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11 *Attorneys for Plaintiff*  
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12  
13 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

14  
15 MASON KIEN, On Behalf of Himself  
and All Others Similarly Situated,

16  
17 Plaintiff,

18 v.

19 KELLOGG CO.,

20 Defendant.  
21

Case No.: '18CV2759 AJB MSB

22 **CLASS ACTION COMPLAINT FOR:**

- 1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*; and
- 2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*

23 DEMAND FOR JURY TRIAL  
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1 Plaintiff Mason Kien brings this action on behalf of himself and all others  
2 similarly situated against Defendant Kellogg Co. and states:

3 **FACTUAL ALLEGATIONS**

4 1. Defendant manufactures, markets, sells, and distributes various food  
5 products under the Kellogg’s brand. This lawsuit concerns two of those products:  
6 (1) Kellogg’s Nutrigrain Soft Baked Breakfast Bars – Strawberry; and (2) Kellogg’s  
7 Cracklin’ Oat Bran oat cereal (the “Products”).<sup>1</sup>

8 2. In marketing the Products, Defendant seeks to appeal to the consuming  
9 public’s ever-growing health consciousness and increasing appetite for nutritious,  
10 wholesome foods that will benefit their health and avoidance of highly-processed  
11 foods with non-healthy attributes such as GMOs, artificial additives, gluten, added  
12 sugars, and hydrogenated oils.

13 3. Defendant makes several detailed representations about the health  
14 attributes of the Products on the front of the Product packages. For example,  
15 Defendant represents on the front of the Kellogg’s Nutrigrain Soft Baked Breakfast  
16 Bars – Strawberry Product that the Product provides “8g Whole Grains”, is  
17 “Strawberry naturally flavored with other natural flavors”, is “made with real fruit”,  
18 and contains “No artificial flavors”, and “No colors from artificial sources”.  
19 Defendant makes similar attribute representations on the front of the Kellogg’s  
20 Cracklin’ Oat Bran oat cereal Product. These representations are collectively referred  
21 to as the “Product Health Representations”.

22 4. The Product Health Representations lead reasonable consumers to  
23 believe the Products will foster their “good health” and not pose a safety risk to or  
24 potentially harm their health.

25 5. However, recent testing by the Environmental Working Group (EWG),  
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<sup>1</sup> Plaintiff reserves the right to add additional products upon completion of discovery.  
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1 a nonprofit organization dedicated to protecting human health and the environment,  
2 revealed that Defendant's Products contain glyphosate. EWG's Children's Health  
3 Initiative, "Breakfast With a Dose of Roundup?" August 15, 2018, *available at*  
4 <https://www.ewg.org/childrenshealth/glyphosateincereal/#.W3TTbPZFw2w>  
5 ("EWG") (last visited December 6, 2018). Glyphosate is one of the most widely used  
6 weed killing poisons in the United States. *Id.* It is also sprayed on wheat, barley, and  
7 oats as a preharvest desiccant to dry the grain faster. Each year, more than 250  
8 million pounds of glyphosate is sprayed on American crops, including wheat, barley,  
9 and oats just before they are harvested. *Id.* Glyphosate adheres to the crops and  
10 Defendant's cleansing process fails to remove the glyphosate residue.

11 6. The International Agency for Research on Cancer, part of the World  
12 Health Organization, has determined that glyphosate is "probably carcinogenic to  
13 humans". IARC Monographs Volume 112: evaluation of five organophosphate  
14 insecticides and herbicides, March 20, 2015, *available at*  
15 <http://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf> (last  
16 visited August 23, 2018). Glyphosate is even more dangerous for children, who are  
17 more susceptible to carcinogens. *See* EWG. This is because, *inter alia*, children's  
18 detoxification pathways are not yet fully developed, so their ability to eliminate even  
19 tiny amounts of pesticides and other harmful chemicals is limited. The danger is  
20 amplified by the fact that few people, children in particular, eat only a single serving  
21 of the Products on any given day and repeated daily exposures can add up.

22 7. Because it is a probable carcinogen with no nutritional value, the  
23 presence of *any* amount of glyphosate in the Products, no matter whether above or  
24 below regulatory limits, is material to reasonable consumers. No reasonable  
25 consumer would purchase the Products knowing that they contained glyphosate. This  
26 is particularly true given that there are numerous comparable products without  
27 glyphosate.

1           8.       Even though Defendant knew that the Products contain the probable  
2 carcinogen glyphosate or, at a minimum, that they could not guarantee the Products  
3 did not contain glyphosate given its wide use as a pesticide, Defendant does not  
4 disclose this information on the front of the Product labels, choosing instead to  
5 specifically identify only the healthy attributes of the Products. Nor does Defendant  
6 include this information on the back or sides of the packages, where more detailed  
7 Product information is generally found, instead choosing to repeat and reinforce the  
8 Health Representations identified on the front of the packages. In fact, nowhere on  
9 the Product packages – inside or out – does Defendant disclose that the Products  
10 contain or likely contain glyphosate, such that Defendant’s Product Health  
11 Representations are false, deceptive, or, at a minimum, misleading half-truths.

12           9.       As the manufacturers and distributors of the Products, Defendant knew  
13 that the Products contained or likely contained glyphosate. By contrast, Plaintiff and  
14 consumers did not and do not have access to such information. Nor is that fact easily  
15 discovered by Plaintiff and consumers before purchase of the Products. Because  
16 Defendant had knowledge that the Products contain or likely contain glyphosate, and  
17 Plaintiff and consumers did not, Defendant had a duty to disclose that fact—and that  
18 glyphosate is a probable carcinogen—to consumers. Defendant did not disclose these  
19 material facts.

