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7
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9
10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11
12 MARTHA ESPINOLA, on behalf of
herself and all others similarly situated,

13 Plaintiff,

14 v.

15 KASHI COMPANY, a California
16 Corporation, and DOES 1-10, inclusive,

17 Defendants.

Case No. **CV 11-08534 SVW (SPK)**

**CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE FALSE
ADVERTISING LAWS ("UCL");
Bus. & Prof. Code §17500 et seq.;

2. VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAWS
("UCL"); Bus. & Prof. Code §17200
et seq.;

3. VIOLATION OF CALIFORNIA'S
CONSUMER LEGAL REMEDIES
ACT ("CLRA"), Civil Code §1750 et
seq.;

BY FAX

DEMAND FOR JURY TRIAL

FILED
11 OCT 14 PM 2:57
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

LAW OFFICES
KIRTLAND & PACKARD LLP

1 Plaintiff Martha Espinola, on behalf of herself and all others similarly
2 situated (collectively "Plaintiffs"), alleges the following upon information and
3 belief based upon investigation of counsel and published reports, except to her own
4 acts, which she alleges upon personal knowledge:

5 **PARTIES**

- 6 1. Plaintiff Martha Espinola is and was at all relevant times a resident of San
7 Bernardino, California. She has purchased a Kashi Company food product,
8 Heart to Heart Apple Cinnamon instant oatmeal, which is packaged in a box
9 that states "Nothing Artificial." One of the reasons that Plaintiff purchased
10 the product is because she believed it contained nothing artificial and was all
11 natural, based on the statement on the box. Plaintiff relied on Kashi
12 Company's advertising and has been damaged because the Kashi product
13 purchased contained synthetic and/or unnatural ingredients; she would have
14 either not bought the product or paid less for the Kashi product.
- 15 2. Defendant Kashi Company (hereafter "Kashi" or "Defendant") is a California
16 company with its principal place of business in La Jolla, California. Kashi
17 manufactures and markets Kashi food products, sold through numerous
18 avenues to consumers in California and throughout the nation.
- 19 3. The true names and capacities of the Defendants sued herein as DOES 1
20 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues
21 such Defendants by fictitious names. Each of the Defendants designated
22 herein as a DOE is legally responsible for the unlawful acts alleged herein.
23 Plaintiff will seek leave of Court to amend this Complaint to reflect the true
24 names and capacities of the DOE Defendants when such identities become
25 known.
- 26 4. At all relevant times, each and every Defendant was acting as an agent and/or
27 employee of each of the other Defendants and was acting within the course
28 and/or scope of said agency and/or employment with the full knowledge and

1 consent of each of the other Defendants. Each of the acts and/or omissions
2 complained of herein were alleged and made known to, and ratified by, each
3 of the other Defendants (Kashi and DOE Defendants will hereafter
4 collectively be referred to as "Defendants").

5 **JURISDICTION AND VENUE**

6 5. A Court has diversity jurisdiction over this class action pursuant to 28 U.S.C.
7 § 1332 as amended by the Class Action Fairness Act of 2005 because the
8 amount in controversy exceeds \$5,000,000, exclusive of interest and costs,
9 and is a class action in which some members of the class are citizens of
10 different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

11 6. This Court also has personal jurisdiction over Defendants because
12 Defendants are authorized to do business, and currently do business, in this
13 state.

14 7. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because
15 Defendants are subject to personal jurisdiction in this District and a
16 substantial portion of the conduct complained of herein occurred in this
17 District.

18 **FACTUAL ALLEGATIONS**

19 8. Kashi is a food company that has built its image around being all natural and
20 wholesome, with nothing artificial in its foods, and on its website states,
21 "We can't say it enough-We're passionate about good, all-natural foods."

22 9. This action arises out of the deceptive nature of Kashi labeling its food
23 products as "All Natural" and/or containing "Nothing Artificial," when in
24 fact that is not the case.

25 10. Though the FDA does not have a specific definition for the term "natural" or
26 its derivatives, the "agency has not objected to the use of the term if the food
27 does not contain added color, artificial flavors or synthetic substances."

