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16 Attorneys for Defendant
17 NESTLE USA, INC.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 MARK BEASLEY, on behalf of himself and
21 all others similarly situated,

22 Plaintiff,

23 v.

24 LUCKY STORES, INC., NESTLE USA,
25 INC., SAVE MART SUPER MARKETS,
26 THE KROGER COMPANY, and THE SAVE
27 MART COMPANIES, INC.,

28 Defendants.

Case No. 18-07144

**(San Francisco Superior Court Case No.
CGC-18-570953)**

**NOTICE OF PETITION FOR REMOVAL
BY DEFENDANT NESTLÉ USA, INC.
PURSUANT TO 28 U.S.C. §§ 1332, 1441
1446, AND 1453**

1 PLEASE TAKE NOTICE that Defendant Nestlé USA, Inc. (“Nestlé”), through its
2 undersigned counsel, hereby removes the case identified in paragraph 1 below to this Court.
3 This removal is made pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

4 **I. PAPERS FROM THE REMOVED ACTION**

5 1. On October 29, 2018, Plaintiff Mark Beasley filed the removed case, *Beasley v.*
6 *Lucky Stores, Inc., Nestlé USA, Inc., Save Mart Super Markets, The Kroger Company, and The*
7 *Save Mart Companies, Inc.*, No. CGC-18-570953, in the Superior Court of California, County of
8 San Francisco. Plaintiff served the Complaint on Nestlé on October 31, 2018.

9 2. In accordance with 28 U.S.C. § 1446(a), true and correct copies of the following
10 papers served upon Nestlé are attached to the Declaration of Dale J. Giali (“Giali Decl.”):

- 11 • The Summons, attached to the Giali Decl. as Exhibit A;
- 12 • Plaintiff’s Class Action Complaint, attached to the Giali Decl. as Exhibit B;
- 13 • The Civil Cover Sheet, attached to the Giali Decl. as Exhibit C;
- 14 • The Notice to Plaintiff of Case Management Conference, attached to the Giali
15 Decl. as Exhibit D;
- 16 • Plaintiff’s Application to Designate His Action as Complex, attached to the Giali
17 Decl. as Exhibit E; and
- 18 • Discovery requests propounded on defendants, attached to the Giali Declaration
19 as Exhibit F.

20 3. None of the defendants in this action answered plaintiff’s Complaint in San
21 Francisco County Superior Court prior to removal and Nestlé is not aware of any further
22 proceedings or filings regarding this action in that court. Giali Decl. at ¶ 4.

23 **II. NATURE OF REMOVED ACTION**

24 4. Plaintiff alleges that he purchased Coffee-mate coffee creamer products
25 manufactured, distributed, and labeled by Nestlé. Compl. at ¶¶ 13-14. Plaintiff contends that the
26 Coffee-mate brand creamer products were unlawfully made with the allegedly unsafe food
27
28

1 additive known as partially hydrogenated oil (“PHO”), and further, that the products were falsely
2 labeled as containing “0g Trans Fat” when in fact PHO contains trans fat. *Id.* at 3, 8.

3 5. Plaintiff seeks to represent the following putative class:

4 All citizens of California who purchased in California, on or after January 1, 2010,
5 Coffee-mate products containing partially hydrogenated oil.

6 Plaintiff further seeks to represent the following subclass:

7 All citizens of California who purchased in California, on or after January 1,
8 2010, Coffee-mate containing the nutrient content claim “0g Trans Fat” and
9 containing partially hydrogenated oil.

10 Compl. at ¶ 147.

11 6. Plaintiff asserts five causes of action: (a) violation of the California Unfair
12 Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*, alleging unfair and unlawful conduct; (b)
13 breach of implied warranty of merchantability; (c) on behalf of the “0g Trans Fat” subclass,
14 violation of the California Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*, alleging
15 unlawful, fraudulent, and unfair conduct; (d) on behalf of the “0g Trans Fat” subclass, violation
16 of California’s False Advertising Law, Bus. & Prof. Code §§ 17500 *et seq.*; and (e) on behalf of
17 the “0g Trans Fat” subclass, and against Nestlé only, breach of express warranty. *Id.* at ¶¶ 155-
18 201.

19 7. Plaintiff seeks class certification, restitution, pre- and post-judgment interest, and
20 attorneys’ fees and costs. *Id.* at 34. Plaintiff asserts that the amount of restitution sought exceeds
21 \$20 million. *See* Giali Decl. at Ex. E.

22 **III. VENUE**

23 8. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States
24 District Court for the district and division embracing the place where the state court case was
25 pending.

26 **IV. THE REMOVAL IS TIMELY**

27 9. The removal is timely under 28 U.S.C. § 1446(b).

28 10. Plaintiff filed his Complaint on October 29, 2018. *See* Compl. Plaintiff served
Nestlé on October 31, 2018. *See* Giali Decl. at ¶ 3.

1 11. Nestlé filed this Notice of Removal within thirty (30) days of service, as required
2 by law. *See, e.g., Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48, 354-
3 56 (1999).

4 **V. NOTICE TO ADVERSE PARTY AND STATE COURT**

5 12. Pursuant to 28 U.S.C. § 1446(d), Nestlé is serving written notice of the removal of
6 this case on plaintiff’s counsel:

7 Gregory S. Weston
8 Andrew C. Hamilton
9 1405 Morena Blvd., Suite 201
10 San Diego, CA 92110

11 13. Pursuant to 28 U.S.C. § 1446(d), Nestlé will promptly file a Notice of Removal
12 Filing with the Clerk of the Superior Court of California, County of San Francisco.

13 **VI. BASES FOR REMOVAL JURISDICTION**

14 **A. This Court Has Jurisdiction Under CAFA**

15 14. CAFA confers federal jurisdiction over class actions involving: (a) minimal
16 diversity (*i.e.*, diversity between any defendant and any putative class member); (b) at least 100
17 putative class members; and (c) at least \$5 million in controversy, exclusive of interests and
18 costs. *See* 28 U.S.C. § 1332(d). Although the burden rests on the removing party to demonstrate
19 that CAFA’s jurisdictional requirements are met, the party opposing jurisdiction under CAFA
20 bears the burden of demonstrating that any exception to CAFA jurisdiction applies. *Serrano v.*
21 *180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir. 2007). This case satisfies CAFA’s
22 requirements.

23 **1. The Parties Are Minimally Diverse**

24 15. Plaintiff “is a citizen of California” and he seeks to represent a class and subclass
25 composed of other “citizens of California.” Compl. at ¶¶ 18, 147.

26 16. A corporation is deemed to be a citizen of the state in which it has been
27 incorporated and where it has its principal place of business. 28 U.S.C. § 1332(c)(1). The phrase
28 “principal place of business” “refers to the place where the corporation’s high level officers

1 direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77,
2 80 (2010). This is the corporation's "nerve center." *Id.* at 81 (internal quotation marks omitted).
3 This "should normally be the place where the corporation maintains its headquarters." *Id.* at 93.

4 17. At the time of the filing of the Complaint and this notice of removal, Nestlé was a
5 Delaware corporation with its principal place of business in Virginia. *See* Compl. ¶ 12.
6 Accordingly, Nestlé is not a citizen of California.

7 18. At the time of the filing of the Complaint and this notice of removal, Kroger is a
8 Delaware corporation with its principal place of business in Ohio. *See id.* at ¶ 17. Accordingly,
9 Kroger is not a citizen of California.

10 19. Because plaintiff is a citizen of California, Nestlé is a citizen of Delaware and
11 Virginia, and Kroger is a citizen of Delaware and Ohio, the parties are minimally diverse.

12 **2. The Proposed Class Exceeds 100**

13 20. For purposes of removal, the Court looks to a plaintiff's allegations respecting
14 class size. *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013).

15 21. Plaintiff purports to bring a claim on behalf of "[a]ll citizens of California who
16 purchased in California, on or after January 1, 2010, Coffee-mate products containing partially
17 hydrogenated oil." Compl. ¶ 147. Plaintiff further purports to bring a claim on behalf of a
18 subclass of "[a]ll citizens of California who purchased in California, on or after January 1, 2010,
19 Coffee-mate containing the nutrient content claim '0g Trans Fat' and containing partially
20 hydrogenated oil." *Id.* Plaintiff asserts that "[t]he Class is sufficiently numerous, as it includes
21 thousands of individuals who purchased Coffee-mate throughout California during the Class
22 Period." *Id.* at ¶ 151. Thus, the proposed class exceeds 100 members.

23 **3. The Aggregate Amount In Controversy Exceeds Five Million Dollars**

24 22. Under CAFA, "the claims of the individual class members shall be aggregated to
25 determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive
26 of interest and costs." 28 U.S.C. § 1332(d)(6). "[T]he statute tells the District Court to determine
27 whether it has jurisdiction by adding up the value of the claim of each person who falls within
28

1 the definition of [the] proposed class and determine whether the resulting sum exceeds \$5
2 million.” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013).

3 23. To determine the amount in controversy, the Court must assume that the
4 allegations in the operative pleading are true and that a jury will return a verdict for the plaintiff
5 on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249
6 (C.D. Cal. 2012) (“The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s
7 complaint, not what a defendant will actually owe.”) (emphasis and internal quotation marks
8 omitted). The Court also may consider summary-judgment-type evidence relevant to the amount
9 in controversy. *See Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d
10 993, 1001 (C.D. Cal. 2002).

11 24. Further, “when a defendant seeks federal-court adjudication, the defendant’s
12 amount-in-controversy allegation should be accepted when not contested by the plaintiff or
13 questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,
14 553, 190 L. Ed. 2d 495 (2014). “Once the proponent of federal jurisdiction has explained
15 plausibly how the stakes exceed \$5 million . . . then the case belongs in federal court unless it is
16 legally impossible for the plaintiff to recover that much.” *Rhoades v. Progressive Cas. Ins. Co.*,
17 410 F. App’x 10, 11 (9th Cir. 2010).

18 25. Here, it is clear that the amount in controversy exceeds \$5 million.

19 26. Plaintiff does not allege a particular amount in controversy in his complaint.
20 However, in a filing in state court to designate the action as complex, plaintiff states that “[t]he
21 amount of restitution demanded for the proposed class exceeds \$20 million.” *See Giali Decl.* at
22 Ex. E.

23 27. This is reflected in the complaint’s allegations and prayer for relief, where
24 plaintiff demands “disgorgement” and “restitution,” which plaintiff alleges is equal to “all
25 revenue received by Defendants from the sale of Coffee-mate.” Compl. at ¶¶ 159, 167, 173, 183,
26 287, 192, 195, Prayer § B. The putative class consists of “[a]ll citizens of California who
27 purchased in California, on or after January 1, 2010, Coffee-mate products containing partially
28

1 hydrogenated oil.” *Id.* at ¶ 147. Thus, pursuant to plaintiff’s allegations, the estimated amount
2 in controversy with respect to plaintiff’s restitution claims can be determined by aggregating the
3 total revenue derived from the sale of Coffee-mate products. During the calendar year 2010, and
4 separately in each year thereafter to the present, Nestlé’s gross revenue from the sale of Coffee-
5 mate products in the State of California has been more than \$5,000,000.

6 28. This number does not even take into account the additional mark-up added by
7 retailers of the products, as is necessary to calculate plaintiff’s requested restitution of the
8 revenue from the sale of Coffee-mate products from retailers, as well. *See* Compl. at ¶¶ 159,
9 167, 173, 183, 287, 192, 195. Thus, the aggregate “amount in controversy,” consistent with
10 plaintiff’s allegations, well exceeds the threshold established by 28 U.S.C. § 1332(d).

11 **4. No Exception Applies to Defeat CAFA Jurisdiction**

12 29. Neither CAFA’s “local controversy” nor its “home state” exceptions apply to this
13 case.

14 30. For the home state exception to apply, all primary defendants must be citizens of
15 the state in which the case is filed. 28 U.S.C. § 1332(d)(B); *see also Corsino v. Perkins*, 2010
16 WL 317418, at *5 (C.D. Cal. Jan. 19, 2010). As discussed *supra*, Nestlé, the primary defendant,
17 is not a citizen of California, and therefore, this exception does not apply.

18 31. For the local controversy exception to apply, at least one defendant must be a
19 citizen of California, and that defendant’s conduct must form a significant basis for the claims
20 asserted by the proposed plaintiff class. 28 U.S.C. § 1332(d)(4)(i)(II). Here, the California
21 defendants are retailers who merely sold products that Nestlé owns, manufactures, distributes,
22 formulates, labels, and markets. *See* Compl. at ¶¶ 4, 11-16; *see also* ¶¶ 76, 78, 80 (outlining that
23 it is Nestlé’s conduct that forms the basis of plaintiff’s claims). The California defendants are
24 not responsible for the labeling or the ingredient formulation of the Coffee-mate products.
25 Accordingly, the retailers’ conduct does not form a significant basis for the claims asserted by
26 the proposed class. *See Clay v. Chobani LLC*, 2015 WL 4743891, at *6 (S.D. Cal. Aug. 10,
27 2015).

1 32. Moreover, the local controversy exception does not apply when the principal
2 injury alleged is one that occurred throughout the country, not just in the state where the case
3 was filed, as is the case here. 28 U.S.C. § 1332(d)(A)(4)(i)(III); *see also Waller v. Hewlett-*
4 *Packard Co.*, 2011 WL 8601207, at *4 (S.D. Cal. May 10, 2011); *Clay*, 2015 WL 4743891, at
5 *6. Coffee-mate is sold nationwide and the labels and ingredient formulation for the Coffee-
6 mate products are the same throughout the United States. Indeed, in 2015, plaintiff’s counsel
7 filed a putative class action alleging the same misbranding theory against the very same product,
8 and brought that case as to a nationwide class. *See Giali Decl.* ¶ 5. This demonstrates that this
9 controversy is not truly local in nature, and that the principal injury is nationwide.

10 33. Finally, the local controversy exception does not apply when, in the three years
11 preceding the filing of a case, any other class action has been filed “asserting the same or similar
12 factual allegations against any of the defendants on behalf of the same or other persons.” 28
13 U.S.C. § 1332(d)(4)(A)(ii). *Backus v. Nestlé USA, Inc.*, No. 3:15-cv-01963 (N.D. Cal.) was first
14 filed on April 30, 2015, just outside of the three-year requirement, demonstrating that removal of
15 this case is consistent with the policy behind CAFA and is an example of a type of controversy
16 that is not truly local in nature, and should instead be heard in federal court.