20           10.       Consumers have a reasonable expectation that material product  
21 information, such as the presence of a probable carcinogen like glyphosate, will be  
22 provided by a product manufacturer, especially when the manufacturer prominently  
23 features and affirmatively identifies the health-related attributes of the Products such  
24 as “8g Whole Grains”, “naturally flavored”, and “no colors from artificial sources”.  
25 By only identifying the health attributes of the Products and failing to disclose that  
26 the Products contain or likely contain glyphosate and glyphosate is a probable  
27 carcinogen, Defendant actively concealed this information from Plaintiff, Class  
28

1 members, and the general public. *See* representative Product labels, attached hereto  
2 as Exhibit A.

3 11. Defendant had a duty to disclose that the Products contain or likely  
4 contain glyphosate and that glyphosate is a probable carcinogen, which was known  
5 to Defendant and unknown and/or not reasonably accessible to Plaintiff and  
6 consumers, on the Product labels where the disclosure could be viewed by Plaintiff  
7 and consumers at the point-of-sale.

8 12. By failing to disclose that the Products contain or likely contain  
9 glyphosate and glyphosate is a probable carcinogen and continuing to sell the  
10 Products in packages omitting this information, Defendant has and continues to  
11 deceive and mislead consumers, including Plaintiff.

12 13. As a result of Defendant's false and deceptive Product Health  
13 Representations, misleading half-truths and material nondisclosures, consumers will  
14 continue to purchase Defendant's Products that, unbeknownst to them, contain or  
15 likely contain glyphosate.

16 14. Plaintiff brings this action on behalf of himself and other similarly  
17 situated consumers who purchased the Products to halt the dissemination of this  
18 misleading and deceptive advertising message, correct the misleading perception it  
19 has created in the minds of consumers, and obtain redress for those who have  
20 purchased the Products. Based on violations of California unfair competition laws  
21 (detailed below), Plaintiff seeks declaratory, injunctive, and restitutionary relief for  
22 consumers who purchased the Products.

### 23 **JURISDICTION AND VENUE**

24 15. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).  
25 The matter in controversy, exclusive of interest and costs, exceeds the sum or value  
26 of \$5,000,000 and is a class action in which there are in excess of 100 class members  
27 and some members of the Class are citizens of a state different from Defendant.

1           16. This Court has personal jurisdiction over Defendant because Defendant  
2 is authorized to conduct and do business in California, including this District.  
3 Defendant marketed, promoted, distributed, and sold the Products in California, and  
4 Defendant has sufficient minimum contacts with this State and/or sufficiently availed  
5 itself of the markets in this State through its promotion, sales, distribution, and  
6 marketing within this State, including this District, to render the exercise of  
7 jurisdiction by this Court permissible.

8           17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
9 because a substantial part of the events giving rise to Plaintiff's claims occurred while  
10 he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a)  
11 because Defendant transacts substantial business in this District.

#### 12   **PARTIES**

13           18. Plaintiff Mason Kien resides in San Diego, California. Throughout the  
14 relevant period, Plaintiff Kien routinely was exposed to, saw, and relied upon  
15 Defendant's Product Health Representations by reading the Kellogg's Nutrigrain  
16 Soft Baked Breakfast Bars – Strawberry Product labels at Ralph's in San Diego,  
17 California. Plaintiff Kien purchased the Product on several occasions and most  
18 recently in September 2018. At all relevant times, Plaintiff Kien was unaware that  
19 the Product contained glyphosate, that glyphosate was a probable carcinogen, or that  
20 Defendant could not guarantee the Product did not contain glyphosate. Had  
21 Defendant disclosed on the package that the Product contained or may contain  
22 glyphosate and that glyphosate was a probable carcinogen, Plaintiff Kien would have  
23 seen and read that disclosure and would not have purchased them. As a result,  
24 Plaintiff suffered injury in fact and lost money at the time of purchase. Plaintiff Kien  
25 continues to desire to purchase Kellogg's products with healthy attributes that do not  
26 contain glyphosate, and he would purchase such a product manufactured by  
27 Defendant if it were possible to determine prior to purchase whether the Product

1 contained or could contain glyphosate. Indeed, Plaintiff Kien regularly visits stores  
2 such as Ralph’s, where Defendant’s Products are sold, but will be unable to rely upon  
3 the Product Health Representations and will not be able to determine if the Product  
4 contain glyphosate when deciding whether to purchase the Product in the future.

5 19. Defendant Kellogg Co. is a Delaware corporation with its principal  
6 place of business in Michigan. Defendant Kellogg Co.’s headquarters is located at 1  
7 Kellogg Sq., Battle Creek, MI 49017. Kellogg Co. manufactures, advertises,  
8 markets, distributes, and/or sells the Kellogg’s Nutrigrain Soft Baked Breakfast Bars  
9 – Strawberry and Kellogg’s Cracklin’ Oat Bran oat cereal Products to tens of  
10 thousands of consumers in California and throughout the United States.