28 11. Kashi products, such as the one purchased by Plaintiff, which include

1 statements that such a product is either “All Natural” and/or containing
2 “Nothing Artificial” are misleading because such products do contain
3 artificial ingredients and synthetic substances. A sampling of some of the
4 artificial or synthetic substances in Kashi products are:

- 5 a. Absorbic Acid is, according to federal regulations, a synthetic
6 substance. See 7 C.F.R. § 205.605(b). This acid is created in a
7 laboratory and is an artificial, reduced form of natural vitamin C.
- 8 b. Glycerin is a synthetic substance. See 7 CRF 205.605(b). It is used in
9 medical, pharmaceutical and personal care preparations. In food and
10 beverages it serves as a humectant, solvent, and sweetener and may
11 help preserve foods.
- 12 c. Sodium Acid Pyrophosphate is, according to federal regulations, a
13 synthetic substance. See 7 C.F.R. § 205.605(b). It is an acidic agent
14 used for leavening flour.
- 15 d. Xanthan Gum is also listed, per federal regulations, as a synthetic
16 compound. 7 C.F.R. § 205.605. It is produced by the fermentation of
17 glucose, sucrose or lactose by the Xanthomonas campestris bacterium.
18 It is used in toothpaste, ice cream, salad dressing and to thicken
19 drilling mud.
- 20 e. Zinc Oxide is also listed, per federal regulations, as a synthetic
21 compound. 7 C.F.R. § 205.601(j)(6)(ii). It is chiefly produced as a
22 byproduct of soap-making. It is considered a chemical compound that
23 is used an active for various non-prescription products such as for
24 minor skin irritants, along with being used as a food additive to
25 provide the mineral zinc.

- 26 12. A reasonable consumer would understand the terms “nothing artificial”
27 and/or “natural” to mean that the ingredients in the product are all natural and
28 there is nothing synthetic or artificial that make up that product. Consumers

1 are often willing to pay a premium for products which on their label or box
2 claim to be all natural or have no artificial ingredients.

3 13. Kashi has been deceptive in labeling its food products as either as “All
4 Natural” and/or containing “Nothing Artificial,” though such products
5 actually contain synthetic and unnatural ingredients, such as those listed
6 above, along with a host of others.

7 14. Consumers, such as Plaintiff and class members, have relied on Defendants’
8 statements and labels regarding Kashi food products being “All Natural”
9 and/or containing “Nothing Artificial,” when in fact such products contained
10 synthetic and artificial ingredients. Consumers paid money for the falsely
11 labeled Kashi products and did not obtain the benefit of the bargain. Plaintiff
12 and Class Members would have not purchased, or would have not paid as
13 much, for Kashi’s falsely labeled products had they known the truth that such
14 products did, in fact, contain unnatural and artificial ingredients. Defendants’
15 wrongful conduct has caused Plaintiff and the Class Members to suffer injury
16 in fact and a loss of money and/or property.

17 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

18 15. Plaintiff brings this action on behalf of herself, on behalf of all others
19 similarly situated, and on behalf of the general public, as members of the
20 class or subclasses (collectively referred to hereafter as the “Class”) defined
21 as follows:

22 (1) California Class: The class that Plaintiff seeks to represent (“the
23 California Class”) consists of all persons who are citizens or residents
24 of California who purchased Kashi food products that were labeled
25 “Nothing Artificial” and/or “All Natural” but contained artificial or
26 synthetic ingredients, within the four years prior to the filing of the
27 initial complaint. Excluded from the class are Defendants, any parent,
28 subsidiary, affiliate, or controlled person of Defendants, as well as the

- 1 officers and directors of Defendants, and the immediate family member
2 of any such person. Also excluded is any judge who may preside over
3 this case, and such judge's immediate family and courtroom staff.
- 4 (2) Nationwide Class: The class that Plaintiff seeks to represent ("the
5 Nationwide Class") is defined to include all persons in the United
6 States who purchased Kashi food products that were labeled "Nothing
7 Artificial" and/or "All Natural" but contained artificial or synthetic
8 ingredients, within the four years prior to the filing of the initial
9 complaint. Excluded from the class are Defendants, any parent,
10 subsidiary, affiliate, or controlled person of Defendants, as well as the
11 officers and directors of Defendants, and the immediate family member
12 of any such person. Also excluded is any judge who may preside over
13 this case, and such judge's immediate family and courtroom staff.
- 14 16. This action is brought and may be properly maintained as a class action
15 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4)
16 and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,
17 predominance and superiority requirements of those provisions.
- 18 17. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
19 joinder of all of its members is impractical. While the exact number and
20 identities of Class members are unknown to Plaintiff at this time and can only
21 be ascertained through appropriate discovery, Plaintiff is informed and
22 believes the Class includes well over one hundred thousand members.
23 Plaintiff alleges that the Class may be ascertained by the records maintained
24 by Defendants.
- 25 18. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
26 members of the Class which predominate over any questions affecting only
27 individual members of the Class. These common legal and factual questions,
28 which do not vary from class member to class member, and which may be

1 determined without reference to the individual circumstances of any class
2 member, include, but are not limited to, the following:

- 3 (a) Whether Defendants' labeling is false, misleading or defective;
4 (b) Whether Defendants' products do, indeed, contain unnatural or
5 artificial products;
6 (c) Whether Defendants' conduct violates the CLRA or other laws;
7 (d) Whether Defendants' conduct is "unfair" under Bus. & Prof. Code
8 Section 17200;
9 (e) Whether, as a result of Defendants' misconduct, Plaintiff and the
10 Class are entitled to damages, restitution, equitable relief and other
11 relief, and the amount and nature of such relief.