17 **VII. CONSENT OF DEFENDANTS**

18 34. With respect to CAFA jurisdiction, a case can be removed by any defendant
19 without the consent of any other defendant, as provided by 28 U.S.C. § 1453(b).

20 **VIII. RESERVATION OF RIGHTS AND REQUEST FOR ADDITIONAL BRIEFING** 21 **IF NECESSARY**

22 35. By removing this matter, Nestlé does not waive and, to the contrary, reserves any
23 rights it may have, including, without limitation, all available arguments and affirmative
24 defenses. Nestlé does not concede that class certification is appropriate or that plaintiff is
25 entitled to any recovery whatsoever. However, the question is not whether class certification is
26 appropriate or whether plaintiff will recover any amount for any particular time period. “The
27 amount in controversy is simply an estimate of the total amount in dispute, not a prospective
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1 assessment of defendant's liability." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th
2 Cir. 2010).

3 36. In the event that plaintiff files a request to remand, or the Court considers remand
4 *sua sponte*, Nestlé respectfully requests the opportunity to submit additional argument and/or
5 evidence in support of removal.

6 **IX. CONCLUSION**

7 37. Nestlé hereby removes the above-captioned action from the Superior Court of
8 California, County of San Francisco, to the United States District Court for the Northern District
9 of California.

10 Dated: November 26, 2018

MAYER BROWN LLP
Carmine R. Zarlenga
Dale J. Giali
Keri E. Borders

13 by: /s/ Dale J. Giali
14 Dale J. Giali
15 Attorneys for Defendant
16 NESTLE USA, INC.

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16 Attorneys for Defendant
17 NESTLE USA, INC.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 MARK BEASLEY, on behalf of himself and
21 all others similarly situated,

22 Plaintiff,

23 v.

24 LUCKY STORES, INC., NESTLE USA,
25 INC., SAVE MART SUPER MARKETS,
26 THE KROGER COMPANY, and THE SAVE
27 MART COMPANIES, INC.,

28 Defendants.

Case No. 18-07144

**(San Francisco Superior Court Case No.
CGC-18-570953)**

**DECLARATION OF DALE J. GIALI IN
SUPPORT OF DEFENDANT NESTLE
USA, INC.'S NOTICE OF REMOVAL**

DECLARATION OF DALE J. GIALI

I, Dale J. Giali, declare as follows:

1. I am a partner at the law firm of Mayer Brown LLP, counsel of record in this action for Defendant Nestlé USA, Inc. (“Nestlé”). This declaration is made in support of Nestlé’s Notice of Petition for Removal, which is being filed concurrently herewith. I have personal knowledge of the matters set forth herein, and could and would competently testify thereto if called as a witness.

2. On October 29, 2018, Plaintiff Mark Beasley (“Plaintiff”) initiated the removed case, *Beasley v. Lucky Stores, Inc. et al.*, No. CGC-18-570953, in the Superior Court for the State of California, County of San Francisco. True and correct copies of all papers filed in the Superior Court are attached hereto, and include:

- The Summons, attached hereto as Exhibit A;
- Plaintiff’s Class Action Complaint, attached hereto as Exhibit B;
- The Civil Cover Sheet, attached hereto as Exhibit C;
- The Notice to Plaintiff of Case Management Conference, attached hereto as Exhibit D;
- Plaintiff’s Application to Designate His Action as Complex, attached hereto as Exhibit E; and
- Discovery requests propounded on Defendants, attached hereto as Exhibit F.

3. On October 31, 2018, Plaintiff served Nestlé with copies of the Summons, the Complaint, the Civil Cover Sheet, and the Notice to Plaintiff of Case Management Conference.

4. None of the Defendants answered or otherwise responded to Plaintiff’s Complaint in the Superior Court prior to removal and Nestlé is not aware of any further proceedings or filings regarding this action in the Superior Court. Defendants’ time to answer or otherwise respond has not yet run.

5. On or around April 30, 2015, Plaintiff’s counsel, The Weston Firm, filed a complaint in a case captioned *Troy Backus v. Nestlé USA, Inc.*, Case No. 3:15-cv-01963 (N.D.

1 Cal.), alleging that Nestlé’s Coffee-mate products were false and/or misleading, based on the
2 same misbranding theory advanced in this case. On or around June 26, 2015, Plaintiff’s counsel
3 filed a First Amended Complaint, also alleging that Nestlé’s Coffee-mate products were false
4 and/or misleading, also based on the same misbranding theory advanced in this case, and
5 bringing those claims on behalf of a putative nationwide class.

6 6. Notice of this removal will promptly be given both to Plaintiff and to the Superior
7 Court pursuant to 28 U.S.C. § 1446(d).

8 7. I declare under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct.

10 Executed this 26th day of November 2018 at Los Angeles, CA.

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13 /s/ Dale J. Giali
14 Dale J. Giali
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Exhibit A

10-31-2018 10:48 Am

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Lucky Stores, Inc., Nestle USA, Inc., Save Mart Super Markers, The Kroger Company, and The Save Mart Companies, Inc.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Mark Beasley

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quedé más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumple con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org); en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

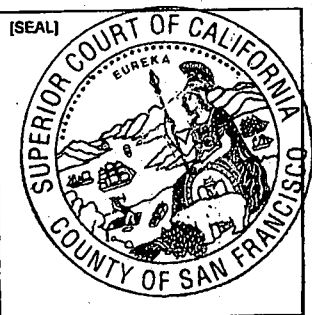
The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Civic Center Courthouse
400 McAllister St.
San Francisco, CA 94102

CASE NUMBER:
(Número de caso) **CGC-18-570953**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gregory S. Weston, The Weston Firm, 1405 Morena Blvd., Ste. 201, San Diego, CA 92110

DATE: **OCT 29 2018** Clerk, by **CLERK OF THE COURT** (Secretario) **MEREDITH GRIER**, Deputy (Adjunto)

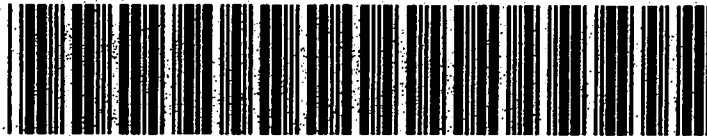
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify): **NESTLE USA, INC.**
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - by personal delivery on (date):

By Fax

Exhibit B



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Oct-29-2018 2:05 pm

Case Number: CGC-18-570953

Filing Date: Oct-29-2018 2:03

Filed by: MEREDITH GRIER

Image: 06553118

COMPLAINT

MARK BEASLEY VS. LUCKY STORES, INC. ET AL

001C06553118

Instructions:

Please place this sheet on top of the document to be scanned.

1 **THE WESTON FIRM**
2 GREGORY S. WESTON (239944)
3 *greg@westonfirm.com*
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7 San Diego, CA 92110
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FILED
San Francisco County Superior Court
OCT 29 2018
CLERK OF THE COURT
BY: *Marilyn G...*
Deputy Clerk

Counsel for Plaintiff

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

12 MARK BEASLEY, on behalf of himself and
13 all others similarly situated,

14 Plaintiff,

15 v.

16 LUCKY STORES, INC., NESTLE USA,
17 INC., SAVE MART SUPER MARKETS,
18 THE KROGER COMPANY, and THE
19 SAVE MART COMPANIES, INC.,

20 Defendants.

Case No. **CGC-18-570953**

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF:
BUS. & PROF. CODE §§17200 et seq.;
BUS. & PROF. CODE §§17500 et seq.; and
BREACH OF EXPRESS AND IMPLIED WARRANTIES**

By Fax

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1 Plaintiff Mark Beasley, on behalf of himself, all others similarly situated, and the general
2 public, by and through his undersigned counsel, hereby sues Defendants Lucky Stores, Inc. ("Lucky"),
3 Nestle USA, Inc. ("Nestle"), Save Mart Super Markets ("Save Mart"), The Kroger Company
4 ("Kroger"), and The Save Mart Companies, Inc. ("SMCI") (collectively "Defendants") and, upon
5 information and belief and investigation of counsel, alleges as follows:

6 **I. JURISDICTION AND VENUE**

7 1. Jurisdiction is proper in the Superior Court of San Francisco because Plaintiff is a citizen
8 of California and because all claims are asserted under the laws of California.

9 2. Venue is proper in the Superior Court for the County of San Francisco because
10 Plaintiff's claims accrued, in part, in San Francisco, and Defendants are found and do business in San
11 Francisco.

12 **II. NATURE OF THE ACTION**

13 3. Nestle manufactures, markets, and sells a line of coffee creamer products under the
14 Coffee-mate brand name (collectively "Coffee-mate"). During the class period defined herein, Nestle
15 unlawfully made Coffee-mate with the unsafe food additive known as partially hydrogenated oil
16 ("PHO"). Unless otherwise stated, references to Coffee-mate only include Coffee-mate during the
17 period it contained PHO.

18 4. Lucky, Save Mart, SMCI, and Kroger unlawfully sold Coffee-mate at their grocery
19 stores throughout California.

20 5. On June 16, 2015, the FDA issued a final regulation and declaratory order, after
21 extensive public comment, declaring PHO unsafe for any use in food.¹ The FDA came to the same
22 conclusion when it initially proposed the regulation in 2013.

23 6. Defendants were aware that PHO was unsafe even before this time, yet still harmed their
24 customers by manufacturing, distributing, and selling Coffee-mate.

25 7. During the entire class period, inexpensive and commercially viable alternatives to PHO
26 existed, and indeed were even in used by the primary competitor to Coffee-mate, International Delight.

27 ¹ 80 Fed. Reg. 34650 (June 17, 2015) (hereinafter "FDA Final Determination").
28

1 In order to increase profits, Defendants instead sold an unsafe and illegal product, and such behavior
2 was an unfair business practice.

3 8. For much of the class period, Defendants also defrauded the class by using the false and
4 unauthorized "0g Trans Fat" nutrient content claim on Coffee-mate packaging. All PHO, however,
5 contains trans fat, and the amount in Coffee-mate was not "0g," but a substantial and dangerous
6 amount.

7 9. Plaintiff purchased and consumed Coffee-mate from the grocery stores owned by
8 Defendants Lucky, Save Mart, SMCI, and Kroger grocery stores during the Class Period defined
9 herein.

10 10. Plaintiff seeks an order of restitution for himself and a class.

11 **III. PARTIES**

12 11. Defendant Lucky is a California corporation and a subsidiary of SMCI. Lucky operates a
13 chain of grocery stores in California and sells Coffee-mate at these stores.

14 12. Defendant Nestle is a Delaware corporation with its principal place of business in
15 California or Virginia.

16 13. Nestle owns, manufactures, distributes, and sells Coffee-mate.

17 14. Nestle manufactured, labeled, and distributed Coffee-mate in California. Further,
18 decisions regarding its formulation, labeling, and marketing were made in California.

19 15. Defendant Nestle USA, Inc. is a subsidiary of Nestle, S.A., a Swiss corporation
20 headquartered in Vevey, Canton of Vaud. Nestle, S.A. is the largest food company in the world, with
21 2017 annual revenue and profits of about \$90 billion and \$7.2 billion.

22 16. Defendants Save Mart and SMCI are California corporations with their principal place
23 of business in Modesto, California. They own and operate multiple chains of grocery stores in
24 California, including Lucky, and sold Coffee-mate during this time.

25 17. Defendant Kroger is Delaware corporation with its principle place of business in Ohio. It
26 owns and operates grocery stores in California, including under the brand name Foods Co, one of the
27 places Plaintiff purchased Coffee-mate. Kroger sells Coffee-mate throughout its California grocery
28 stores.

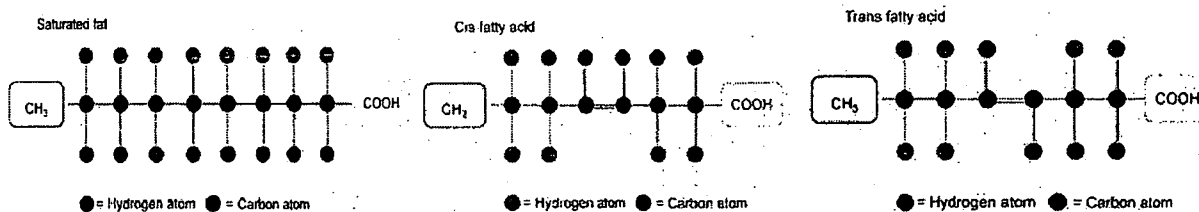
1 18. Plaintiff Mark Beasley is a citizen of California who repeatedly purchased Coffee-mate
2 for personal and household consumption, including at a Foods Co store in San Francisco.

3 IV. NATURE OF TRANS FAT

4 19. Artificial trans fat is manufactured via an industrial process called partial hydrogenation,
5 in which hydrogen atoms are added to normal vegetable oil by heating the oil to temperatures above
6 400°F in the presence of ion donor catalyst metals such as rhodium, ruthenium, and nickel.² The
7 resulting product is known as partially hydrogenated oil, or PHO.

8 20. PHO was invented in 1901 and patented in 1902 by German chemist Wilhelm Normann.
9 PHO molecules chemically differ from the natural fat molecules in other food products.³

10 21. Natural fat, except the trace amounts of natural trans fat from ruminant animal sources
11 like beef, milk, and mutton, comes in two varieties: (1) fats that lack carbon double bonds (“saturated
12 fat”) and (2) fats that have carbon double bonds. Trans fat, in contrast to cis fat, has carbon double bonds
13 with hydrogen atoms on opposite sides of the carbon chain.



18 22. PHO was initially a “wonder product” attractive to the processed food industry because
19 it combined the low cost of unsaturated cis fat with the flexibility and long shelf life of saturated fat.
20 Like processed cis fat, PHO is manufactured from low-cost legumes,⁴ while saturated fat is derived
21 from relatively expensive animal and tropical plant sources.⁵

22

23 ² See Alice H. Lichtenstein, *Trans Fatty Acids, Plasma Lipid Levels, and Risk of Developing Cardiovascular Disease*, 95 CIRCULATION 2588, 2588-90 (1997).

