checkbox"/> A6190 Election Contest		2	
<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender		2, 7	
<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law		2, 3, 8	
	<input type="checkbox"/> A6100 Other Civil Petition	2, 9	


SHORT TITLE: Yamin, etc. v. Eden Creamery, LLC, et al.	CASE NUMBER
--	-------------

**Step 4: Statement of Reason and Address:** Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

<b>REASON:</b> <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			<b>ADDRESS:</b> 4470 W. Sunset Blvd., #90182
<b>CITY:</b> Los Angeles	<b>STATE:</b> CA	<b>ZIP CODE:</b> 90027	

**Step 5: Certification of Assignment:** I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: November 22, 2017

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

11/27/2017