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DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA

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Kroger to Pay \$1.25 Million to Resolve False Advertising Lawsuit

Re: *People v. The Kroger Co.*
Santa Barbara Superior Court Case No. 24CV03007

SANTA BARBARA, Calif., — Santa Barbara County District Attorney John Savrnock announced today that The Kroger Company will pay \$1.25 million to resolve a lawsuit filed in the Santa Barbara County Superior Court alleging violations of California’s False Advertising and Unfair Competition laws. The violations stem from inaccurate calorie advertisements Kroger included on the physical packaging and online displays for five Kroger-branded Carbmaster Bread varieties—White, Wheat, and Multiseed Bread, and Hamburger and Hotdog Buns. These products were sold online and at hundreds of Kroger-owned Ralphs, Food4Less, and Foods Co. stores in California.

Investigation by the Santa Barbara County District Attorney’s Office revealed that when Kroger began selling Carbmaster bread products in 2021, it miscalculated their calorie content and displayed an inaccurate calorie value on both the FDA Nutrition Panel and front packaging. Consumers complained, and Kroger corrected the value on the FDA Nutrition Panel, but continued advertising the substantially lower, incorrect calorie value on the consumer-facing portions of the packaging for at least six months. Additionally, for at least one of the bread varieties, Kroger continued advertising the false calorie value online for nearly two years, even after the company was aware of the District Attorney’s investigation.

The calorie discrepancies were not trivial. For example, Kroger advertised that its Carbmaster Hamburger Buns contained 50 calories when they actually contained 100, and it advertised that its white and wheat bread varieties had 30 calories when the correct value was 50.

Kroger’s and its counsel’s handling of the matter contributed to delays and complications in the investigation, litigation, and resolution of the case. During litigation, the company was sanctioned in both federal and state court. The federal court imposed a \$9,800 sanction and stated that Kroger relied on arguments that were “clearly foreclosed by Ninth Circuit precedent.” In Santa Barbara County Superior Court, Judge Thomas Anderle sanctioned the company \$12,750 for failing to follow multiple court orders regarding discovery. This was not the first case where Kroger was sanctioned for failing to comply with court orders. (See *Hawkins v. The Kroger Co.* (S.D. Cal. Oct. 20, 2020).)

Kroger was represented by Jacob Harper of Davis Wright Tremaine, who regularly represents Kroger in food product mislabeling cases.

The People of the State of California were represented by the District Attorney’s Offices of Santa Barbara, Ventura, and Riverside Counties. Senior Deputy District Attorney Morgan Lucas of the Santa Barbara County District Attorney’s Office was the lead prosecutor, and the case was investigated by Santa Barbara County District Attorney Investigator Robert Parmelee.

District Attorney Savrnoch thanked Morgan Lucas and Robert Parmelee, as well as the Ventura and Riverside County District Attorney's Offices for their extensive work on the case. He commented: "Food labeling laws protect consumers and help them make healthy food choices. Kroger marketed Carbmaster Bread Products to consumers on specialty diets while significantly misrepresenting the nutritional information of those products. As one of the largest food manufacturers and retailers in the United States, Kroger had a responsibility to ensure its representations about nutritional information were accurate, and it failed. California consumers deserve better."

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