24 ³ See Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J. MED. 94,
25 94-8 (1999). See also Walter Willett, *The Scientific Case for Banning Trans Fats*, Scientific American,
26 available at www.scientificamerican.com/article/the-scientific-case-for-banning-trans-fats/ (last visited
October 22, 2018).

27 ⁴ e.g., corn oil, cottonseed oil, soybean oil, peanut oil

28 ⁵ e.g., butter, cream, tallow, palm oil, coconut oil

1 23. As detailed herein, PHO causes cardiovascular disease, diabetes, cancer, Alzheimer's
 2 disease, and accelerates memory damage and cognitive decline. These risks were well known during
 3 the entire class period, and at no point during the class period was there ever a consensus that PHO was
 4 safe to use, neither in general nor as an ingredient in coffee creamer.

5 **A. There is a Well-Established Scientific Consensus That Trans Fat is Extremely**
 6 **Harmful.**

7 24. The National Academies of Science were chartered by an act of Congress, signed by
 8 President Lincoln in 1863. Under that charter, in 1970, the National Academy of Medicine was created.
 9 In a 2005 report, under its former name of the Institute of Medicine, it issued a report finding there was
 10 "no safe level" of PHO or artificial trans fat intake.⁶ Therefore, in 2005, there was no consensus that
 11 PHO was a safe ingredient to use in food. To the contrary, the consensus was that it is unsafe.

12 25. In addition, "trans fatty acids are not essential and provide no known benefit to human
 13 health."⁷ Thus, while IOM provided safe maximum levels for other food elements like saturated fat, in
 14 could not and declined to provide one for trans fat when requested by the FDA, the reason being that
 15 "any incremental increase in trans fatty acid intake increases the risk of CHD."⁸ (emphasis added).

16 26. In 2006, Dariush Mozaffarian of Harvard Medical School wrote in the *New England*
 17 *Journal of Medicine*, "the consumption of trans fatty acids results in considerable potential harm but no
 18 apparent benefit."⁹

19 27. Julie Louise Gerberding, who served eight years as the head of the United States Centers
 20 for Disease Control and Prevention, wrote in 2009:

21 The scientific rationale for eliminating exposure to artificial trans fatty acids in foods is rock
 22 solid. There is no evidence that they provide any health benefit, and they are certainly

23 ⁶ Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy, Carbohydrate, Fiber,*
 24 *Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2005).

25 ⁷ Food Labeling; Health Claim; Phytosterols and Risk of Coronary Heart Disease; Proposed Rule, 75
 Fed. Reg. 76526, 76542 (Dec. 8, 2010).

26 ⁸ *Id.*

27 ⁹ Dariush Mozaffarian et al., *Trans Fatty Acids and Cardiovascular Disease*, 354 N. ENGL. J. MED.
 1601, 1608-1609 (2006).

1 harmful. These compounds adversely affect both low- and high-density lipoprotein
 2 cholesterol levels and increase the risk for coronary heart disease, even at relatively low
 3 levels of dietary intake. Gram for gram, trans fats are far more potent than saturated fats in
 4 increasing the risk for heart disease, perhaps because they also have pro-inflammatory
 5 properties and other adverse effects on vascular endothelium. The strong evidence of harm...
 6 Eliminating exposure to these dangerous fats could have a powerful population impact—
 7 potentially protecting 30,000 to 100,000 Americans from death related to heart disease each
 8 year.¹⁰

9 28. Dr. Mozaffarian further writes:

10 Given the adverse effects of trans fatty acids on serum lipid levels, systemic inflammation,
 11 and possibly other risk factors for cardiovascular disease and the positive associations with
 12 the risk of CHD, sudden death from cardiac causes, and possibly diabetes, the potential for
 13 harm is clear. The evidence and the magnitude of adverse health effects of trans fatty acids
 14 are in fact far stronger on average than those of food contaminants or pesticide residues,
 15 which have in some cases received considerable attention.¹¹

16 29. In 2011, Walter Willet, also a professor at Harvard Medical School, described
 17 Defendants' behavior of selling food made with PHO as "a food safety issue . . . this is actually
 18 contamination."¹²

19 30. The views of these experts, and many others, show that, even before the FDA formally
 20 declared PHO to be unsafe for use in food in 2015, its use was still unlawful because there was not a
 21 consensus of scientific experts that PHO was a safe food additive.

22 **B. The PHO in Coffee-mate Caused Coronary Heart Disease.**

23 31. Trans fat raises the risk of CHD more than any other known consumed substance.¹³

24 32. A 1999 estimate published in the New England Journal of Medicine found that
 25 removing PHO from the American diet "would prevent approximately 30,000 premature coronary
 26 deaths per year, and epidemiologic evidence suggests this number is closer to 100,000 premature deaths
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¹⁰ Julie Louise Gerberding, *Safer Fats for Healthier Hearts: The Case for Eliminating Dietary Artificial Trans Fat Intake*, 151 ANN. INTERN. MED. 137-138 (2009).

¹¹ Dariush Mozaffarian et al., *Trans Fatty Acids and Cardiovascular Disease*, 354 N. ENGL. J. MED. 1601 (2006).

¹² Rebecca Coombes, *Trans fats: chasing a global ban*, 343 BRITISH MED. J. (2011).

¹³ Mozaffarian, 354 NEW ENG. J. MED. at 1603.

1 annually.”¹⁴

2 33. By raising LDL levels and lowering HDL levels, trans fat causes a wide variety of
3 dangerous heart conditions, including vasodilation, coronary artery disease, and primary cardiac arrest.

4 34. In a joint Dietary Guidelines Advisory Committee Report, the Department of Health and
5 Human Services and the U.S. Department of Agriculture recognized “[t]he relationship between trans
6 fatty acid intake and LDL cholesterol is direct and progressive, increasing the risk of cardiovascular
7 disease.”¹⁵

8 35. The American Heart Association warns, “trans fats raise your bad (LDL) cholesterol
9 levels and lower your good (HDL) cholesterol levels. Eating trans fats increases your risk of developing
10 heart disease.”¹⁶

11 36. Even further back, in 2003, a review of literature on the connection between the
12 consumption of artificial trans fat and coronary heart disease, the FDA concluded:

13 [B]ased on the consistent results across a number of the most persuasive types of study
14 designs (i.e., intervention trials and prospective cohort studies) that were conducted using a
15 range of test conditions and across different geographical regions and populations . . . the
16 available evidence for an adverse relationship between trans fat intake and CHD risk is
17 strong.¹⁷

18 37. The FDA concluded in 2010 that “there have been no reports issued by authoritative
19 sources that provide a level of trans fat in the diet . . . below which there is no risk of [Coronary Heart
20 Disease].” 75 Fed. Reg. 76526, 76542 (Dec. 8, 2010). Rather, there “is a positive linear trend between
21 trans fatty acid intake and LDL cholesterol concentration, and therefore there is a positive relationship
22 between trans fatty acid intake and the risk of CHD.” *Id.*

23 38. A study published in American Heart Association’s *Circulation* found that the largest

24 ¹⁴ Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J. MED. 94, 94-
25 8 (1999).

26 ¹⁵ Dep’t of Health & Human Serv. & U.S. Dep’t of Agric., 2005 Dietary Guidelines Advisory
27 Committee Report, Section 10 (2005).

28 ¹⁶ Am. Heart Ass’n., *Trans Fat Overview*, available at tinyurl.com/TransFatOverview (last visited
October 22, 2018).

¹⁷ FDA, Final Rule, 68 Fed. Reg. 41433, 41445 (July 11, 2003).

1 consumers of trans fat have three times the risk of suffering primary cardiac arrest, even after
2 controlling for a variety of medical and lifestyle risk factors.¹⁸

3 39. Australian researchers observed that heart attack patients possess elevated amounts of
4 trans fat in their adipose tissue (stored body fat) compared to controls. The effects of consuming trans
5 fat are therefore shown to be long-lived because of its storage within the body in place of natural fats.¹⁹

6 40. Cholesterol dysregulation and systemic inflammation/immune system dysregulation are
7 the most important pathways through which PHO consumption causes morbidity and death. Another
8 route is by promoting atherosclerosis by degrading the function of TGF- β , a protein responsible for
9 preventing the development of atherosclerotic lesions.²⁰

10 41. TGF- β also functions to suppress cancerous tumors. Degradation of TGF- β function is
11 also likely one route by which artificial trans fat consumption promotes cancers in fatty organs and the
12 digestive system.²¹

13 **C. The PHO in Coffee-mate Caused Type-2 Diabetes.**

14 42. Artificial trans fat also causes type-2 diabetes.²²

15 43. In particular, trans fat disrupts the body's glucose and insulin regulation system by
16 incorporating itself into cell membranes, causing the insulin receptors on cell walls to misform and
17 malfunction, and in turn elevating blood glucose levels and stimulating further release of insulin.

18 44. Researchers at Northwestern University's medical school found that mice show multiple
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22 ¹⁸ Rozenn N. Lemaitre et al., *Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac Arrest*, 105 CIRCULATION 697, 697-701 (2002).

23 ¹⁹ Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction*. 134 J. NUTR. 874, 874-79 (2004).

24 ²⁰ Chen, C.L. et al., *A mechanism by which dietary trans fats cause atherosclerosis*, J. NUTR. BIOCHEMISTRY 22(7) 649-655 (2011).

25 ²¹ *Id.*

26 ²² Am. Heart Ass'n., *Trans Fat Overview*, available at tinyurl.com/TransFatOverview (last visited
27 October 22, 2018).
28

1 markers of type-2 diabetes after eating PHO for only four weeks.²³

2 45. By the eighth week of the study, mice fed the high trans fat diet showed a 500% increase
3 compared to the control group in hepatic interleukin-1 β gene expression, one such marker of diabetes,
4 indicating the extreme stress even short-term exposure to artificial trans fat places on the body.²⁴

5 46. A 14-year study of 84,204 women found that for every 2 percent increase in energy
6 intake from artificial trans fat, the relative risk of type-2 diabetes was increased by 39 percent.²⁵

7 **D. The PHO in Coffee-mate Caused Breast, Prostate, and Colorectal Cancer.**

8 47. Trans fat is a carcinogen which causes breast, prostate, and colorectal cancer.

9 48. A 13-year study of 19,934 French women showed 75 percent more women contracted
10 breast cancer in the highest quintile of trans fat consumption than did those in the lowest.²⁶

11 49. In a 25-year study of 14,916 American physicians, those in the highest quintile of trans
12 fat consumption had more than double the risk of developing prostate cancer than the doctors in the
13 lowest quintile.²⁷

14 50. A study of 1,012 American males observing trans fat intake and the risk of prostate
15 cancer found “[c]ompared with the lowest quartile of total trans-fatty acid consumption, the higher
16 quartiles gave odds ratios (ORs) equal to 1.58,” meaning those in the highest quartile are 58% more
17 likely to contract prostate cancer than those in the lowest.²⁸

18 51. A 600-person study found an 86 percent greater risk of colorectal cancer in the highest
19

20 ²³ Sean W. P. Koppe et al., *Trans fat feeding results in higher serum alanine aminotransferase and*
21 *increased insulin resistance compared with a standard murine high-fat diet*, 297 AM. J. PHYSIOL.
22 GASTROINTEST LIVER PHYSIOL. 378 (2009).

23 ²⁴ *Id.*

24 ²⁵ Jorge Salmeron et al., *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*, 73 AM. J. CLINICAL
25 NUTRITION 1019, 1023 (2001).

26 ²⁶ Véronique Chajès et al., *Association between Serum Trans-Monounsaturated Fatty Acids and Breast*
27 *Cancer Risk in the E3N-EPIC Study*, 167 AM. J. EPIDEMIOLOGY 1312, 1316 (2008).

28 ²⁷ Jorge Chavarro et al., *A Prospective Study of Blood Trans Fatty Acid Levels and Risk of Prostate*
29 *Cancer*, 47 PROC. AM. ASSOC. CANCER RESEARCH 95, 99 (2006).

²⁸ Xin Liu et al., *Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate Cancer:*
30 *Modification by RNASEL R462Q Variant*, 28 CARCINOGENESIS 1232, 1232 (2007).

1 trans fat consumption quartile.²⁹

2 52. A 2,910-person study found “trans-monounsaturated fatty acids . . . were dose-
3 dependently associated with colorectal cancer risk,” which showed “the importance of type of fat in the
4 etiology and prevention of colorectal cancer.”³⁰

5 **E. The PHO in Coffee-mate Caused Alzheimer’s Disease and Cognitive Decline.**

6 53. Trans fat causes Alzheimer’s disease and cognitive decline.

7 54. In a study examining 815 Chicago area seniors, researchers found “increased risk of
8 incident Alzheimer disease among persons with high intakes of . . . trans-unsaturated fats.”³¹

9 55. The study “observed a strong increased risk of Alzheimer disease with consumption of
10 trans-unsaturated fat.”³²

11 56. In a study of 1,486 women with type-2 diabetes, researchers found “[h]igher intakes of
12 . . . trans fat since midlife . . . were [] highly associated with worse cognitive decline”³³

13 57. The study cautioned “[d]ietary fat intake can alter glucose and lipid metabolism and is
14 related to cardiovascular disease risk in individuals with type 2 diabetes. Because insulin, cholesterol,
15 and vascular disease all appear to play important roles in brain aging and cognitive impairments,
16 dietary fat modification may be a particularly effective strategy for preventing cognitive decline,
17 especially in individuals with diabetes.”³⁴ (citations omitted).

18 58. Artificial trans fat also damages the brains of those who consume it. A study conducted
19 by UCSD School of Medicine of 1,018 men, mostly younger men, found trans fat consumption to be
20

21 ²⁹ L.C. Vinikoor et al., *Consumption of Trans-Fatty Acid and its Association with Colorectal*
22 *Adenomas*, 168 AM. J. EPIDEMIOLOGY 289, 294 (2008).

23 ³⁰ Evropi Theodoratou et al., *Dietary Fatty Acids and Colorectal Cancer: A Case-Control Study*, 166
24 AM. J. EPIDEMIOLOGY 181 (2007).

25 ³¹ Martha Clare Morris et al., *Dietary Fats and the Risk of Incident Alzheimer Disease*, 60 ARCH.
26 NEUROL. 194, 198-99 (2003).

27 ³² *Id.*

28 ³³ Elizabeth E. Devore et al., *Dietary Fat Intake and Cognitive Decline in Women with Type 2 Diabetes*,
32 DIABETES CARE 635 (2009).