11 **CLASS DEFINITION AND ALLEGATIONS**

12 20. Plaintiff brings this action on behalf of himself and all other similarly  
13 situated consumers pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of  
14 Civil Procedure and seeks certification of the following Class:

15 **Multi-State Class Action**

16 All consumers who, within the applicable statute of limitations  
17 period until the date notice is disseminated, purchased the Products  
18 in California, Florida, Illinois, Massachusetts, Michigan, Minnesota,  
19 Missouri, New Jersey, New York, and Washington.<sup>2</sup>

20 Excluded from this Class are Defendant and its officers,  
21 directors, employees and those who purchased the Products  
22 for the purpose of resale.

23 <sup>2</sup> The States in the Multistate Class are limited to those States with similar consumer  
24 fraud laws as applied to the facts of this case: California (Cal. Bus. & Prof. Code  
25 §17200, *et seq.*); Florida (Fla. Stat. §501.201, *et seq.*); Illinois (815 Ill. Comp. Stat.  
26 502/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich.  
27 Comp. Laws §445.901, *et seq.*); Minnesota (Minn. Stat. §325F.67, *et seq.*);  
28 Missouri (Mo. Rev. Stat. 010, *et seq.*); New Jersey (N.J. Stat. §56:8-1, *et seq.*); New  
York (N.Y. Gen. Bus. Law §349, *et seq.*); and Washington (Wash. Rev. Code  
§19.86.010, *et seq.*). These statutes are referred to as “Similar Consumer Fraud  
Statutes.”

1           21. In the alternative to a Multi-State Class, Plaintiff seeks certification of  
2 the following California-Only Class:

3                           **California-Only Class Action**

4                           All California consumers who within the applicable statute  
5 of limitations period until the date notice is disseminated,  
6 purchased the Products.

7                           Excluded from this Class are Defendant and its officers,  
8 directors and employees, and those who purchased the  
9 Products for the purpose of resale.

10           22. **Numerosity.** The members of the Classes are so numerous that joinder  
11 of all members of the Classes is impracticable. Plaintiff is informed and believes that  
12 the proposed Classes contain thousands of purchasers of the Products who have been  
13 damaged by Defendant's conduct as alleged herein. The precise number of Class  
14 members is unknown to Plaintiff.

15           23. **Existence and Predominance of Common Questions of Law and**  
16 **Fact.** This action involves common questions of law and fact, which predominate  
17 over any questions affecting individual Class members. These common legal and  
18 factual questions include, but are not limited to, the following:

- 19           (a) whether Defendant's alleged conduct is unlawful;  
20           (b) whether the alleged conduct constitutes violations of the laws asserted;  
21           (c) whether Defendant engaged in misleading and/or deceptive advertising;

22 and

23           (d) whether Plaintiff and Class members are entitled to appropriate  
24 remedies, including restitution and injunctive relief.

25           24. **Typicality.** Plaintiff's claims are typical of the claims of the members  
26 of the Classes because, *inter alia*, all Class members were injured through the  
27 uniform misconduct described above. Plaintiff is also advancing the same claims  
28 and legal theories on behalf of himself and all Class members.



1           25.   **Adequacy of Representation.** Plaintiff will fairly and adequately  
2 protect the interests of Class members. Plaintiff has retained counsel experienced in  
3 complex consumer class action litigation, and Plaintiff intends to prosecute this  
4 action vigorously. Plaintiff has no adverse or antagonistic interests to those of the  
5 Classes.

6           26.   **Superiority.** A class action is superior to all other available means for  
7 the fair and efficient adjudication of this controversy. The damages or other financial  
8 detriment suffered by individual Class members is relatively small compared to the  
9 burden and expense that would be entailed by individual litigation of their claims  
10 against Defendant. It would thus be virtually impossible for members of the Classes,  
11 on an individual basis, to obtain effective redress for the wrongs done to them.  
12 Furthermore, even if Class members could afford such individualized litigation, the  
13 court system could not. Individualized litigation would create the danger of  
14 inconsistent or contradictory judgments arising from the same set of facts.  
15 Individualized litigation would also increase the delay and expense to all parties and  
16 the court system from the issues raised by this action. By contrast, the class action  
17 device provides the benefits of adjudication of these issues in a single proceeding,  
18 economies of scale, and comprehensive supervision by a single court, and presents  
19 no unusual management difficulties under the circumstances here.

20           27.   Plaintiff seeks preliminary and permanent injunctive and equitable relief  
21 on behalf of the entire Classes, on grounds generally applicable to the entire Classes,  
22 to enjoin and prevent Defendant from engaging in the acts described, and requiring  
23 Defendant to provide full restitution to Plaintiff and Class members.

24           28.   Unless a Class is certified, Defendant will retain monies received as a  
25 result of its conduct that were taken from Plaintiff and Class members.

26           29.   Unless an injunction is issued, Defendant will continue to commit the  
27 violations alleged, and the members of the Classes and the general public will

1 continue to be deceived and not know whether the Product Health Representations  
2 are true or if the Products continue to contain glyphosate.

3 **COUNT I**

4 **Violation of Business & Professions Code §17200, *et seq.***  
5 **and Similar Consumer Fraud Statutes, *supra* note 2**  
6 **(On Behalf of the Multi-State or California-Only Class)**

7 30. Plaintiff repeats and re-alleges the allegations contained in the  
8 paragraphs above, as if fully set forth herein.

9 31. Plaintiff brings this claim individually and on behalf of the Classes.

