

## Federal Judge in California Denies Defendant's Motion to Dismiss in Consumer Class Action Over Weight Prevention Claims

*Bailey et al v. Kind, LLC*, No. 8:16-cv-168 (C.D. Cal.): The Court denied Defendant's motion to dismiss this putative class action asserting violations of California and New York's consumer protection statutes, as well as claims of fraud, negligent misrepresentation, unjust enrichment, and breach of the express and implied warranty of merchantability. Plaintiffs allege Defendant falsely represented that eating two Kind bars a day helps prevent weight gain." Defendant's motion, brought under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), raised three arguments: (1) lack of Article III standing; (2) failure to state a claim because the challenged statements were neither false nor misleading as a matter of law; and (3) failure to adequately allege causation or reliance. The Court rejected Defendant's argument that its weight gain prevention claims accurately reflected the findings of a published study, noting Defendant's representation left off an important caveat. The study concluded that two Kind bars per day does not cause weight gain in *overweight* people, while Defendant represented the weight gain prevention benefits as universal. The Court also rejected Defendant's reliance and standing arguments, finding Plaintiffs' allegations regarding payment of a price premium that they would not have otherwise paid sufficient indicia of reliance and economic injury. [Order](#).

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