³⁴ *Id.*

1 strongly correlated with impaired memory.³⁵ The authors of the study, appearing in *Circulation*, the
2 American Heart Association's peer-reviewed journal, conclude that "Greater dTFA [dietary trans fatty
3 acid] was significantly associated with worse word memory in adults aged 20-45 years, often critical
4 years for career building."

5 59. Performing a word memory test, each additional gram per day of trans fat consumed was
6 associated with 0.76 fewer words correctly recalled. The authors suggest trans fat's well-established
7 pro-oxidant effect and its damage to cell energy processes is the pathway by which trans fat
8 consumption damages memory ability. The young men with the highest trans fat consumption scored
9 12 fewer recalled words on the 104-word test.³⁶

10 **F. The PHO in Coffee-mate Caused Organ Damage.**

11 60. Artificial trans fat molecules are readily incorporated into blood and organ cells in place
12 of natural fat molecules, which damages vital organs, including the heart, brain, and reproductive system.
13 Further, changing the chemical composition of cells induces systemic inflammation, where the immune
14 system fails to recognize such cells as native to the body and becomes persistently overactive, leading to
15 further organ damage.³⁷

16 **G. PHO Use is Unlawful in California, the United States, and European Nations.**

17 61. New York City banned trans fat in restaurants in 2006. Similar laws exist in Philadelphia;
18

19 ³⁵ Golomb, B. et al., *Trans Fat Consumption is Adversely Linked to Memory in Working-Age Adults*,
20 *CIRCULATION*. 130:A15572 (2014).

21 ³⁶ *Id.*

22 ³⁷ *See:*

23 Lopez-Garcia et al., *Consumption of Trans Fat is Related to Plasma Markers of Inflammation and*
Endothelial Dysfunction, 135 *J. NUTR.* 562-66 (2005);

24 Baer et al., *Dietary fatty acids affect plasma markers of inflammation in healthy men fed controlled*
diets; a randomized crossover study, 79 *AM. J. CLIN. NUTR.* 969-73 (2004);

25 Mozaffarian & Clarke, *Quantitative effects on cardiovascular risk factors and coronary heart disease*
risk of replacing partially hydrogenated vegetable oils with other fats and oils, 63 *EURO. J. CLIN. NUTR.*
26 S22-33 (2009);

27 Mozaffarian et al., *Trans Fatty acids and systemic inflammation in heart failure* 80 *AM. J. CLIN. NUTR.*
1521-25 (2004).
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1 Baltimore; Stamford, Connecticut; and Montgomery County, Maryland.

2 62. A 2004 Danish law restricted all foods to fewer than 2 percent of calories from artificial
3 trans fat, a test that Coffee-mate did not meet during the class period.

4 63. Nestle's home country, Switzerland, made the same restriction in 2008.³⁸

5 64. A study of Denmark's 2004 trans fat ban concluded it "did not appreciably affect the
6 quality, cost or availability of food" and did not have "any noticeable effect for the consumers."³⁹

7 65. These laws were all motivated by the strong evidence trans fat is dangerous, showing there
8 was not a scientific consensus during the class period that PHO was a safe food additive.

9 66. On June 17, 2015, the FDA released a declaratory order which it called its Final
10 Determination Regarding Partially Hydrogenated Oils, finding that "PHOs are not GRAS for any use in
11 human food." 80 Fed. Reg. 34650, 34651 (June 17, 2015) ("Final Determination")

12 67. The FDA's Final Determination noted that "if there are data and information that
13 demonstrates to a reasonable certainty that no harm will result from a specific use of a PHO in food,
14 that information could be submitted as part of a food additive petition to FDA seeking issuance of a
15 regulation to prescribe conditions under which the additive may be safely used in food." Final
16 Determination at 34664.

17 68. On June 11, 2015 and March 7, 2017, the Grocery Manufacturers Association ("GMA")
18 submitted such a food additive petition and then an amended petition seeking approval to use partially
19 hydrogenated oil in "approximately 60 food categories," including coffee creamers. On May 21, 2018,
20 the FDA denied the amended GMA petition, and stated it considered the first one abandoned. In doing
21 so, the FDA rejected the GMA's argument for a "non-linear dose response" model and noted that "the
22 vast majority of scientific studies have been consistent in their conclusions that trans fat consumption
23 has a progressive and linear adverse effect on blood lipids and CHD risk." Denial of Food Additive
24 Petition, 83 Fed. Reg. 23382, 23390 (May 21, 2018).

25 _____
26 ³⁸ Andrew Collier, *Deadly Fats: Why Are We still Eating Them?*, The Independent (UK), June 10,
2008.

27 ³⁹ Mozaffarian, 354 NEW ENG. J. MED. at 1610; see also Steen, Stender, *High Levels of Industrially*
28 *Produced Trans Fat in Popular Fast Food*, 354 NEW ENG. J. MED. 1650, 1652 (2006).

V. PLAINTIFF'S PURCHASES OF COFFEE-MATE

69. Plaintiff Mark Beasley purchased Coffee-mate during the Class Period approximately once per month. These purchases included both the liquid and powder versions of Coffee-mate.

70. The most frequent locations of Mr. Beasley's purchases of Coffee-mate were at the Foods Co located at 345 Williams Ave., San Francisco, CA 94124 and Lucky, located at 1322 El Camino Real, San Bruno, CA 94066.

71. Plaintiff first discovered Defendants' unlawful acts described herein in January 2017, when he learned that Coffee-mate contained an unsafe food additive for years and was fraudulently marketed.

72. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier Defendants' fraudulent and unlawful acts. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay consumer who did not have the specialized human nutrition knowledge of Defendants, nor is Plaintiff, like Defendants, charged with compliance with state and federal food safety laws.

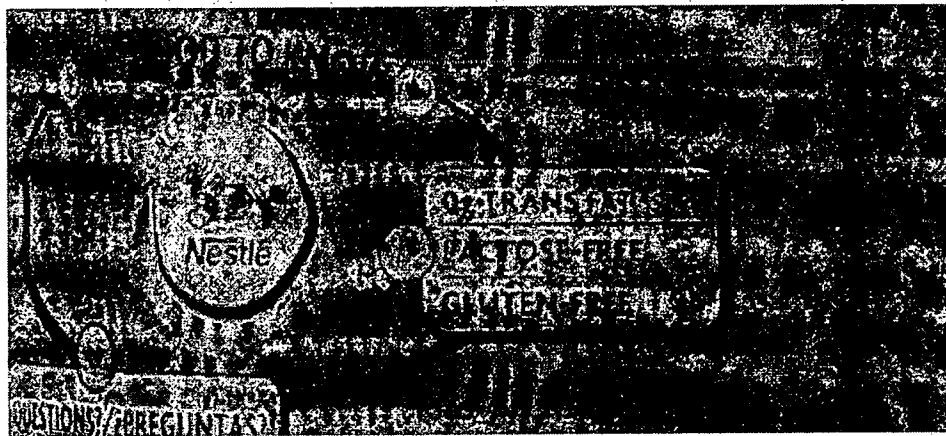
73. Plaintiff relied on Nestle's "0g TRANS FAT" claim as a substantial factor in some of his purchases of Coffee-mate.

VI. COFFEE-MATE'S "0g TRANS FAT" CLAIM WAS FALSE, MISLEADING AND AN UNLAWFUL NUTRIENT CONTENT CLAIM

74. During much of the Class Period, Coffee-mate was made with PHO yet contained the deceptive health and wellness claim "0g Trans Fat" prominently displayed on the front of the bottle. It also at times made this unlawful nutrient content claim on the back of the product "IT'S GOOD TO KNOW: 0g TRANS FAT/SERV LACTOSE-FREE GLUTEN-FREE."

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8 75. This language was part of an intentional, long-term campaign to deceptively market
9 Coffee-mate as healthful and free of trans fat.

10 76. Nestle's conduct is especially egregious because milk, cream, soy milk, almond milk,
11 and competing creamer brands like International Delight, are and were free of PHO and do not pose the
12 serious health consequences associated with Coffee-mate.

13 77. "0g Trans Fat" and "IT'S GOOD TO KNOW: 0g TRANS FAT/SERV LACTOSE-FREE
14 GLUTEN-FREE" are unauthorized nutrient content claims.

15 **VII. COFFEE-MATE UNNECESSARILY CONTAINED PHO AND TRANS FAT.**

16 78. Nestle's use of PHO in Coffee-mate was always unnecessary. There are several safe
17 substitutes for PHO and artificial trans fat. Indeed, Nestle now uses "soybean and/or canola oil," neither
18 of which contain trans fat, as a substitute for PHO in the current formulation.

19 79. Coffee-mate was made with PHO even as competing creamer products did not engage in
20 this unfair and unlawful conduct. During the class period, brands of coffee creamer without PHO
21 included International Delight, Nature's First Natural Dairy Creamer, Silk For Coffee Soy Beverage,
22 and Bailey's Coffee Creamer.

23 **VIII. NESTLE HAS A PATTERN AND PRACTICE OF ENGAGING IN**
24 **OPPRESSIVE CONDUCT TOWARD CONSUMERS**

25 80. Nestle's use of dangerous PHOs when it knows there are safe substitutes is part of a
26 pattern and practice of oppressive and unlawful conduct toward consumers.
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1 **A. Nestle Gives Promotions to the Ringleaders in a Criminal Price Fixing**
2 **Conspiracy**

3 81. Nestle Canada and its former executives were criminally charged by the Canada
4 Competition Bureau.⁴⁰ The case in the Ontario Superior Court is numbered 13-90000394-000.

5 82. Hershey, a competitor, gained immunity as a whistleblower under a Canadian Immunity
6 Program in return for describing in detail its criminal price fixing conspiracy with Nestle Canada.⁴¹

7 83. Canadian investigators uncovered a pattern of criminal behavior Nestle Canada's
8 leading executives.

9 84. Robert Leonidas, former president of Nestle Canada and one of the executives named in
10 the criminal investigation, frequently met with executives from competing chocolate firms.⁴² For
11 example, Leonidas met with a rival executive at restaurant Manoir Richelieu during the Confectionery
12 Manufacturers Association of Canada annual meeting held June 2-5, 2005. At this meeting he informed
13 his rival "We are going to take a price increase and I want you to hear it from the top." He also handed
14 the executive an envelope which outlined Nestle's planned price increase on chocolate in 2005, which
15 after taking note of the rival executive shredded.⁴³

16 85. Later, Leonidas met with the assistant of a rival executive downstairs from his office
17 because "it was better not to be seen in his office" and handed the assistant an envelope which
18 contained an unsigned, future-dated letter with information about another price increase.⁴⁴

19 86. At another date, Leonidas sent emails to a rival executive stating "want to see you Feb.
20 7th 8am to TALK." On this date, the two met at a coffee shop and Leonidas explained Nestle's specific
21
22

23 ⁴⁰ See [www.confectionerynews.com/Regulation-Safety/Canada-price-fixing-woes-Chocolate-titans-](http://www.confectionerynews.com/Regulation-Safety/Canada-price-fixing-woes-Chocolate-titans-settle-class-action-but-still-face-criminal-charges)
24 [settle-class-action-but-still-face-criminal-charges](http://www.confectionerynews.com/Regulation-Safety/Canada-price-fixing-woes-Chocolate-titans-settle-class-action-but-still-face-criminal-charges) (accessed October 22, 2018).

25 ⁴¹ See www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03569.html (accessed October 22, 2018).

26 ⁴² Information of Daniel Wilcock, *The Commissioner of Competition v. Nestle Canada Inc. et al.*,
Ontario Superior Court of Justice (November 19, 2007).

27 ⁴³ *Id.*

28 ⁴⁴ *Id.*

1 pricing plans for Halloween and Easter chocolate.⁴⁵

2 87. Nestle promoted Leonidas. Leonidas was replaced as president of Nestle Canada by
3 Sandra Martinez, also named in the criminal complaint. In July 2007 she met with another food
4 company's executive at Auberge du Pommier, a restaurant featuring "roasted leg of rabbit" and \$1,500
5 wines, and

6 suggested the cooperator's company raise its prices first in 2007, 'as Nestle wanted to take a
7 price increase in the third quarter.' The executive cooperating with authorities told Martinez
8 he would follow on a price hike, but not lead, according to the affidavit.⁴⁶

9 88. Despite being criminally prosecuted for price fixing, and with knowledge of these
10 accusations, Defendant Nestle's parent, Nestle S.A., **gave promotions** to both of the executives
11 Canadian authorities charged with running a criminal conspiracy.

12 89. Specifically, Martinez was promoted to head of global chocolate and confectionery
13 business.⁴⁷

14 90. Leonidas was promoted to president and CEO for Nestle Prepared Foods and the Nestle
15 Baking group.⁴⁸

16 **B. Nestle Lies to Women in Developing Countries, Using Saleswomen Dressed as
17 Nurses, Telling Them Nestle Powder Formula is Superior to Mother's Breast Milk.**

18 91. Nestle for decades has fraudulently promoted its infant formula as superior to breast
19 milk.⁴⁹ This has included having Nestle saleswomen dress up in nurse uniforms when they are not

20 ⁴⁵ *Id.*

21 ⁴⁶ Greg Saitz, *Canadian investigation of industry drizzles into United States, New Jersey*, Newark Star
22 Ledger, Business Sunday, Page 1, Jan. 28, 2008 available at
23 www.labaton.com/en/about/press/upload/Sunday-Star-Ledger-Jan-20-2008-Final-version.pdf (accessed
24 October 22, 2018).

25 ⁴⁷ See <https://www.nestle.com/stories/cassava-plant-tackle-child-labour-women-empowerment> (accessed
26 October 23, 2018).

27 ⁴⁸ See www.refrigeratedfrozenfood.com/articles/85280-leonidas-leads-nestle-prepared-foods (accessed
28 October 22, 2018).

⁴⁹ For an early overview, see the report by the English non-profit War on Want, "The Baby Killer: A
War on Want investigation into the promotion and sale of powdered baby milks in the Third World."
(March 1974), available at archive.babymilkaction.org/pdfs/babykiller.pdf (accessed October 22, 2018).

1 actually nurses, to sell its powder formula product.⁵⁰

2 92. These practices led to mothers in developing countries abandoning breast milk in favor
3 of formula in increasingly numbers, the opposite of the trend in the West.

