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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAY 20 2009
[Signature]

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MAY 26 2009

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF RIVERSIDE, RIVERSIDE COURT

11	JEANESSA FENDERSON; TRISTA ESSEX;	)	Case No. RIC 483005
12	KATHLEEN ROGERS; DIANA SHERBY;)	
13	ANN MARIE WOOD; NANCY MCGREGOR,	)	[PROPOSED] ORDER ON MOTION FOR
14	individually and on behalf of all other similarly	)	CLASS CERTIFICATION
15	situated,)	
16		)	DATE:
17	Plaintiffs,	)	TIME: 8:30 a.m.
18		)	DEPT:
19	v.)	
20)	
21	HEIDI DIAZ; KIMKINS, an unknown business	)	[Assigned to Judge Michael B. Donner,
22	entity, and DOES 4 through 100, Inclusive,	)	Dept. 4]
23)	
24	Defendants.	)	<u>CLASS ACTION</u>
25)	
26		)	Action Filed: October 15, 2007
27		)	Trial Date: None Set

22 On May 20, at 8:30 a.m., in Department 4 of the Riverside County
23 Superior Court Plaintiffs' Motion for Class Certification came on regularly for hearing before the
24 Honorable Michael B. Donner, Judge Presiding. Plaintiffs appeared by counsels John E. Tiedt of
25 Tiedt & Hurd, and Michael Cohen of the Law Offices of Michael Cohen. Defendant Heidi Diaz
26 appeared by Timothy Peabody of the Law Offices of Timothy Peabody.

27 Good Cause Appearing Therefore, the Court orders as follows:

- 28 1. Plaintiffs' Motion for Class Certification is granted;

1 2. The claims that may be maintained on behalf of the class for which the class is
2 certified:

3 a. Plaintiffs claims on behalf of the class for equitable relief, including disgorgement of
4 subscription fees paid to Heidi Diaz/Kimkins for false and misleading advertising that were
5 violative of Business and Professions Code §§ 17200 and 17500;

6 b. Plaintiffs' claims on behalf of the class for equitable relief including disgorgement of
7 subscription fees paid to Heidi Diaz for unfair, unlawful, and fraudulent business practices in
8 violation of Business and Professions Code §17200;

9 c. Plaintiffs' claims on behalf of the class for equitable relief including disgorgement of
10 subscription fees paid to Heidi Diaz for Defendant's use of false or misleading success stories and
11 photographs were violative of Business and Professions Code §§17200 and 17500;

12 d. Plaintiffs' claims on behalf of the class for equitable relief including disgorgement of
13 subscription fees paid to Heidi Diaz Defendant's false impersonation and fraud in order to induce
14 sales of the Kimkins' website subscription in violation of California Penal Code §§529 and 532;

15 e. Plaintiffs' claims on behalf of the class for damages and equitable relief as
16 Defendant engaged in fraud in order to induce Plaintiffs to pay subscription fees in violation of
17 California Civil Code §§ 1709 and 1710;

18 f. Plaintiffs' claims on behalf of the class for damages that Defendant contrived and/or
19 repeated rumors and false statements that celebrities such as Jessica Alba and Lindsay Lohan had
20 used and/or successfully lost weight on the Kimkins diet;

21 g. Plaintiffs' claims on behalf of the class for equitable relief including disgorgement of
22 subscription fees paid to Heidi Diaz for Defendant's unlawful use of labels and Metatags to
23 misdirect internet traffic was an unfair business practice under Business and Professions Code §
24 17200;

25 3. The Court finds that there is a predominance of common issues of fact and law in
26 determining liability. The common factual issues are as follows:

27 a. Did the defendants engage in unfair, unlawful or fraudulent acts as defined by
28 Business & Professions Code § 17200?

1 b. Did the defendants violate the false advertising law set forth in Business &
2 Professions Code § 17500?

3 c. Did the defendants violate federal and state laws by making unsubstantiated and
4 false claims to sell memberships?¹

5 d. Did the defendants commit fraud through the intentional misrepresentations that they
6 communicated to class members on the Kimkins.com Web site?

7 e. Does the defendants' misconduct constitute negligent misrepresentation?

8 f. Are class members entitled to injunctive relief or other equitable relief under
9 Business & Professions Code § 17200?