10 32. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
11 property at the time of purchase as a result of Defendant's conduct because he  
12 purchased Defendant's Products in reliance on Defendant's Product Health  
13 Representations. Had Defendant disclosed on the packages that the Products  
14 contained or may contain the probable carcinogen glyphosate, Plaintiff would have  
15 seen and read that disclosure and would not have purchased the Products.

16 33. The Unfair Competition Law, Business & Professions Code §17200, *et*  
17 *seq.* ("UCL") prohibits any "unlawful," "fraudulent," or "unfair" business act or  
18 practice and any false or misleading advertising. The Similar Consumer Fraud  
19 Statutes likewise prohibit the use of unfair or deceptive practices in the course of  
20 trade or commerce, and are to be liberally construed.

21 34. In the course of conducting business, Defendant committed "unlawful"  
22 business practices by, *inter alia*, making the Product Health Representations, which  
23 are false and deceptive representations and misleading half-truths, and the material  
24 omissions (which also constitute advertising within the meaning of §17200)  
25 regarding the Products' labeling, as set forth more fully herein, and violating Civil  
26 Code §§ 1552, 1573, 1709, and 1711, the California Legal Remedies Act, Civil Code  
27 § 1750, *et seq.*, Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*,

1 the Similar Consumer Fraud Statutes, and the common law.

2 35. Plaintiff reserves the right to allege other violations of law, which  
3 constitute other unlawful business acts or practices. Such conduct is ongoing and  
4 continues to this date.

5 36. In the course of conducting business, Defendant committed “unfair”  
6 business acts or practices by, *inter alia*, making the Product Health Representations,  
7 which are false and deceptive representations and misleading half-truths, and  
8 material omissions (which also constitute advertising within the meaning of § 17200)  
9 regarding the Products’ labeling, as set forth more fully herein. There is no societal  
10 benefit from false advertising, only harm. While Plaintiff and the public at large were  
11 and continue to be harmed, Defendant has been unjustly enriched by its misleading  
12 half-truths and material omissions. Because the utility of Defendant’s conduct (zero)  
13 is outweighed by the gravity of harm to Plaintiff, consumers, and the competitive  
14 market, Defendant’s conduct is “unfair” having offended an established public  
15 policy. Further, Defendant engaged in immoral, unethical, oppressive, and  
16 unscrupulous activities that are substantially injurious to the public at large.

17 37. There were reasonable available alternatives to further Defendant’s  
18 legitimate business interests, other than the conduct described herein.

19 38. In the course of conducting business, Defendant committed “fraudulent  
20 business act[s] or practices” and deceptive or misleading advertising by, *inter alia*,  
21 making the Product Health Representations, which are false and deceptive  
22 representations and misleading half-truths, and the material omissions (which also  
23 constitutes advertising within the meaning of §17200) regarding the Products as set  
24 forth more fully herein.

25 39. Defendant’s actions, claims, and misleading statements, as more fully  
26 set forth above, are misleading and/or likely to deceive the consuming public within  
27 the meaning of Business & Professions Code §17200, *et seq.* and the Similar

1 Consumer Fraud Statutes.

2 40. Plaintiff relied on Defendant’s Product Health Representations and was  
3 in fact injured as a result of those false and deceptive representations and misleading  
4 half-truths and material omissions. Plaintiff has suffered injury in fact and lost  
5 money as a result of his purchases of Defendant’s Products.

6 41. Unless restrained and enjoined, Defendant will continue to engage in  
7 the above described conduct. Accordingly, injunctive relief is appropriate.

8 42. Plaintiff, on behalf of himself, all others similarly situated, and the  
9 general public, seeks declaratory relief and an injunction prohibiting Defendant from  
10 continuing such practices, restitution of all money obtained from Plaintiff and the  
11 members of the Classes collected as a result of unfair competition, and all other relief  
12 this Court deems appropriate, consistent with Business & Professions Code § 17203  
13 and the Similar Consumer Fraud Statutes.

14  
15 **COUNT II**  
16 **Violations of the Consumers Legal Remedies Act – Civil Code § 1750 *et seq.***  
17 **(On Behalf of the California-Only Class)**

18 43. Plaintiff repeats and re-alleges the allegations contained in the  
19 paragraphs above, as if fully set forth herein.

20 44. Plaintiff brings this claim individually and on behalf of the California-  
21 Only Class.

22 45. This cause of action is brought pursuant to the Consumers Legal  
23 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”).

24 46. Plaintiff is a consumer as defined by California Civil Code § 1761(d).  
25 The Products are “goods” within the meaning of the Act.

26 47. Defendant violated and continues to violate the Act by engaging in the  
27 following practices proscribed by California Civil Code § 1770(a) in transactions  
28 with Plaintiff and the California-Only Class which were intended to result in, and did

1 result in, the sale of the Products:

2 (5) Representing that [the Products have] . . . characteristics, . . . uses [and]  
3 benefits . . . which [they do] not have . . . .

4 \* \* \*

5 (7) Representing that [the Products] are of a particular standard, quality, or  
6 grade . . . if they are of another.

7 48. Defendant violated the Act by making the Product Health  
8 Representations, which are false and deceptive representations and misleading half-  
9 truths, and the material omissions, as described above, when it knew or should have  
10 known that the false and deceptive representations and misleading half-truths and  
11 material omissions were misleading and deceptive.