4 93. Nestle's continuing behavior in promoting its powdered infant formula over breast milk
5 has inspired long-running global boycotts.⁵¹

6 94. In 2011, a group of NGOs in Laos including Save the Children and Oxfam issued a joint
7 open letter about Nestle's cruel and oppressive behavior, summed up with this joint conclusion: "Your
8 marketing of formula milk still jeopardizes the health of infants and children in Laos."

9 95. They charged Nestle with corrupting many doctors in that very poor country⁵² by
10 "visiting hospitals and providing incentives, such as gifts and trips, to doctors and nurses, to promote
11 formula usage." They further write that "In poor nations, formula-fed infants *are four to six times more*
12 *likely to die of infectious disease than breastfed babies*" (emphasis added).⁵³

13 96. The 2011 open letter also notes that that Nestle's "[a]dvertising is promoting unscientific
14 and unsubstantiated claims that formula increases intelligence and enhances immunity. This creates a
15 situation where family income is being spent unnecessarily on formula for infants and young children,
16 keeping households poor."

17 97. A Nestle company was named in a 2013 report by Save the Children which found that
18 healthcare professionals in poor countries were being targeted and exploited by infant formula
19 companies to push their products as superior to breast milk.⁵⁴

20 98. The deceptively named "Nestle Nutrition Institute" is also continuing to organize
21

22 ⁵⁰ *Id.*

23 ⁵¹ See www.theguardian.com/sustainable-business/nestle-baby-milk-scandal-food-industry-standards
24 (accessed October 22, 2018).

25 ⁵² Per capita GDP in Laos was \$1,646 in 2013, compared to \$53,042 in the United States.

26 ⁵³ See www.irinnews.org/report/93040/laos-ngos-flay-nestl%C3%A9-s-infant-formula-strategy
27 (accessed October 22, 2018).

28 ⁵⁴ See www.theguardian.com/business/2013/feb/24/food-companies-flout-baby-milk-formula-code
(accessed October 22, 2018).

1 doctors meetings despite objections from the Government of India.”⁵⁵

2 99. A 2013 report by IBFAN found examples of Nestle using misleading labeling in China,
3 Mexico, South Africa, Tanzania, Armenia, Zimbabwe and the Republic of Georgia to promote its infant
4 formula products.⁵⁶

5 100. A 2018 report by the Changing Markets Foundation analyzed over 70 Nestle baby
6 formula products in 40 countries and found that Nestle violated the UN’s World Health Organization
7 (WHO) advertising codes.

8 101. The report further found that Nestle made claims on their products sold in various
9 American and Asian countries and in some European countries which are prohibited in Europe by the
10 European Food Safety Authority (ESFA) as not having sufficient scientific evidence.

11 102. Further, Nestle offers contradictory nutritional advice in different countries, ignoring its
12 own nutrition advice with products of contradicting composition.

13 103. For example, some of Nestle’s infant milks sold in Brazil and Hong Kong advise
14 (correctly) against giving sucrose (white table sugar) to infants, while selling formula in South Africa
15 with sucrose.

16 104. The ESFA advises against the addition of sucrose as “it can lead to severe symptoms,
17 including poor feeding, vomiting and overall failure to thrive in some infants” and “it may, because of
18 their greater sweetness, increase the preference for sweet tastes in infants.”⁵⁷

19 105. A Nestle Hong Kong product explicitly states “no sucrose has been added... for baby’s
20 good growth” illustrating that Nestle knows of the health risks sucrose presents to infant health, yet
21 Nestle contradicts its own advertising claims by choosing to include sucrose in its South Africa
22 products.⁵⁸

23
24 ⁵⁵ See ibfan.org/heinz-nestle-abbott-breaking-the-rules-misleading-mothers (accessed October 22, 2018).

25 ⁵⁶ See www.ibfan.org/art/302-17.pdf (accessed October 22, 2018).

26 ⁵⁷ See EFSA Panel on Dietetic Products, Nutrition and Allergies (NDA). “Scientific Opinion on the
essential composition of infant and follow-on formulae.” *EFSA Journal* 12.7 (2014): 3760.

27 ⁵⁸ See [http://changingmarkets.org/wp-content/uploads/2018/02/BUSTING-THE-MYTH-OF-SCIENCE-
BASED-FORMULA.pdf](http://changingmarkets.org/wp-content/uploads/2018/02/BUSTING-THE-MYTH-OF-SCIENCE-BASED-FORMULA.pdf) (accessed October 25, 2018).

1 106. Nestle's nutritional advice is based on "product-specific marketing purposes rather than
2 based on science" or even consistency across markets.⁵⁹

3 107. In Hong Kong, Nestle products are marketed as healthier for not having "any added
4 vanilla flavor or flavorings for baby's good growth" as ESPA advises against the addition of such
5 substances for they "put a burden on the infant's metabolism".

6 108. Nutrition experts also advise against the consumption of flavoring in infancy as it may
7 contribute to the preference of sweet tastes later in life.

8 109. Yet despite knowing of the nutritional science showing that the consumption of
9 flavoring by infants is dangerous, Nestle includes flavorings such as ethyl vanillin and vanillin in their
10 infant products sold in China and South Africa.

11 **C. Nestle Does Business With Cocoa Bean Companies That Use Child Slave Labor.**

12 110. Nestle has a lengthy history of knowingly doing business with companies that use slave
13 labor and has shown no sign of stopping this practice.

14 111. In 2005, Nestle was sued by Global Exchange and three individuals from Mali alleging
15 that Nestle trafficked them into Côte d'Ivoire as child slaves and forced them to work harvesting and
16 cultivating cocoa beans for Nestle chocolate.

17 112. In 2018, Nestle was sued in a class action alleging that Nestle omitted and failed to
18 disclose the child labor practices it engages in to consumers who would not have purchased the
19 chocolate products had they had known about the child and slave labor in the supply chain.

20 113. The 2018 complaint describes how Nestle represents itself as socially and ethically
21 responsible its actions say otherwise as they continue to turn a blind eye to known human rights abuses
22 and engage in business with companies that use the "worst form of child labor as recognized by the
23 United Nations: 'the compulsory labor of trafficked children and the labor of children involving
24 dangerous tools, transport of heavy loads, and exposure to toxic substances, i.e., hazardous work.'"

25 114. Ivory Coast's 'cocoa sector employed an estimated 1,203,473 child laborers ages 5 to
26

27 ⁵⁹ See <http://changingmarkets.org/wp-content/uploads/2018/02/BUSTING-THE-MYTH-OF-SCIENCE-BASED-FORMULA.pdf> (accessed October 25, 2018).
28

1 17, of which 95.9 percent were engaged in hazardous work in cocoa production.’ Such work includes
2 burning and clearing fields with machetes, spraying pesticides, using sharp tools to break open cocoa
3 pods, and carrying heavy loads of cocoa pods and water.”⁶¹

4 115. A 2015 Fair Labor Association report found that children younger than 15 continue to
5 work at cocoa farms connected to Nestle, more than a decade after the food company promised to end
6 the use of child labor in its supply chain. These children were expected to work in hazardous conditions
7 and carry out dangerous tasks, including using machetes and transporting heavy loads. And the Fair
8 Labor Association found evidence of forced labor, with a young worker not receiving any salary for a
9 year’s work at a farm.⁶²

10 116. Nestle’s defense for profiting off of child slave labor was to have a spokesperson claim
11 “no company sourcing cocoa from Ivory Coast can guarantee that it has completely removed the risk of
12 child labour from its supply chain.”⁶³

13 **D. The FDA Warns Nestle Its Gerber Baby Foods Have “Unauthorized” and**
14 **“Misleading” Label Claims and Websites.**

15 117. In October 2014, the FDA issued a warning letter to Nestle regarding its Gerber Good
16 Start Gentle Infant Formula products, stating that Nestle’s “product label and [] website bear health
17 claims that were not authorized by FDA” that its “labeling is misleading” and therefore the product is
18 misbranded.

19 118. Specifically, the FDA concluded that the product label “bears a series of statements that,
20 taken together, characterize the relationship of a nutrient to a disease or health-related condition”
21 because the label referred to the product as the “1st and ONLY Routine Formula TO REDUCE THE
22

23 ⁶¹ See <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/CotedIvoire.pdf> (last
24 accessed October 25, 2018).

25 ⁶² See [http://www.fairlabor.org/report/2014-assessments-nestl%C3%A9-cocoa-supply-chainivory-](http://www.fairlabor.org/report/2014-assessments-nestl%C3%A9-cocoa-supply-chainivory-coast)
26 [coast](http://www.fairlabor.org/report/2014-assessments-nestl%C3%A9-cocoa-supply-chainivory-coast) (last accessed October 25, 2018).

27 ⁶³ See [https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-](https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-labour-on-nestle-farms-chocolate-giants-problems-continue)
28 [labour-on-nestle-farms-chocolate-giants-problems-continue](https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-labour-on-nestle-farms-chocolate-giants-problems-continue) (last accessed October 25, 2018).

1 RISK OF DEVELOPING ALLERGIES.” Further, the FDA noted that the “product label and . . .
2 website further assert that 100% whey partially hydrolyzed may reduce the risk of atopic dermatitis,”
3 which constituted an unauthorized health claim.⁶⁴

4 119. In February 2010, the FDA sent Nestle a warning letter regarding mislabeling of their
5 Gerber Graduates Fruit Puffs line of baby food. Nestle violated multiple “regulations [which] do not
6 allow the claim[s made by Nestle] for products specifically intended for children under two years of
7 age.”

8 120. The FDA determined that the product label included nutrient content claims such as
9 “good source of iron, zinc, and vitamin E for infants and toddlers” in violation of 21 C.F.R. § 101.54
10 which “does not allow such claims for foods intended specifically for infants and children under 2.”
11 Further, the letter noted that the label of Nestle’s “2nd Food Carrots” product contained, like Coffee-
12 mate, unlawful nutrient content claims such as “As Healthy as Fresh,” “Excellent Source . . . of
13 Vitamin A,” and “No Added Sugar.”

14 **E. In Addition to Infant Formula and Baby Food, Nestle Also Targets Parents of Older**
15 **Children With False and Misleading Advertising on Its Diabetes-inducing Junk**
16 **Foods.**

17 121. In February 2010, the FDA sent another warning letter to Nestle reprimanding its
18 mislabeling of various Dryers ice cream products “because the products’ labels bear a nutrient content
19 claim but do not meet the requirements to make the claim.”

20 122. In December 2009, the FDA sent a warning letter to Nestle castigating the company’s
21 misbranding of Juicy Juice products “because the labels are misleading,” as well as “[t]he labeling
22 found on [Nestle’s] website [which] makes an additional unauthorized nutrient content claim, which
23 further misbrands the product.”

24 123. In December 2009, the FDA sent a warning letter to Nestle which found that it was
25 advertising Boost Kid Essentials Nutritionally Complete Drink in a manner that was “false or

26 ⁶⁴ Available at
27 <https://www.fda.gov/iceci/enforcementactions/warningletters/ucm423087.htm> (last
28 accessed October 25, 2018).

1 misleading.”

2 124. In November 2006, the FDA sent a warning letter to Nestle finding Good Start Infant
3 Formula with Iron to be “adulterated.”

4 **IX. DEFENDANTS’ PRACTICES ARE “UNFAIR” WITHIN THE MEANING OF**
5 **THE CALIFORNIA UNFAIR COMPETITION LAW.**

6 125. Defendants’ practices as described herein are “unfair” within the meaning of the
7 California Unfair Competition Law because their conduct is immoral, unethical, unscrupulous, and
8 substantially injurious to consumers, and the utility of this conduct to Defendants does not outweigh the
9 gravity of the harm to Defendants’ victims.

10 126. Plaintiff’s claims for unfair business practices are independent of his claim for false
11 advertising. Even absent the unlawful and deceptive Og Trans Fat claim, the sale of Coffee-mate
12 violates the UCL and implied warranty of merchantability.

13 127. In particular, while the unlawful sale of Coffee-mate may have had some utility to
14 Defendants in the form of profits, this utility was small and far outweighed by the gravity of the serious
15 health harm they inflicted on consumers.

16 128. Defendants’ conduct injured competing manufacturers and sellers of coffee creamer and
17 dairy cream that do not engage in their unfair behavior, especially given their large market share, large
18 market power, and limited retail shelf space.

19 129. Moreover, Defendants’ practices violated public policy as declared by specific
20 constitutional, statutory, or regulatory provisions, including the California Health & Safety Code §
21 114377 and California Education Code § 49431.7.

22 130. Defendants’ actions also violated public policy by causing the United States and
23 California to pay—via Medicare, Medicaid, Affordable Care Act Exchange subsidies, veterans’ health
24 programs, public employee and retiree health insurance—for treatment of trans fat-related illnesses.

25 131. Further, the injury to consumers from Defendants’ practices is substantial, not
26 outweighed by benefits to consumers or competition, and not an injury consumers themselves could
27 reasonably have avoided.

28 132. The unfairness of Defendant Nestle’s conduct is also illustrated by, *inter alia*:

- 1 • Nestle’s largest competitor, International Delight, has long made its refrigerated coffee creamers
2 without adding trans fat;
- 3 • Many other smaller brands, even cheaper store brands, are also made without adding trans fat;
- 4 • Peer-reviewed studies published in scholarly public health journals have repeatedly found that
5 the removal of trans fat does not affect the price or availability of any food;
- 6 • The State of California has made legislative findings that artificial trans fat is a dangerous
7 hazard to public health;
- 8 • The FDA has found the partially hydrogenated oil used in Coffee-mate to not be Generally
9 Recognized as Safe;
- 10 • Doctors’ associations such as the American Heart Association, and learned societies such as the
11 National Academies of Science, found that the addition of trans fat to the American diet by
12 causing tens of thousands excess deaths per year, and worked to publicize these findings. Nestle
13 was well aware of these dangers, but choose not to follow its food industry peers in immediately
14 removing trans fat from its products.

15
16 **X. DEFENDANTS’ PRACTICES ARE “UNLAWFUL” WITHIN THE MEANING**
17 **OF THE CALIFORNIA UNFAIR COMPETITION LAW.**

18 133. The PHO used in Coffee-mate appears nowhere on the FDA’s list of the hundreds of
19 substances it considers GRAS.⁶⁵

20 134. PHO also fails to meet the fundamental requirement for GRAS status—that the
21 substance is safe. In fact, the FDA has explicitly recognized that there is no safe level of artificial trans
22 fat consumption.