10 4. The big-picture issues above—mixed questions of law and fact that apply to each
11 class member's claims—require the resolution of the following factual issues, which also are
12 common to the class:

13 a. Did the defendants use false names to induce customers to subscribe to
14 Kimkins.com?

15 b. Did the defendants subject the Kimkins diet program to any clinical testing or
16 medical evaluation to substantiate the claims they made on the Kimkins.com Web site?

17 c. Is the Kimkins diet program effective?

18 d. Did the defendants fail to warn class members about potential ill effects associated
19 with extremely low-calorie diets?

20 e. Did the defendants misrepresent the weight loss claims of "Kimmer" (defendant
21 Heidi Diaz)?

22 f. Are the "before" and "after" photographs of Kimmer, (defendant Heidi Diaz) and
23 other models false or misleading?

24 g. Did the defendants use false testimonials to sell memberships to Kimkins.com?

25 h. Did the defendants wrongfully or unlawfully terminate consumers from the
26 Kimkins.com Web site?

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¹ e.g., Lanham Act, 15 USC §1125(a), W.V.C. §32A-1-2, N.J.S.A. 56:8-2

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- i. Is the Kimkins diet “thermogenic”?
- j. Does the Kimkins diet cause “fast and permanent” weight loss?
- k. Did the defendants unlawfully use misleading labels and metatags to attract customers?

5. The Court finds that any individual proof and factual determination in this case relate to the amount of each class members damages, not a liability determination, and such determination does not predominate over common questions of law and fact.

There is an ascertainable class and joinder of 40,000 plaintiffs is impracticable. Plaintiffs’ claims are typical of the claims of the other members of the class i.e., that Defendant has allegedly violated Business and Professions Code and other statutes as alleged in the complaint for damages, discovery and this motion. Plaintiffs are appropriate representatives for the class in that counsel will competently prosecute the action on their behalf.

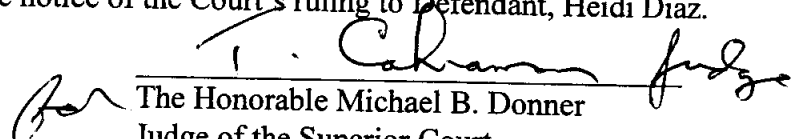
6. The Court recognizes that the individual members of the class may have to prove the amount of damages each has suffered. However, adjudication of damages is manageable.

7. All requests for judicial notice on behalf of Plaintiffs are granted.

8. Defendant’s evidentiary objections have been overruled.

9. Plaintiffs are to give notice of the Court’s ruling to Defendant, Heidi Diaz.

DATED: May 20, 2009


The Honorable Michael B. Donner
Judge of the Superior Court

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF RIVERSIDE) ss.

4 I, JILL HUSK, state that I am employed in the aforesaid County, State of California; I am
5 over the age of eighteen years and not a party to the within action; my business address is 980
Montecito Drive, Suite 209, Corona, California, 92879.

6 On April/0, 2009, I served the foregoing [PROPOSED] ORDER on the interested parties by
7 placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the
8 United States mail at Corona, California, addressed as follows and/or by one of the methods of
service as follows:

9 SEE ATTACHED SERVICE LIST

10 X BY MAIL: I am readily familiar with this firm's practice of collection and processing of
11 correspondence for mailing with the United States Postal Service, and that the
12 correspondence shall be deposited with the United States Postal Service the same day in the
ordinary course of business pursuant to Code of Civil Procedure section 1013(a).

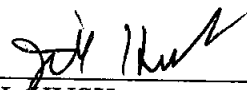
13 BY FAX: In addition to service by mail as set forth above, a copy of said document(s) were
14 also delivered by facsimile transmission to the addressee pursuant to Code of Civil
Procedure section 1013(e).

15 BY PERSONAL SERVICE: I caused to be hand-delivered said document(s) to the office
16 of the addressee, using an attorney service, pursuant to Code of Civil Procedure section
1011.

17 BY EXPRESS MAIL: I caused said document(s) to be placed in an Express Mail
18 Overnight Envelope and deposited in an Express Mail DropBox to be delivered the
following business day pursuant to Code of Civil Procedure section 1013(c).

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

20 Executed on April/0, 2009, at Corona, California.

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22 _____
JILL HUSK

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SERVICE LIST
Sylvia Fenderson, et al v. Heidi Diaz, Kimkins, et al
RCSC, Riverside Court, Case No. RIC 483005
FEN-0001

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