- 12 19. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
13 members of the Class. Plaintiff and all members of the Class have sustained
14 injury and are facing irreparable harm arising out of Defendants' common
15 course of conduct as complained of herein. The losses of each member of the
16 Class were caused directly by Defendants' wrongful conduct as alleged
17 herein.
- 18 20. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the
19 interests of the members of the Class. Plaintiff has retained attorneys
20 experienced in the prosecution of class actions, including complex consumer
21 and mass tort litigation.
- 22 21. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
23 methods of fair and efficient adjudication of this controversy, since
24 individual litigation of the claims of all Class members is impracticable.
25 Even if every Class member could afford individual litigation, the court
26 system could not. It would be unduly burdensome to the courts in which
27 individual litigation of numerous issues would proceed. Individualized
28 litigation would also present the potential for varying, inconsistent, or

1 contradictory judgments and would magnify the delay and expense to all
2 parties and to the court system resulting from multiple trials of the same
3 complex factual issues. By contrast, the conduct of this action as a class
4 action, with respect to some or all of the issues presented herein, presents
5 fewer management difficulties, conserves the resources of the parties and of
6 the court system, and protects the rights of each Class member.

7 22. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
8 thousands of individual Class members would create the risk of inconsistent
9 or varying adjudications with respect to, among other things, the need for and
10 the nature of proper notice, which Defendants must provide to all Class
11 members.

12 23. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
13 individual class members would create a risk of adjudications with respect to
14 them that would, as a practical matter, be dispositive of the interests of the
15 other Class members not parties to such adjudications or that would
16 substantially impair or impede the ability of such non-party Class members to
17 protect their interests.

18 24. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects
19 generally applicable to the Class, thereby making appropriate final injunctive
20 relief with regard to the members of the Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **Business and Professions Code § 17500**

23 **(Violation of the False Advertising Act)**

24 **(By Plaintiff and the Class Against All Defendants)**

25 25. Plaintiff hereby incorporates paragraphs 1-24 above as if set forth in full.

26 26. California Business and Professions Code (the "Code") § 17500 provides that
27 "[i]t is unlawful for any ... corporation . . . with intent . . . to dispose of . . .
28 personal property . . . to induce the public to enter into any obligation relating

1 thereto, to make or disseminate or cause to be made or disseminated . . . from
2 this state before the public in any state, in any newspaper or other
3 publication, or any advertising device, or by public outcry or proclamation, or
4 in any other manner or means whatever, including over the Internet, any
5 statement . . . which is untrue or misleading, and which is known, or which
6 by the exercise of reasonable care should be known, to be untrue or
7 misleading”

8 27. Defendants misled consumers by making untrue statements and failing to
9 disclose what is required as stated in the Code, as alleged above.

10 28. As a direct and proximate result of Defendants’ misleading and false
11 advertising, Plaintiff and the members of the Class have suffered injury in
12 fact and have lost money or property.

13 29. The misleading and false advertising described herein presents a continuing
14 threat to Plaintiff and the Class in that Defendants persist and continue to
15 engage in these practices, and will not cease doing so unless and until forced
16 to do so by this Court. Defendants’ conduct will continue to cause
17 irreparable injury to consumers unless enjoined or restrained.

18 **SECOND CAUSE OF ACTION**

19 **Business and Professions Code § 17200, et seq.**

20 **(Violation of the Unfair Competition Law)**

21 **(By Plaintiff and the Class Against All Defendants)**

22 30. Plaintiff hereby incorporates paragraphs 1-29 above as if set forth in full.

23 31. California Business and Professions Code § 17200, et seq., (the “Unfair
24 Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of
25 “unfair competition” which includes any unlawful, unfair, or fraudulent
26 business practice.