23 135. Under the Food Additives Amendment of 1958, which amended the FDCA, all food
24 additives are unsafe unless they (1) fall within a specified exemption to the statute’s definition of food
25 additive, or (2) their use is pursuant to FDA approval. Because the PHO used in Coffee-mate do not
26 meet either of these exceptions, they are, and long have been, unsafe and unlawful for use in food.

27 ⁶⁵ See 21 C.F.R. §§ 181, 182, 184 and 186.
28

1 136. Defendants' practices as described herein are "unlawful" within the meaning of the
2 California Unfair Competition Law because PHO is not Generally Recognized as Safe (GRAS).
3 Therefore, the PHO in Coffee-mate rendered it adulterated within the meaning of 21 U.S.C. §
4 342(a)(2)(C).

5 137. At no point during the class period was there a scientific consensus PHO was safe.
6 Indeed, for more than two decades, the scientific consensus has been that it is unsafe.

7 **XI. RELIANCE AND INJURY**

8 138. When purchasing Coffee-mate, Plaintiff was seeking a product made with safe and lawful
9 ingredients.

10 139. Plaintiff lost money as a result of Defendants' conduct because he purchased products
11 that were detrimental to his health and were unfairly offered for sale in violation of federal and
12 California law. Had Defendants not violated the law, Plaintiff would not have been able to purchase
13 Coffee-mate.

14 140. Plaintiff suffered physical injury when he repeatedly consumed Coffee-mate, because
15 consuming artificial trans fat in *any* quantity, including the quantity he actually consumed, inflames and
16 damages vital organs and increases the risk of heart disease, diabetes, cancer, and death.

17 141. Reasonable consumers in California, including Plaintiff, expect food sold in grocery
18 stores to be fit for human consumption, not unlawful foods that are adulterated under California and
19 federal law. Coffee-mate during the class period was not fit for human consumption and has a value of
20 \$0.

21 142. Plaintiff, on at least one occasion, would not have purchased Coffee-mate absent
22 Defendants' 0g trans fat misrepresentation, and never would have purchased it had he known it was
23 unlawful and adulterated.

24 143. Plaintiff lost money as a result of Defendants' unlawful behavior. Plaintiff altered his
25 position to his detriment and suffered loss in an amount equal to the amount he paid for Coffee-mate.

26 **XII. DELAYED DISCOVERY**

27 144. Plaintiff did not discover that Defendants' behavior was unfair and unlawful and
28 Nestle's labeling was false, deceptive or misleading until January 2017, when he learned that Coffee-

1 mate contained, despite its explicit label claim, trans fat, and that trans fat is harmful to human health in
 2 any quantity because it causes heart disease, diabetes, and cancer. Until this time, he lacked the
 3 knowledge regarding the facts of his claims against Defendants.

4 145. Plaintiff is a reasonably diligent consumer who exercised reasonable diligence in his
 5 purchase, use, and consumption of Coffee-mate. Nevertheless, he would not have been able to discover
 6 Defendants' deceptive practices and lacked the means to discover them given that, like nearly all
 7 consumers, he is not an expert on nutrition and does not typically read or have ready access to scholarly
 8 journals such as *The Journal of Nutrition*,⁶⁶ *The European Journal of Clinical Nutrition*,⁶⁷ and *The New*
 9 *England Journal of Medicine*,⁶⁸ where the scientific evidence of artificial trans fat's dangers has been
 10 published. Furthermore, Nestle's labeling practices—in particular, representing for many years that
 11 Coffee-mate has "0g trans fat"—actively impeded Plaintiff's and Class members' abilities to discover
 12 the dangerous effects of Coffee-mate throughout the Class Period.

13 XIII. CLASS ACTION ALLEGATIONS

14 146. Plaintiff brings this action on behalf of himself and all others similarly situated (the
 15 "Class"), excluding Defendants' officers, directors, and employees, and the Court, its officers and their
 16 families.

17 147. The Class is defined as follows:

18 All citizens of California who purchased in California, on or after January 1, 2010,
 19 Coffee-mate products containing partially hydrogenated oil.

20 Plaintiff also defines a the 0g Trans Fat Claim Subclass as follows:

21 All citizens of California who purchased in California, on or after January 1, 2010,
 22

23 ⁶⁶ Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated*
 24 *With Myocardial Infarction*, 134 J. Nutr. 874, 874-79 (2004).

25 ⁶⁷ A. Tavani et al., *Margarine intake and risk of nonfatal acute myocardial infarction in Italian women*,
 26 51 Eur. J. Clin. Nutr. 30-32 (1997) (estimating a 50 percent greater risk of heart attack in women with
 high consumption of margarine, an association "independent of body mass index, history of
 hypertension and hyperlipidemia").

27 ⁶⁸ Mozaffarian, 354 New Eng. J. Med. at 1611 ("10 to 19 percent of CHD events in the United States
 28 could be averted by reducing the intake of trans fat").

1 Coffee-mate containing the nutrient content claim “0g Trans Fat” and containing partially
2 hydrogenated oil.

3 148. Questions of law and fact common to Plaintiff and the Class include:

- 4 a. Whether Defendants’ conduct was immoral, unethical, unscrupulous, or substantially
5 injurious to consumers;
- 6 b. Whether the slight utility Defendants realize as a result of their conduct outweighs the
7 gravity of the harm the conduct causes to their victims;
- 8 c. Whether Defendants’ conduct violates public policy as declared by specific
9 constitutional, statutory, or regulatory provisions;
- 10 d. Whether the injury to consumers from Defendants’ practices is substantial;
- 11 e. Whether the injury to consumers from Defendants’ practices is one consumers
12 themselves could reasonably have avoided;
- 13 f. Whether Coffee-mate communicated a misleading health and wellness message and
14 made an unauthorized nutrient content claim through its “0g Trans Fat” claim;
- 15 g. Whether that message was material to a reasonable consumer;
- 16 h. Whether Defendants’ conduct constitutes violations of California’s False Advertising
17 Law;
- 18 i. Whether members of the Class are entitled to restitution and, if so, the measure of
19 restitution
- 20 j. Whether members of the Class are entitled to prejudgment interest, and how that
21 interest is to be calculated;
- 22 k. Whether members of the Class are entitled to any further relief;
- 23 l. The fair apportionment of liability among Defendants.

24 149. Plaintiff’s claims are typical of Class members’ claims because all Class members were
25 subjected to the same unlawful, unfair, and deceptive conduct when they purchased Coffee-mate and
26 suffered the same economic injury.
27
28

1 150. Absent Defendants' material deceptions, misstatements, and omissions, and Defendants'
2 unlawful sale, distribution, and marketing of Coffee-mate, Plaintiff and other Class members would not
3 have purchased Coffee-mate.

4 151. The Class is sufficiently numerous, as it includes thousands of individuals who
5 purchased Coffee-mate throughout California during the Class Period.

6 152. Class representation is superior to other options for the resolution of the controversy.
7 The relief sought for each Class member is small, as little as two dollars for some Class members.
8 Absent the availability of class action procedures, it would be infeasible for Class members to redress
9 the wrongs done to them.

10 153. Questions of law and fact common to the Class predominate over any questions
11 affecting only individual members.

12 154. Class treatment is appropriate under Civ. Code § 382. Plaintiff will, if notice is required,
13 confer with Defendants and seek to present the Court with a stipulation and proposed order on the
14 details of a class notice plan.

15 **CAUSES OF ACTION**

16 **First Cause of Action**

17 **Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.***

18 155. In this and every cause of action, Plaintiff realleges and incorporates by reference each
19 and every allegation contained elsewhere in the Complaint, as if fully set forth herein.

20 **Unfair Conduct**

21 156. The business practices and omissions of Defendants as alleged herein constitute "unfair"
22 business acts and practices in that Defendants' conduct is immoral, unethical, unscrupulous, and
23 substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity
24 of the harm to Defendants' victims.

25 157. Further, Defendants' practices are unfair because they violate public policy as declared
26 by specific constitutional, statutory, or regulatory provisions, including those embodied in the FDCA,
27 California Health and Safety Code, and California Education Code.

28 158. Further, Defendants' practices are unfair because the injury to consumers from

1 Defendants' practices is substantial, not outweighed by benefits to consumers or competition, and not
2 one consumers themselves could reasonably have avoided or should be obligated to avoid.

3 159. Plaintiff also seeks an order for the disgorgement and restitution of all revenue received
4 by Defendants' from the sale of Coffee-mate.

5 **Unlawful Conduct**

6 160. Defendants' have made and distributed, in interstate commerce and in this county,
7 products that contain unlawful food additives. Coffee-mate was placed into interstate commerce by
8 Defendants.

9 161. Defendants' conduct is "unlawful" because it violates the Federal Food, Drug, and
10 Cosmetic Act ("FDCA"), specifically, the Food Additives Amendment of 1958, which deems a food
11 additive unsafe unless it has met two exceptions, neither of which the PHO used in Coffee-mate has
12 met. 21 U.S.C. §§ 348, 342.

13 162. Defendants' conduct further violates The California Sherman Food, Drug, and Cosmetic
14 Law ("Sherman Law"), Health & Safety Code § 110100, which adopts all FDA regulations as state
15 regulations. Defendants' conduct also violates the following sections of the Sherman Law:

- 16 • § 110100 (adopting all FDA regulations as state regulations);
- 17 • § 110398 ("It is unlawful for any person to advertise any food, drug, device, or cosmetic that is
18 adulterated or misbranded.");

19 163. The use of artificial trans fat in Coffee-mate thus constitutes a violation of the FDCA
20 and the Sherman Law and, as such, violated the "unlawful prong" of the UCL.

21 164. Plaintiff suffered injury in fact and lost money or property as a result of Defendants'
22 unlawful acts: he was denied the benefit of the bargain when he decided to purchase Coffee-mate over
23 competing products that are less expensive and/or contain no artificial trans fat.

24 165. Had Plaintiff been aware of Defendants' unlawful tactics, he would not have purchased
25 Coffee-mate.

26 166. Defendants' unlawful acts allowed them to sell more units of Coffee-mate than they
27 would have otherwise, and at a higher price, and higher margin.

1 167. Plaintiff seeks an order for the disgorgement and restitution of all revenue received by
2 Defendants from the sale of Coffee-mate.

3 **Second Cause of Action**

4 **Breach of Implied Warranty of Merchantability**

5 168. Defendants, through their acts and omissions set forth herein, in the sale, marketing and
6 promotion of Coffee-mate, made representations to Plaintiff and the Class that Coffee-mate was safe to
7 consume.

8 169. Plaintiff and the Class bought Coffee-mate manufactured, advertised, and sold by
9 Defendants, as described herein.

10 170. Defendants are merchants with respect to the goods of this kind which were sold to
11 Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied
12 warranty that those goods were merchantable.

13 171. Defendants breached that implied warranty, however, in that Coffee-mate was not fit for
14 its ordinary purpose and did not conform with the representations on its labels, as set forth in detail
15 herein.

16 172. As an actual and proximate result of Defendants' conduct, Plaintiff and the Class did not
17 receive goods as impliedly warranted by Defendants to be merchantable in that they did not conform to
18 the promises and affirmations made on the container or label of the goods.

19 173. Plaintiff and Class have sustained damages as a proximate result of the foregoing breach
20 of implied warranty in the amount of Coffee-mate's purchase price.

21 **Third Cause of Action**

22 **Unfair Competition Law**

23 **Bus. & Prof. Code §§ 17200 *et seq.***

24 **(Limited to the "0g Trans Fat" Subclass)**

25 **Unlawful Conduct**

26 174. Defendants have made and distributed, in interstate commerce and in this county
27 products that make false or misleading statements of fact regarding their content. Coffee-mate was
28 placed into interstate commerce by Defendants and sold throughout the country and throughout

1 California.

2 175. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as
3 alleged herein constitute “unlawful” business acts and practices in that Defendants’ conduct violates the
4 California False Advertising Law, as alleged herein.

5 176. Defendants’ conduct is further “unlawful” because it violates the Federal Food, Drug
6 and Cosmetic Act (“FDCA”), specifically, (a) 21 U.S.C. § 343(a), which deems food misbranded when
7 the label contains a statement that is “false or misleading in any particular,” and (b) 21 C.F.R. §
8 101.13(i)(3), which bars nutrient content claims voluntarily placed on the front of a product label that
9 are “false or misleading in any respect.”

10 177. Nestle further violates the FDCA’s implementing regulation, 21 C.F.R. § 1.21, because
11 Coffee-mate’ packaging fails to reveal material facts, namely the dangers of PHO described in detail
12 herein, “in light of other representations,” namely the misleading “0g Trans Fat” front label claim

13 178. Defendants’ conduct further violates The California Sherman Food, Drug, and Cosmetic
14 Law (“Sherman Law”), Health & Safety Code § 110660, which deems food products “misbranded” if
15 their labeling is “false or misleading in any particular,” and Health & Safety Code § 110670, which
16 bars nutrient content claims voluntarily placed on the front of a product label that fail to comply with
17 the federal regulation for nutrient content claims (i.e., “may not be false or misleading in any respect”).

18 Defendants’ conduct also violates the following sections of the Sherman Law:

- 19 • § 110100 (adopting all FDA food labeling regulations as state regulations);
- 20 • § 110290 (“In determining whether the labeling or advertisement of a food . . . is misleading,
21 all representations made or suggested by statement, word, design, device, sound, or any
22 combination of these shall be taken into account. The extent that the labeling or advertising fails
23 to reveal facts concerning the food . . . or consequences of customary use of the food . . . shall
24 also be considered.”);
- 25 • § 110390 (“It is unlawful for any person to disseminate any false advertisement of any food . . .
26 . An advertisement is false if it is false or misleading in any particular.”);
- 27 • § 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
28 food . . . that is falsely advertised.”);

- 1 • § 110398 (“It is unlawful for any person to advertise any food, drug, device, or cosmetic that is
2 adulterated or misbranded.”);
- 3 • § 110400 (“It is unlawful for any person to receive in commerce any food . . . that is falsely
4 advertised or to deliver or proffer for delivery any such food . . .”);
- 5 • § 110670 (“Any food is misbranded if its labeling does not conform with the requirements for
6 nutrient content or health claims as set forth in Section 403(r) (21 U.S.C. Sec. 343(r)) of the
7 federal act and the regulations adopted pursuant thereto.”);
- 8 • § 110680 (“Any food is misbranded if its labeling or packaging does not conform to the
9 requirements of Chapter 4 (commencing with Section 110290).”);
- 10 • § 110705 (“Any food is misbranded if any word, statement, or other information required
11 pursuant to this part to appear on the label or labeling is not prominently placed upon the label or
12 labeling and in terms as to render it likely to be read and understood by the ordinary individual
13 under customary conditions of purchase and use.”);
- 14 • § 110760 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
15 food that is misbranded.”);
- 16 • § 110765 (“It is unlawful for any person to misbrand any food.”); and
- 17 • § 110770 (“It is unlawful for any person to receive in commerce any food that is misbranded
18 or to deliver or proffer for delivery any such food.”).