12 49. Pursuant to California Civil Code § 1782(d), Plaintiff and the  
13 California-Only Class seek a Court Order declaring Defendant to be in violation of  
14 the CLRA, enjoining the above-described wrongful acts and practices of Defendant,  
15 and ordering restitution and disgorgement.

16 50. Pursuant to § 1782 of the Act, Plaintiff notified Defendant in writing by  
17 certified mail of the particular violations of § 1770 of the Act and demanded that  
18 Defendant rectify the problems associated with the actions detailed above and give  
19 notice to all affected consumers of Defendant's intent to so act. A copy of the letter  
20 is attached hereto as Exhibit B.

21 51. If Defendant fails to rectify or agree to rectify the problems associated  
22 with the actions detailed above and give notice to all affected consumers within 30  
23 days of the date of written notice pursuant to § 1782 of the Act, Plaintiff will amend  
24 this Complaint to add claims for actual, punitive, and statutory damages as  
25 appropriate.

26 52. Pursuant to § 1780 (d) of the Act, attached hereto as Exhibit C is the  
27 affidavit showing that this action has been commenced in the proper forum.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Classes as requested herein;
- B. Issuing an order declaring that Defendant is in violation of the UCL and CLRA;
- C. Enjoining Defendant’s conduct;
- D. Awarding restitution and disgorgement of Defendant’s revenues to Plaintiff and the proposed Class members;
- E. Awarding attorneys’ fees and costs; and
- F. Providing such further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: December 7, 2018

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed the 7th day of December 2018.

/s/Patricia N. Syverson  
Patricia N. Syverson



CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
MASON KIEN, On Behalf of Himself and All Others Similarly Situated
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
Patricia Syverson, Manfred Muecke
600 W. Broadway, Suite 900, San Diego, CA 92101, 619-798-4593

DEFENDANTS
KELLOGG CO., a Delaware corporation
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'18CV2759 AJB MSB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. 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
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§1332. Violation of Cal. Bus. & Prof. Code §17200 et seq and Cal. Civil Code §1750 et seq
Brief description of cause:
Recover damages sustained as a result of Defendant's sale of NutriGrain bars & Cracklin' Oat Bran cereal

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 12/07/2018 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# **EXHIBIT A**

Kellogg's®

# NUTRI GRAIN®

SOFT BAKED BREAKFAST BARS

## Rise & Thrive

WITH REAL FRUIT AND SOFT WHOLE GRAINS,  
NUTRI-GRAIN® GIVES YOU FAST, FEEL-GOOD ENERGY  
TO HELP YOUR MORNINGS RUN SMOOTHER.

WAKE UP  
TO OUR OTHER  
GREAT BARS



apple cinnamon • mixed berry • blueberry



GROC  
11 1100007



A 0003800035900

*Kellogg's*<sup>®</sup>

# NUTRI GRAIN<sup>®</sup>

SOFT BAKED BREAKFAST BARS



**MORNING ENERGY**  
WITH **8G WHOLE GRAINS\***

**STRAWBERRY**  
NATURALLY FLAVORED WITH OTHER NATURAL FLAVORS

MADE WITH **REAL FRUIT**

**NO** ARTIFICIAL FLAVORS

**NO** COLORS FROM ARTIFICIAL SOURCES

**8** - 1.3 OZ (37g) BARS NET WT 10.4 OZ (296g)

**130** CALORIES

**0.5g** SAT FAT  
3% DV

**140mg** SODIUM  
6% DV

**12g** TOTAL SUGARS

PER BAR



Kellogg's®

# NUTRI GRAIN®

SOFT BAKED BREAKFAST BARS

STRAWBERRY

NATURALLY FLAVORED WITH  
OTHER NATURAL FLAVORS



MADE WITH  
**REAL FRUIT**

**NO** ARTIFICIAL  
FLAVORS

**NO** COLORS  
FROM ARTIFICIAL  
SOURCES



**Questions or Comments?**



VISIT [kelloggs.com](http://kelloggs.com)



CALL 1-800-962-1413  
(SE HABLA ESPAÑOL)

PROVIDE PRODUCTION CODE ON PACKAGE.

36USC220506

© TM © 2018 Kellogg NA Co

# Nutrition Facts

8 servings per container

Serving size 1 Bar (37g)