27 //

28 //

- 1 32. The UCL imposes strict liability. Plaintiff need not prove that Defendants
2 intentionally or negligently engaged in unlawful, unfair or fraudulent
3 business practices—but only that such practices occurred.
- 4 33. The material misrepresentations, concealment, and non-disclosures by
5 Defendants and DOES 1-10 as part of their marketing and advertising of
6 Kashi food products are unlawful, unfair, and fraudulent business practices
7 prohibited by the UCL.
- 8 34. In carrying out such marketing, Defendants have violated the Consumer
9 Legal Remedies Act, the False Advertising Law, and various other laws,
10 regulations, statutes, and/or common law duties. Defendants' business
11 practices alleged herein, therefore, are unlawful within the meaning of the
12 UCL.
- 13 35. The harm to Plaintiff and members of the public outweighs the utility of
14 Defendants' practices and, consequently, Defendants' practices, as set forth
15 fully above, constitute an unfair business act or practice within the meaning
16 of the UCL.
- 17 36. Defendants' practices are additionally unfair because they have caused
18 Plaintiff and the Class substantial injury, which is not outweighed by any
19 countervailing benefits to consumers or to competition, and is not an injury
20 the consumers themselves could have reasonably avoided.
- 21 37. Defendants' practices, as set forth above, have misled the general public in
22 the past and will mislead the general public in the future. Consequently,
23 Defendants' practices constitute an unlawful and unfair business practice
24 within the meaning of the UCL.
- 25 38. Pursuant to California Business and Professions Code § 17204, an action for
26 unfair competition may be brought by any "person . . . who has suffered
27 injury in fact and has lost money or property as a result of such unfair
28 competition." Defendants' wrongful misrepresentations and omissions have

1 directly and seriously injured Plaintiff and the putative class by causing them
2 to pay for a product that was defective, based on false and misleading
3 marketing and advertising.

4 39. The unlawful, unfair, and fraudulent business practices of Defendants are
5 ongoing and presents a continuing threat that members of the public will be
6 misled into purchasing Kashi food products based on the belief that Kashi
7 products were and are all natural and contained nothing artificial, when in
8 fact that was not the case.

9 40. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
10 injunctive relief ordering Defendants to cease this unfair competition, as well
11 as disgorgement and restitution to Plaintiff and the Class of all of
12 Defendants' revenues associated with Defendants' unfair competition, or
13 such portion of those revenues as the Court may find equitable.

14 **THIRD CAUSE OF ACTION**

15 **Civil Code § 1770, et seq.**

16 **(Violation of the Consumer Legal Remedies Act)**

17 **(By Plaintiff and the Class Against All Defendants)**

18 41. Plaintiff hereby incorporates paragraphs 1-40 above as if set forth in full.

19 42. The Consumer Legal Remedies Act ("CLRA") creates a non-exclusive
20 statutory remedy for unfair methods of competition and unfair or deceptive
21 acts or business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th
22 1139, 1164 (1997). Its self-declared purpose is to protect consumers against
23 these unfair and deceptive business practices, and to provide efficient and
24 economical procedures to secure such protection. Cal. Civil Code § 1760 et
25 seq. The CLRA was designed to be liberally construed and applied in favor
26 of consumers to promote its underlying purposes. *Id.*

27 43. Plaintiff has standing to pursue this claim as Plaintiff purchased a Kashi food
28 product, namely, Heart to Heart Apple Cinnamon instant oatmeal, which is

1 packaged in a box that states "Nothing Artificial." One of the reasons that
2 Plaintiff purchased the product is because she believed the product contained
3 nothing artificial and was all natural, based on the statement on the box.
4 Plaintiff relied on Kashi's advertising and has been damaged because the
5 Kashi product purchased contained synthetic and/or unnatural ingredients;
6 she would have either not bought the product or paid less for the Kashi
7 product.

8 44. Plaintiff has filed concurrently herewith the declaration of venue required by
9 Civil Code Section 1780(d).

10 45. Defendants' wrongful business practices constituted, and constitute, a
11 continuing course of conduct in violation of the California CLRA since
12 Defendants are still representing that their products have characteristics
13 which are false and misleading, and have injured Plaintiff and the Class.

14 46. More specifically, Plaintiff alleges that Defendants have violated paragraphs
15 5, 7, and 9 of California Civil Code § 1770(a) by engaging in the unfair
16 and/or deceptive acts and practices set forth herein. Defendants' unfair and
17 deceptive business practices in carrying out the marketing program described
18 above were and are intended to and did and do result in Plaintiff and Class
19 members purchasing Defendants' products, in violation of the CLRA. Cal.
20 Civil Code § 1770, et seq.