19 179. All of the challenged labeling statements made by Nestle thus constitute violations of
20 the FDCA and the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

21 180. Defendants leveraged their deception to induce Plaintiff and members of the Subclass to
22 purchase products that were of lesser value and quality than advertised.

23 181. Plaintiff suffered injury in fact and lost money or property as a result of Defendants’
24 deceptive advertising: he was denied the benefit of the bargain when he decided to purchase Coffee-
25 mate over competitor products that are not adulterated with artificial trans fat.

26 182. Had Plaintiff been aware of Defendants’ false and misleading advertising tactics, he
27 would not have purchased Coffee-mate, and had Defendants not advertised and sold Coffee-mate in a
28 fraudulent manner, he would have paid less for it.

1 183. Plaintiff also seeks an order for the restitution of all revenue received by Defendants
2 from the sale of Coffee-mate which was acquired through acts of unlawful, unfair, or fraudulent
3 competition.

4 **Fraudulent Conduct**

5 184. Defendants leveraged their deception to induce Plaintiff and members of the Subclass to
6 purchase products that were of lesser value and quality than advertised.

7 185. Plaintiff suffered injury in fact and lost money or property as a result of Defendants'
8 deceptive advertising: he was denied the benefit of the bargain when he decided to purchase Coffee-
9 mate over competitor products, which are less expensive or contain no artificial trans fat.

10 186. The acts of Defendants as alleged herein constitute "fraudulent" business acts and
11 practices in that Defendants' conduct has a likelihood, capacity or tendency to deceive Plaintiff, the
12 Subclass, and the general public.

13 187. Plaintiff further seeks an order for the restitution of all revenue received by Defendants
14 from the sale of Coffee-mate containing artificial trans fat and the false "0g Trans Fat" nutrient content
15 claim.

16 **Unfair Conduct**

17 188. Defendants leveraged their deception to induce Plaintiff and members of the Subclass to
18 purchase products that were of lesser value and quality than advertised.

19 189. Plaintiff suffered injury in fact and lost money or property as a result of Defendants'
20 deceptive advertising: he was denied the benefit of the bargain when he decided to purchase Coffee-
21 mate over competitor products, which are less expensive and/or contain no artificial trans fat.

22 190. Had Plaintiff been aware of Defendants' false and misleading advertising tactics, he
23 would not have purchased Coffee-mate, and had Defendants not advertised them in a fraudulent manner,
24 Plaintiff would have paid less for them.

25 191. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as
26 alleged herein constitute "unfair" business acts and practices because Defendants' conduct is:

- 27 a. immoral, unethical, unscrupulous, and offends public policy;

1 b. the gravity of Defendants' conduct outweighs any conceivable benefit of such conduct;
2 and

3 c. the injury to consumers caused by Defendants' conduct is substantial, not outweighed by
4 any countervailing benefits to consumers or competition, and not one that consumers
5 themselves could reasonably have avoided.

6 192. Plaintiff seeks an order for the restitution of all revenue received by Defendants from the
7 sale of Coffee-mate which were acquired through acts of unlawful, unfair, or fraudulent competition.

8 **Fourth Cause of Action**

9 **California False Advertising Law,**

10 **Bus. & Prof. Code §§ 17500 *et seq.***

11 **(Limited to the "0g Trans Fat" Claim Subclass)**

12 193. In violation of Bus. & Prof. Code §§ 17500 *et seq.*, the advertisements, labeling, policies,
13 acts, and practices described herein were designed to, and did, result in the purchase and use of Coffee-
14 mate without the knowledge that they contained harmful amounts of toxic artificial trans fat.

15 194. Defendants knew and reasonably should have known that the labels on Coffee-mate were
16 untrue and misleading.

17 195. As a result, Plaintiff, the Subclass, and the general public are entitled to equitable relief,
18 restitution, and an order for the disgorgement of the funds by which Defendants were unjustly enriched.

19 **Fifth Cause of Action**

20 **Breach of Express Warranty**

21 **(Against Nestle Only, Limited to the "0g Trans Fat" Subclass)**

22 196. Nestle made written representations to the public, including Plaintiff, with its front label
23 "0g Trans Fat" claim.

24 197. These promises and related promises printed on the label became part of the basis of the
25 bargain between the parties and thus constituted an express warranty.

26 198. Thereon, Nestle sold the goods to Plaintiff and other consumers.
27
28

1 199. However, Nestle breached this express warranty in that Coffee-mate does not contain
2 "0g Trans Fat" because it contained partially hydrogenated oil, which necessarily contains artificial
3 trans fat.

4 200. As a result of this breach, Plaintiff and other consumers in fact did not receive goods as
5 warranted by Nestle.

6 201. As a proximate result of this breach of warranty by Nestle, Plaintiff and other consumers
7 have been damaged in an amount to be determined at trial.

8 **XIV. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
10 public, prays for judgment against Defendants as follows:

- 11 A. An order confirming that this class action is properly maintainable as a class action as
- 12 defined above, appointing Plaintiff and his undersigned counsel to represent the Class,
- 13 and requiring Defendants to bear the cost of class notice;
- 14 B. An order requiring Defendants to pay restitution to Plaintiff and class members so that
- 15 they may be restored the money which Defendants acquired by means of any unfair,
- 16 deceptive, unconscionable, fraudulent, and negligent acts;
- 17 C. An award of pre-judgment and post-judgment interest;
- 18 D. An award of attorney fees and costs; and
- 19 E. Such other and further relief as this Court may deem just, equitable, or proper.

20 **XV. NO JURY DEMAND**

21 Plaintiff does not demand a trial by jury.

22 //

23 //

24 //

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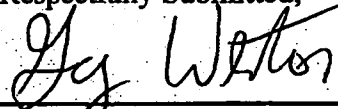
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1 DATED: October 26, 2018

Respectfully Submitted,



THE WESTON FIRM
GREGORY S. WESTON
ANDREW C. HAMILTON
1405 Morena Blvd., Suite 201
San Diego, CA 92110
Telephone: (619) 798-2006
Facsimile: ((619) 343-2789

Counsel for Plaintiff

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Exhibit C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory S. Weston (239944) The Weston Firm 1405 Morena Blvd., Suite 201 San Diego, CA 92110 TELEPHONE NO.: (619) 798-2006 FAX NO.: (619) 343-2789 ATTORNEY FOR (Name): Plaintiff Mark Beasley	FOR COURT USE ONLY <h1 style="margin: 0;">FILED</h1> San Francisco County Superior Court OCT 29 2018 CLERK OF THE COURT BY: <i>Messiah</i> Deputy Clerk												
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>San Francisco</u> STREET ADDRESS: <u>400 McAllister St.</u> MAILING ADDRESS: <u>400 McAllister St.</u> CITY AND ZIP CODE: <u>San Francisco, CA 94102</u> BRANCH NAME: <u>Civic Center Courthouse</u>	CASE NUMBER: <h2 style="margin: 0;">CGC-18-570953</h2>												
CASE NAME: <u>Mark Beasley v. Lucky Stores, Inc., Nestle USA, Inc., et al.</u>	JUDGE: DEPT:												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left;">CIVIL CASE COVER SHEET</th> <th colspan="2" style="text-align: left;">Complex Case Designation</th> </tr> <tr> <td><input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)</td> <td><input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)</td> <td><input type="checkbox"/> Counter.</td> <td><input type="checkbox"/> Joinder</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</td> </tr> </table>	CIVIL CASE COVER SHEET		Complex Case Designation		<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter.	<input type="checkbox"/> Joinder			Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:
CIVIL CASE COVER SHEET		Complex Case Designation											
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter.	<input type="checkbox"/> Joinder										
		Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)											

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PIP/D/W (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W (23) <p>Non-PIP/D/W (Other) Tort</p> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary. b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Five

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 26, 2018
Gregory S. Weston
 (TYPE OR PRINT NAME)

Gregory Weston
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

By Fax

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing From Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file along with your first paper the Civil Case Cover Sheet contained on page 1 of this form. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages; (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease	Construction Defect (10)
	Contract (not unlawful detainer or wrongful eviction)	Claims Involving Mass Tort (40)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Securities Litigation (28)
	Negligent Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment
Asbestos Property Damage	Collection Case—Seller Plaintiff	Enforcement of Judgment (20)
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Abstract of Judgment (Out of County)
Product Liability (not asbestos or toxic/environmental) (24)	Insurance Coverage (not provisionally complex) (18)	Confession of Judgment (non-domestic relations)
Medical Malpractice (45)	Auto Subrogation	Sister State Judgment
Medical Malpractice—Physicians & Surgeons	Other Coverage	Administrative Agency Award (not unpaid taxes)
Other Professional Health Care Malpractice	Other Contract (37)	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other PI/PD/WD (23)	Contractual Fraud	Other Enforcement of Judgment Case
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Miscellaneous Civil Complaint
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Real Property	RICO (27)
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	Other Complaint (not specified above) (42)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Other PI/PD/WD	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only (non-harassment)
Non-PI/PD/WD (Other) Tort	Writ of Possession of Real Property	Mechanics Lien
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Other Commercial Complaint Case (non-tort/non-complex)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Quiet Title	Other Civil Complaint (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Miscellaneous Civil Petition
Fraud (16)	Unlawful Detainer	Partnership and Corporate Governance (21)
Intellectual Property (19)	Commercial (31)	Other Petition (not specified above) (43)
Professional Negligence (25)	Residential (32)	Civil Harassment
Legal Malpractice	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Workplace Violence
Other Professional Malpractice (not medical or legal)	Judicial Review	Elder/Dependent Adult Abuse
Other Non-PI/PD/WD Tort (35)	Asset Forfeiture (05)	Election Contest
Employment	Petition Re: Arbitration Award (11)	Petition for Name Change
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Relief From Late Claim
Other Employment (15)	Writ—Administrative Mandamus	Other Civil Petition
	Writ—Mandamus on Limited Court Case Matter	
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

Exhibit D

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: APR-03-2019
TIME: 10:30AM
PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

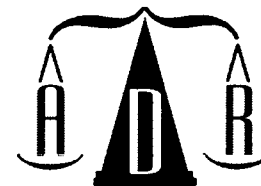
[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California County of San Francisco



HON. TERI L. JACKSON
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos
The Honorable Angela Bradstreet
The Honorable Andrew Y.S. Cheng
The Honorable Samuel K. Feng
The Honorable Curtis E.A. Karnow
The Honorable Charlene P. Kiesselbach

The Honorable Stephen M. Murphy
The Honorable Joseph M. Quinn
The Honorable James Robertson, II
The Honorable John K. Stewart
The Honorable Richard B. Ulmer, Jr.
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3869



Superior Court of California, County of San Francisco Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3869

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see the enclosed brochure.

(B) JUDICIAL MEDIATION provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

Operation: Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.



Superior Court of California County of San Francisco



HON. TERI L. JACKSON
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos
The Honorable Angela Bradstreet
The Honorable Andrew Y.S. Cheng
The Honorable Samuel K. Feng
The Honorable Curtis E.A. Karnow
The Honorable Charlene P. Kiesselbach

The Honorable Stephen M. Murphy
The Honorable Joseph M. Quinn
The Honorable James Robertson, II
The Honorable John K. Stewart
The Honorable Richard B. Ulmer, Jr.
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3869

EJT-001-INFO**Expedited Jury Trial Information Sheet**

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at www.courts.ca.gov/rules.

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.

2 What cases have expedited jury trials?

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in **7** below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—**all parties must waive their rights to appeal**. In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in **9**.

3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and



EJT-001-INFO Expedited Jury Trial Information Sheet

pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

The remainder of this information sheet applies only to voluntary expedited jury trials.

8 Who can take part in a voluntary expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in **1**, and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called [*Proposed*] *Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

10 Can I change my mind after agreeing to a voluntary expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if **both** sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)	APR COURT USE ONLY
TELEPHONE NO.:	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbar.org/esp
- Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days
- 90-120 days
- Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

Plaintiff Defendant Cross-defendant

Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

Exhibit E

1 **THE WESTON FIRM**
GREGORY S. WESTON (239944)
2 *greg@westonfirm.com*
3 ANDREW C. HAMILTON (299877)
andrew@westonfirm.com
4 1405 Morena Blvd., Suite 201
San Diego, CA 92110
5 Telephone: (619) 798-2006
6 Facsimile: (619) 343-2789

7 **Counsel for Plaintiff**

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 v.

15
16 LUCKY STORES, INC., NESTLE USA,
17 INC., SAVE MART SUPER MARKETS,
18 THE KROGER COMPANY, and THE
SAVE MART COMPANIES, INC.,

19 Defendants.

Case No: CGC-18-570953

**PLAINTIFF'S APPLICATION TO DESIGNATE HIS
ACTION AS COMPLEX**

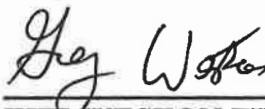
1 This is a class action alleging violations of California consumer protection law against multiple
2 defendants. Plaintiff provisionally designated the action as complex on the civil cover sheet and paid the
3 complex case fee together with his filing fee.

4 He respectfully requests the Court designate his action as complex based on the following
5 factors:

- 6 1. It is a class action.
- 7 2. It involves multiple defendants and will likely involve a large number of witnesses.
- 8 3. The action involves the following complex issues such as: (1) the impact of the
9 consumption of artificial trans fat on human health; (2) analysis of state and federal regulations relating
10 to food labeling and food additives.
- 11 4. The amount of restitution demanded for the proposed class exceeds \$20 million.