Amount per serving

**Calories 130**

% Daily Value\*

**Total Fat** 3.5g 4%

Saturated Fat 0.5g 3%

Trans Fat 0g

**Cholesterol** 0mg 0%

**Sodium** 140mg 6%

**Total Carbohydrate** 25g 9%

Dietary Fiber 1g 5%

Total Sugars 12g

Incl. 12g Added Sugars 24%

**Protein** 2g

Vitamin D 0mcg 0% • Calcium 130mg 10%

Iron 1.8mg 10% • Potassium 80mg 0%

Vitamin A 10% • Thiamin 10%

Riboflavin 10% • Niacin 10%

Vitamin B<sub>6</sub> 10% • Zinc 10%

\* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**INGREDIENTS:** CRUST: WHOLE GRAIN OATS, ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, VITAMIN B1 [THIAMIN MONONITRATE], VITAMIN B2 [RIBOFLAVIN], FOLIC ACID), SOYBEAN OIL, WHOLE WHEAT FLOUR, SUGAR, DEXTROSE, FRUCTOSE, CALCIUM CARBONATE, VEGETABLE GLYCERIN, INVERT SUGAR, SALT, WHEY, SOLUBLE CORN FIBER, WHEAT BRAN, CELLULOSE, NATURAL FLAVORS, POTASSIUM BICARBONATE, MONO- AND DIGLYCERIDES, SOY LECITHIN, WHEAT GLUTEN, NIACINAMIDE, VITAMIN A PALMITATE, CARRAGEENAN, ZINC OXIDE, REDUCED IRON, GUAR GUM, VITAMIN B6 (PYRIDOXINE HYDROCHLORIDE), VITAMIN B1 (THIAMIN HYDROCHLORIDE), VITAMIN B2 (RIBOFLAVIN), FILLING: INVERT SUGAR, CORN SYRUP, STRAWBERRY PUREE CONCENTRATE, VEGETABLE GLYCERIN, SUGAR, MODIFIED FOOD STARCH, VEGETABLE JUICE FOR COLOR, SODIUM CITRATE, SODIUM ALGINATE, CITRIC ACID, NATURAL FLAVORS, DICALCIUM PHOSPHATE, METHYLCELLULOSE, MALIC ACID.

**CONTAINS WHEAT, MILK AND SOY INGREDIENTS.**

Distributed by Kellogg Sales Co.  
Battle Creek, MI 49016 USA



**STRAWBERRY**  
NATURALLY FLAVORED WITH  
OTHER NATURAL FLAVORS

*Kellogg's*  
**NUTRI  
GRAIN**  
SOFT BAKED BREAKFAST BARS

BEST If Used By  
**APR 20 19 CTC5 22:50**

**28.8**  
PER OUNCE  
24R 152



# the JOY of delicious eating

begins with Kellogg's® Cracklin' Oat Bran® cereal! Each oven-baked, distinctly shaped 'O'-like cluster is packed with the unforgettable flavor of golden oats, coconut, and a touch of cinnamon!



### Cracklin' Oat On-the-GO Trail Mix

#### INGREDIENTS

- 1 cup Cracklin' Oat Bran® cereal
- 1/2 cup coarsely chopped walnuts
- 1/2 cup slivered almonds, toasted
- 1/2 cup chopped dried apricots
- 1/2 cup chopped dried dates
- 1/2 cup golden raisins
- 1/2 cup semi-sweet chocolate morsels

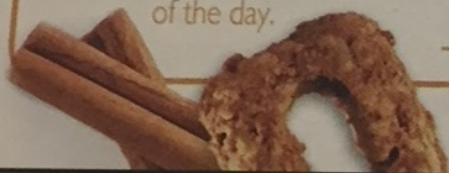
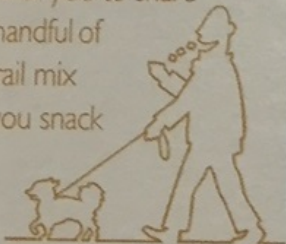
#### IN MEDIUM BOWL COMBINE ALL INGREDIENTS.

STORE IN AIRTIGHT CONTAINER. MAKES 8-1/2 CUP SERVINGS

For more great recipes, visit: [Kelloggs.com](http://Kelloggs.com)

### The Cereal That Goes Beyond the Bowl!

Don't keep Kellogg's® Cracklin' Oat Bran® confined to the breakfast table – take it with you to share and enjoy wherever you go! A handful of Kellogg's® Cracklin' Oat Bran® trail mix is great for snacking. However you snack it or pack it, enjoy any time of the day.



## COLLECT POINTS. EARN REWARDS.

### NO MORE CODES. TWO EASY WAYS TO COLLECT POINTS!

Go to [KFR.com](http://KFR.com) to learn more.

## • LET'S TALK •

At Kellogg, we're working harder to earn a seat at your table. What can we do to make your mornings better?



[OpenForBreakfast.com](http://OpenForBreakfast.com)



Excellent Source of **FIBER** & **WHOLE GRAIN** Made with

7g total fat per serving



# Kellogg's Cracklin' Oat Bran

KD

Crunchy, Sweet, Oven-Baked Oat Cereal



**8g**  
PROTEIN

 + 

4g + 4g

SERVING SUGGESTION  
ENLARGED TO SHOW TEXTURE



PER 3/4 CUP SERVING

<b>200</b> CALORIES	<b>3g</b> SAT FAT 15% DV	<b>135mg</b> SODIUM 6% DV	<b>14g</b> SUGARS
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SEE NUTRITION FACTS FOR "AS PREPARED" INFORMATION

CEREAL

NET WT 17 OZ (1 LB 1 OZ) (482g)