21 47. As a result of Defendants' unfair and/or deceptive business practices,
22 Plaintiff and all consumers who purchased Defendants' food products have
23 suffered damage and lost money in that they paid for products that did not
24 have the characteristics and benefits as represented. Plaintiff seeks and is
25 entitled to an order enjoining Defendants from continuing to engage in the
26 unfair and deceptive business practices alleged herein.

27 48. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendants
28 in writing of the particular violations of Section 1770 of the CLRA (the

1 "Notice Letter"). If Defendants fail to comply with Plaintiff's demands
2 within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of
3 the CLRA, Plaintiff will amend this Complaint to further request damages
4 under the CLRA.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for
7 relief and judgment as follows:

8 1. For preliminary and permanent injunctive relief enjoining Defendants,
9 their agents, servants and employees, and all persons acting in concert with them,
10 from engaging in, and continuing to engage in, the unfair, unlawful and/or
11 fraudulent business practices alleged above and that may yet be discovered in the
12 prosecution of this action;

13 2. For certification of the putative class;

14 3. For restitution and disgorgement of all money or property wrongfully
15 obtained by Defendants by means of its herein-alleged unlawful, unfair, and
16 fraudulent business practices;

17 4. For an accounting by Defendants for any and all profits derived by
18 Defendants from their herein-alleged unlawful, unfair, and/or fraudulent conduct
19 and/or business practices;

20 5. An award of statutory damages according to proof, except that no
21 damages are currently sought on Plaintiff's Cause of Action regarding the
22 Consumer Legal Remedies Act at this time;

23 6. An award of general damages according to proof, except that no
24 damages are currently sought on Plaintiff's Cause of Action regarding the
25 Consumer Legal Remedies Act at this time;

26 7. An award of special damages according to proof, except that no
27 damages are currently sought on Plaintiff's Cause of Action regarding the
28 Consumer Legal Remedies Act at this time;

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8. Exemplary damages, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;

9. For attorneys' fees and expenses pursuant to all applicable laws including, without limitation, Code of Civil Procedure §1021.5, the CLRA, and the common law private attorney general doctrine;

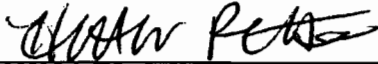
10. For costs of suit; and

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

DATED: October 14, 2011

KIRTLAND & PACKARD LLP

By:

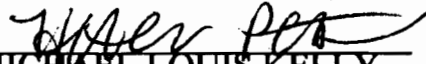

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON
*Counsel for Plaintiff and all others
similarly situated*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all causes of actions so triable.

DATED: October 14, 2011

KIRTLAND & PACKARD LLP

By: 
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON
*Counsel for Plaintiff and all others
similarly situated*

LAW OFFICES
KIRTLAND & PACKARD LLP

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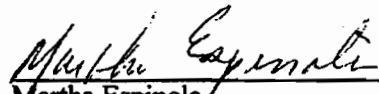
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I, Martha Espinola, declare as follows:

1. I am a Plaintiff in this action, and am a citizen of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Los Angeles is a county in which Defendants are doing business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Martha Espinola

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself)
MARTHA ESPINOLA, on behalf of herself and
 all others similarly situated

DEFENDANTS
KASHI COMPANY, a California Corporation,
 and **DOES 1-10**, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Michael Louis Kelly
Kirtland & Packard LLP
2361 Rosecrans Avenue
Fourth Floor
El Segundo, CA 90245
310-536-1000

Attorneys (If Known)

BY FAX

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

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

IV. ORIGIN (Place an X in one box only.)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$ To Be Determined**

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. 1332(d) (2) (A) - Class Action Fairness Act Diversity - false and misleading advertising causing Plaintiff and the Class to purchase Defendant's food products.

VII. NATURE OF SUIT (Place an X in one box only.)

<p>OTHER</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Act</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Info. Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>	<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Fed. Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury-Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury-Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus-Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input checked="" type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 American with Disabilities - Employment</p> <p><input type="checkbox"/> 446 American with Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISON PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus/Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p>NEGLIGENCE</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>PROPER RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (9)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title</p> <p><input type="checkbox"/> 865 RSI (405)</p> <p>REAL ESTATE</p> <p><input type="checkbox"/> 870 Taxes Plaintiff Defe</p> <p><input type="checkbox"/> 871 IRS 26</p>
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CV 11-08534

FOR OFFICE USE ONLY: Case Number: _____

**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.
CIVIL COVER SHEET**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
 - B. Call for determination of the same or substantially related or similar questions of law and fact; or
 - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Martha Espinola - San Bernardino	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Kashi Company - San Diego

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Martha Espinola - San Bernardino	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date October 14, 2011

MICHAEL LOUIS KELLY

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))