*Kellogg's*  
**Cracklin'**  
Oat Bran



ENLARGED TO  
SHOW TEXTURE



PER SERVING  
20  
CALORIES

12 OZ (1 LB)

# Kellogg's Cracklin' Oat Bran

## Nutrition Facts

Serving Size  $\frac{3}{4}$  Cup (49g)  
Servings Per Container About 10

Amount Per Serving	Cereal	with $\frac{1}{2}$ cup skim milk
<b>Calories</b>	200	240
Calories from Fat	60	60
	<b>% Daily Value**</b>	
<b>Total Fat</b> 7g*	<b>11%</b>	<b>11%</b>
Saturated Fat 3g	<b>15%</b>	<b>15%</b>
Trans Fat 0g		
Polyunsaturated Fat 1.5g		
Monounsaturated Fat 2.5g		
<b>Cholesterol</b> 0mg	<b>0%</b>	<b>0%</b>
<b>Sodium</b> 135mg	<b>6%</b>	<b>8%</b>
<b>Potassium</b> 200mg	<b>6%</b>	<b>11%</b>
<b>Total Carbohydrate</b> 34g	<b>11%</b>	<b>13%</b>
Dietary Fiber 6g	<b>25%</b>	<b>25%</b>
Sugars 14g		
<b>Protein</b> 4g	<b>5%</b>	<b>13%</b>
Vitamin A	8%	10%
Vitamin C	25%	25%
Calcium	2%	15%
Iron	10%	10%
Vitamin D	10%	25%
Thiamin	25%	30%
Riboflavin	25%	35%
Niacin	25%	25%
Vitamin B <sub>6</sub>	25%	25%
Folic Acid	25%	25%
Vitamin B <sub>12</sub>	25%	35%
Pantothenic Acid	2%	6%
Phosphorus	10%	20%
Magnesium	15%	20%
Zinc	10%	15%

\* Amount in cereal. A serving of cereal plus skim milk provides 7g total fat, 0mg cholesterol, 200mg sodium, 400mg potassium, 40g total carbohydrate (20g sugars) and 8g protein.

\*\* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat. Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

**Ingredients:** Whole grain oats, sugar, wheat bran, vegetable oil (palm, palm kernel and/or soybean oil with TBHQ for freshness), oat bran, corn syrup, wheat starch, coconut, contains 2% or less of molasses, malt flavor, cinnamon, salt, baking soda, soy lecithin, natural and artificial flavor, nutmeg.

**Vitamins and Minerals:** Vitamin C (sodium ascorbate and ascorbic acid), niacinamide, vitamin B<sub>6</sub> (pyridoxine hydrochloride), vitamin B<sub>1</sub> (thiamin hydrochloride), vitamin B<sub>2</sub> (riboflavin), vitamin A palmitate, zinc oxide, calcium pantothenate, vitamin B<sub>12</sub>, reduced iron, folic acid, vitamin D.

**CONTAINS WHEAT, COCONUT AND SOY INGREDIENTS.**

Distributed by Kellogg Sales Co.  
Battle Creek, MI 49016 USA  
©, TM, © 2015 Kellogg NA Co.

Produced with Genetic Engineering.

**Questions or Comments?**

visit [kelloggs.com](http://kelloggs.com)

CALL 1-800-962-1413  
(SE HABLA ESPAÑOL)

PROVIDE PRODUCTION CODE ON PACKAGE.

Kellogg's® Cracklin' Oat Bran® 17 oz.

AUG 09 2019 GA 08:16

BETTER  
IF USED  
BEFORE



NO CODE INSIDE.  
LEARN MORE AT [KFR.COM](http://KFR.COM)

LIFT TAB TO OPEN

**Kellogg's**®

**Cracklin'**  
**Oat Bran**®



FIBER & WHOLE GRAIN

# **EXHIBIT B**



WILLIAM G. FAIRBOURN  
VAN BUNCH  
ELAINE A. RYAN  
KIMBERLY C. PAGE  
WILLIAM F. KING  
CARRIE A. LALIBERTE  
NADA DJORDJEVIC<sup>4</sup>

ANDREW S. FRIEDMAN  
ROBERT J. SPURLOCK  
ANDREW Q. EVERROAD  
CHRISTINA L. HANISCH  
T. BRENT JORDAN<sup>2</sup>  
LISA T. HAUSER  
ANDREA M. WRIGHT

FRANCIS J. BALINT, JR.  
C. KEVIN DYKSTRA  
PATRICIA N. SYVERSON  
MANFRED P. MUECKE<sup>1</sup>  
TY D. FRANKEL  
DANIEL R. LEATHERS<sup>3</sup>

MICHAEL N. WIDENER, Of Counsel

<sup>1</sup> Admitted Only in California  
<sup>2</sup> Admitted Only in Pennsylvania  
<sup>3</sup> Admitted Only in New Jersey, New York  
and Pennsylvania  
<sup>4</sup> Admitted Only in Illinois

December 7, 2018

**VIA CERTIFIED MAIL**  
**(RECEIPT NO. 7014 1200 0001 5814 2093)**

Kellogg Co.  
General Counsel  
1 Kellogg Sq.  
Battle Creek, MI 49017

Re: *Mason Kien v. Kellogg Co.*

Dear Sir or Madam:

Our law firm together with Siprut PC represents Mason Kien (“Plaintiff”) and all other consumers similarly situated in an action against Kellogg Co. (“Kellogg’s” or “Defendant”), arising out of, *inter alia*, misrepresentations and material omissions by Defendant that lead reasonable consumers to believe that your Products<sup>1</sup> will foster their good health and not potentially harm their health.

Plaintiff and others similarly situated purchased Defendant’s Products unaware that the Products contained or likely contained glyphosate, a probable carcinogen. Because Defendant does not disclose this fact on its Product packages, the healthy attribute representations Defendant makes on its Product packages are misleading half-truths reasonably likely to deceive the public. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Defendant’s misleading half-truths and material omissions are misleading and constitute unfair methods of competition and unlawful practices, undertaken by Defendant with the intent to induce the consuming public to purchase the Products. The misleading half-truths and material omissions do not assist consumers; they simply mislead them.

Defendant’s misleading half-truths and material omissions violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

---

<sup>1</sup> The products include Kellogg’s NutriGrain Soft Baked Breakfast Bars – Strawberry and Cracklin’ Oat Bran oat cereal (the “Products”).

December 7, 2018  
Page 2

- (5) Representing that [the Products have] . . . characteristics, . . . uses [or] benefits. . . which [they do] not have.

\* \* \*

- (7) Representing that [the Products] are of a particular standard, quality, or grade . . . if they are of another.

California Civil Code §§ 1770(a)(5) and (7).

Defendant's misleading half-truths and material omissions also constitute violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that Kellogg's immediately correct and rectify this violation of California Civil Code § 1770 by ceasing the misleading marketing campaign and ceasing dissemination of misleading and deceptive information as described in the enclosed Complaint. In addition, Kellogg's should offer a refund to all consumer purchasers of the Products plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, file a further amended Complaint as permitted by California Civil Code § 1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Kellogg's address these violations immediately.

Kellogg's must undertake all of the following actions to satisfy the requirements of California Civil Code § 1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the Products;
2. Notify all such purchasers so identified that upon their request, Kellogg's will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Product purchasers who so request; and
4. Cease from representing to consumers that the Products provide the healthy

December 7, 2018

Page 3

attributes identified on the Product packages, without also disclosing that the Products contain or likely contain glyphosate, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia N. Syverson". The signature is fluid and cursive, with a large initial "P" and "S".

Patricia N. Syverson

For the Firm

PNS:td

Enclosures



# **EXHIBIT C**

1 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
2 ELAINE A. RYAN (*To be Admitted Pro Hac Vice*)  
CARRIE A. LALIBERTE (*To be Admitted Pro Hac Vice*)  
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Phoenix, AZ 85016  
4 eryl@bffb.com  
claliberte@bffb.com  
5 Telephone: (602) 274-1100

6 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
7 PATRICIA N. SYVERSON (CA SBN 203111)  
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mmuecke@bffb.com  
10 Telephone: (619) 798-4593

11 SIPRUT PC  
STEWART M. WELTMAN (*To be Admitted Pro Hac Vice*)  
12 TODD L. MCLAWHORN (*To be Admitted Pro Hac Vice*)  
MICHAEL CHANG (*To be Admitted Pro Hac Vice*)  
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Chicago, Illinois 60602  
14 sweltman@siprut.com  
tmclawhorn@siprut.com  
15 mchang@siprut.com  
16 Telephone: (312) 236-0000

Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**  
19

20 MASON KIEN, On Behalf of Himself  
and All Others Similarly Situated,

21  
22 Plaintiff,

23 v.

24 KELLOGG CO.,

25 Defendant.  
26  
27  
28

Case No.: '18CV2759 AJB MSB

**CLASS ACTION**

**DECLARATION OF PATRICIA N.  
SYVERSON PURSUANT TO  
CALIFORNIA CIVIL CODE §  
1780(d)**

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of  
3 the State of California. I am a shareholder of the law firm of Bonnett, Fairbourn,  
4 Friedman & Balint, P.C., the counsel of record for Plaintiffs in the above-entitled  
5 action.

6 2. Defendant Kellogg Co. has done and is doing business in the  
7 Southern District of California. Such business includes the distributing,  
8 marketing, labeling, packaging and sale of Kellogg's Nutrigrain Soft Baked  
9 Breakfast Bars – Strawberry and Kellogg's Cracklin' Oat Bran oat cereal.  
10 Furthermore, Plaintiff Mason Kien purchased the Kellogg's Nutrigrain Soft Baked  
11 Breakfast Bars – Strawberry product in San Diego, California.

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

14 Executed this 7th day of December 2018, at San Diego, California.

15 BONNETT, FAIRBOURN, FRIEDMAN  
16 & BALINT, P.C.

17 */s/Patricia N. Syverson*  
18 Patricia N. Syverson (203111)  
19 Manfred P. Muecke (222893)  
20 600 W. Broadway, Suite 900  
21 San Diego, CA 92101  
22 psyverson@bffb.com  
23 mmuecke@bffb.com  
24 Telephone: (619) 798-4593

21 BONNETT, FAIRBOURN, FRIEDMAN  
22 & BALINT, P.C.  
23 Elaine A. Ryan (*To be Admitted Pro Hac Vice*)  
24 Carrie A. Laliberte (*To be Admitted Pro Hac Vice*)  
25 2325 E. Camelback Rd., Suite 300  
26 Phoenix, AZ 85016  
27 eryan@bffb.com  
28 claliberte@bffb.com  
Telephone: (602) 274-1100

26 SIPRUT PC  
27 Stewart M. Weltman (*To be Admitted Pro Hac Vice*)  
28 Todd L. McLawhorn (*To be Admitted Pro Hac Vice*)  
Michael Chang (*To be Admitted Pro Hac Vice*)  
17 North State Street

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Chicago, Illinois 60602  
sweltman@siprut.com  
tmclawhorn@siprut.com  
mchang@siprut.com  
Telephone: (312) 236-0000

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 7, 2018.

/s/Patricia N. Syverson  
Patricia N. Syverson (203111)  
BONNETT FAIRBOURN FRIEDMAN  
& BALINT, P.C.  
600 W. Broadway, Suite 900  
San Diego, CA 92101  
Telephone: (619) 798-4593

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kellogg's Nutrigrain Breakfast Bars, Cracklin' Oat Bran Contain Weed Killer/Probable Carcinogen Glyphosate, Class Action Claims](#)

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