12
13 DATED: November 12, 2018

Respectfully Submitted,

14 

15 **THE WESTON FIRM**
16 GREGORY S. WESTON
17 ANDREW C. HAMILTON
18 1405 Morena Blvd., Suite 201
19 San Diego, CA 92110
20 Telephone: (619) 798-2006
21 Facsimile: (619) 343-2789

22 **Counsel for Plaintiff**

1 **THE WESTON FIRM**
GREGORY S. WESTON (239944)
2 *greg@westonfirm.com*
3 ANDREW C. HAMILTON (299877)
andrew@westonfirm.com
4 1405 Morena Blvd., Suite 201
San Diego, CA 92110
5 Telephone: (619) 798-2006
6 Facsimile: (619) 343-2789

7 **Counsel for Plaintiff**

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 v.

15
16 LUCKY STORES, INC., NESTLE USA,
17 INC., SAVE MART SUPER MARKETS,
18 THE KROGER COMPANY, and THE
SAVE MART COMPANIES, INC.,

19 Defendants.

Case No: CGC-18-570953

CERTIFICATE OF SERVICE

1 I am a citizen of the United States and a resident of the State of California. I am over the age of
2 eighteen years, and not a party to this action. My business address is The Weston Firm, 1405 Morena
3 Blvd., Suite 201, San Diego, CA 92110. On November 12, 2018, I served the document described
4 below via First Class Mail:

5 PLAINTIFF'S APPLICATION TO DESIGNATE HIS ACTION AS COMPLEX

6 On the following party:

7 Nestle USA, Inc.
8 c/o CT Corporation System
9 818 West Seventh St., Suite 930
10 Los Angeles, CA 90017

11 Nestle USA, Inc.
12 c/o Dale Giali
13 Mayer Brown
14 350 South Grand Ave., 25th Floor
15 Los Angeles, CA 90071

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

18 Executed on November 12, 2018 in San Diego, California.

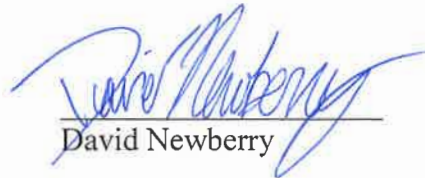
19 
20
21
22
23
24
25
26
27
28
David Newberry

Exhibit F

1 **THE WESTON FIRM**
 2 GREGORY S. WESTON (239944)
 3 *greg@westonfirm.com*
 4 ANDREW C. HAMILTON (299877)
 5 *andrew@westonfirm.com*
 6 1405 Morena., Suite 21
 7 San Diego, CA 92110
 8 Telephone: (619) 798-2006
 9 Facsimile: (619) 343-2789

Counsel for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

10
11
12
13 MARK BEASLEY, on behalf of himself
 14 and all others similarly situated,

15 Plaintiff,

16 v.

17
18 LUCKY STORES, INC., NESTLE USA,
 19 INC., SAVE MART SUPER MARKETS,
 20 THE KROGER COMPANY, and THE
 21 SAVE MART COMPANIES, INC.,

22 Defendants.

Case No: CGC-18-570953
 Pleading Type: Class Action

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

23 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
 24 RESPONDING PARTY: DEFENDANT Lucky Stores, Inc.
 25 SET: ONE

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley requests that
2 Defendant Lucky Stores, Inc. (“Defendant”) produce and permit Plaintiff’s counsel to inspect and copy
3 those Documents specified herein which are in the producing party’s possession, custody or control, at the
4 Weston Firm, 1405 Morena Blvd., Suite 201, San Diego, CA 92110.

5 **I. DEFINITIONS AND INSTRUCTIONS**

6 1. “YOU” and “YOUR” mean the defendant responding to these Requests, and, where
7 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
8 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
9 representatives and all other Persons acting under their control or on their behalf.

10 2. “PERSON” means natural persons, proprietorships, public or private corporations,
11 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
12 representatives of any such PERSON or PERSONS.

13 3. “DOCUMENT” is defined to be synonymous and equal in scope to usage of this term in
14 Rule 34(a) of the Federal Rules of Civil Procedure. A copy or duplicate of a DOCUMENT which has any
15 non-conforming notes, marginal annotations or other markings, and any preliminary version, draft or
16 revision of the foregoing is a separate DOCUMENT within the meaning of this term. DOCUMENTS
17 include, by way of example only, any memorandum, letter, envelope, correspondence, electronic mail,
18 instant message, report, note, Post-It, message, telephone message, telephone log, diary, journal,
19 appointment calendar, calendar, group scheduler calendar, drawing, accounting paper, minutes, working
20 paper, financial report, accounting report, work papers, drafts, facsimile, report, contract, invoice, record
21 of purchase or sale, chart, graph, index, directory, computer directory, computer disk, or any other
22 written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced.
23 DOCUMENTS also include the file, folder tabs, and labels appended to or containing any
24 DOCUMENTS.

25 4. “COMMUNICATION” means the transmission, sending and/or receipt of information of
26 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
27 foreign or otherwise), computer electronics of any kind (including, but not limited to “email”), magnetic
28 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, “floppy disks,”
compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
any kind. The term “communication” also includes, without limitation, all “Documents” (as defined

1 herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings, Meetings,
2 notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

3 5. "MEETING," "MEET," or "MET" means any assembly, convocation, encounter, or
4 contemporaneous presence of two or more PERSON for any purpose, whether planned or not planned,
5 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
6 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

7 6. "MARKETING" or "MARKET" means all activities involved in the distribution of a
8 product including, without limitation, advertising, locating and contacting prospective customers,
9 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
10 servicing customers and the supervision and management of the same.

11 7. "RELATING TO" means in whole or in part constituting, containing, concerning,
12 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

13 8. "CLASS PERIOD" refers to January 1, 2010 to the present.

14 9. "COFFEE-MATE" means the products identified in the Complaint, i.e., the line of coffee
15 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
16 added to the Complaint by amendment. "CLASS PERIOD" means January 1, 2010 to the present.

17 10. The singular form of a word should be interpreted as plural wherever necessary to bring
18 with the scope of the request any information that might otherwise be construed outside its scope.

19 11. The words "and" and "or" shall be construed either disjunctively or conjunctively
20 wherever necessary to bring within the scope of this request any information that might otherwise be
21 construed to be outside its scope.

22 12. In responding to this Request, YOU are required to furnish all Documents that are
23 available to You, including Documents in the possession, custody or control of Your attorneys, officers,
24 agents, employees, accountants, consultants, representatives, or any Persons directly or indirectly
25 employed by or connected with YOU or YOU attorneys or anyone else subject to YOUR control. All
26 DOCUMENTS that are responsive, in whole or in part, to any portion of this Request shall be produced
27 in their entirety, including all attachments.

28 13. All DOCUMENTS should be produced as they are kept in the ordinary course of business
or should be organized and labeled to correspond to the specific requests to which they are responsive.
All DOCUMENTS should be produced in any file folder or carton in which they have been maintained,
and should be stored, clipped, stapled, or otherwise arranged in the same form and manner in which they
were found.

1 14. Electronic stored information (“ESI”) should be produced in the following formats:

2 A. **NATIVE FILES.** For ESI originally created using common, off-the-shelf software (e.g.,
3 Microsoft Office products), you should produce documents in native format. If you are unable to produce
4 certain documents in native format, you should describe the reason for the inability (e.g., the document
5 was created using proprietary software).

6 B. **TIFFs/JPEGs.** For ESI created using proprietary software or otherwise unable to be
7 produced in native format, black and white images should be delivered as 300 D.P.I. Group IV
8 compression single page TIFFs and color images should be delivered as single page JPEGs. Images shall
9 be clearly labeled to show redacted, privileged material. Each image should have a unique file name and
10 should be named with the Bates number assigned to it. For any hard-copy documents scanned to ESI,
11 either for production or in the regular course of business, any such ESI images (whether in tiff, jpeg, pdf,
12 or some other format) should be produced so that they are either text-readable, or along with a concurrent
13 Optical Character Recognition (OCR) file. Extracted OCR files for scanned document should be
14 provided within the Concordance delimited file (DAT).

15 C. **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents should be
16 provided with (1) a Concordance delimited file (DAT), and (2) an Opticon delimited file (LOG or OPT).

17 D. **UNITIZING OF DOCUMENTS.** In scanning paper documents, distinct documents
18 should not be merged into a single record, and single documents should not be split into multiple records
19 (i.e., paper documents should be logically unitized).

20 E. **PARENT-CHILD RELATIONSHIPS.** Parent-child relationships (the association
21 between an attachment and its parent document) should be preserved.

22 F. **TEXT.** Extracted text for electronic files should be provided within the Concordance
23 delimited file (DAT).

24 G. **OBJECTIVE CODING FIELDS.** The following objective coding fields should be
25 provided for each electronic document converted to TIFF:

- 26 • Beginning Bates Number
- 27 • Ending Bates Number
- 28 • Beginning Attachment Number
- Ending Attachment Number
- Source/Custodian.

H. **OBJECTIVE CODING FORMAT.** The objective coding information should be provided
in the following format:

- 1 • Fields should be Pipe (|) delimited.
- 2 • String values within the file should be enclosed with Carats (^).
- 3 • Multi-entries in a field should have a semi-colon (;) delimiter.
- 4 • The first line should contain headers and below the first line there should be exactly one line

for each document.

5 Each line of objective coding information, corresponding to a single document, must contain the
6 same number of fields as the header row.

7 15. If and to the extent that YOU object to any request, state with specificity all grounds for
8 any such objection.

9 16. Unless otherwise indicated, each matter or request listed below shall cover the period from
10 January 1, 2007 to the present.

11 17. If YOU assert any claim of privilege to object to any request, and YOU withhold
12 documents based on that asserted privilege, state the title and nature of the DOCUMENT(s), and furnish
13 a list signed by the attorney of record giving the following information with respect to each withheld
14 DOCUMENT: (a) the name and title of the author and/or sender and the name and title of the recipient;
15 (b) the date of the DOCUMENT'S origination; (c) the name of each Person or Persons participating in
16 the preparation of the DOCUMENT; (d) the name and position, if any, of each PERSON to whom the
17 contents of the DOCUMENT have been communicated by copy, exhibition, reading, or substantial
18 summarization; (e) a statement of the specific basis on which privilege is claimed and whether or not the
19 subject matter or the contents of that DOCUMENT is limited to legal advice or information provided for
20 the purpose of securing legal advice; and (f) the identity and position, if any, of the other PERSON or
21 PERSON supplying the attorney signing the list with the information requested in subparagraphs above.

22 18. In the event that any DOCUMENT called for by these requests has been destroyed or
23 discarded, identify that DOCUMENT by stating the title (if known) and nature of the DOCUMENT and
24 furnish a list signed by the attorney of record giving the following information with respect to each
25 DOCUMENT: (a) any addressor or addressee; (b) any indicated or blind copies; (c) the DOCUMENT'S
26 date, subject matter, number of pages, and attachments or appendices; (d) all PERSONS to whom the
27 DOCUMENT was distributed, shown, or explained; (e) its date of destruction or discard and the manner
28 of destruction or discard; and (f) the PERSONS authorizing or carrying out such destruction or discard.

19 19. The following requests are continuing in nature and in the event YOU become aware of or
20 acquire additional information relating or referring thereto, such additional information is to be promptly
21 produced.

1 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS**

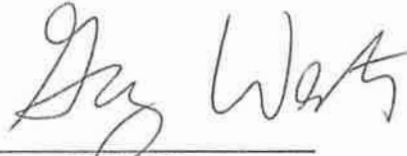
2 **REQUEST NO. 1**

3 All DOCUMENTS describing or summarizing the total sales and pricing of COFFEE-MATE in
4 YOUR grocery stores in California during the CLASS PERIOD.

5 **REQUEST NO. 2**

6 All DOCUMENTS in your possession RELATING TO the effects of artificial trans fat on human
7 or animal health.

8 DATED: November 15, 2018



9 **THE WESTON FIRM**
10 GREGORY S. WESTON
11 ANDREW C. HAMILTON
12 1405 Morena Blvd., Suite 201
13 San Diego, CA 92110
14 Telephone: (619) 798-2006
15 Facsimile: (619) 343-2789

16 **Counsel for Plaintiff**

1 **THE WESTON FIRM**
GREGORY S. WESTON (239944)
2 *greg@westonfirm.com*
ANDREW C. HAMILTON (299877)
3 *andrew@westonfirm.com*
4 1405 Morena., Suite 201
San Diego, CA 92110
5 Telephone: (619) 798-2006
Facsimile: (619) 343-2789
6

7 **Counsel for Plaintiff**

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 v.

15
16 LUCKY STORES, INC., NESTLE USA,
17 INC., SAVE MART SUPER MARKETS,
THE KROGER COMPANY, and THE
18 SAVE MART COMPANIES, INC.,

19 Defendants.

Case No: CGC-18-570953
Pleading Type: Class Action

**PLAINTIFF'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

20
21 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
22 RESPONDING PARTY: DEFENDANT Nestle USA, Inc.
SET: ONE

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley requests that
2 Defendant Nestle USA, Inc. ("Defendant") produce and permit Plaintiff's counsel to inspect and copy
3 those Documents specified herein which are in the producing party's possession, custody or control, at the
4 Weston Firm, 1405 Morena Blvd., Suite 201, San Diego, CA 92110.

5 **I. DEFINITIONS AND INSTRUCTIONS**

6 1. "YOU" and "YOUR" mean the defendant responding to these Requests, and, where
7 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
8 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
9 representatives and all other Persons acting under their control or on their behalf.

10 2. "PERSON" means natural persons, proprietorships, public or private corporations,
11 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
12 representatives of any such PERSON or PERSONS.

13 3. "DOCUMENT" is defined to be synonymous and equal in scope to usage of this term in
14 Rule 34(a) of the Federal Rules of Civil Procedure. A copy or duplicate of a DOCUMENT which has any
15 non-conforming notes, marginal annotations or other markings, and any preliminary version, draft or
16 revision of the foregoing is a separate DOCUMENT within the meaning of this term. DOCUMENTS
17 include, by way of example only, any memorandum, letter, envelope, correspondence, electronic mail,
18 instant message, report, note, Post-It, message, telephone message, telephone log, diary, journal,
19 appointment calendar, calendar, group scheduler calendar, drawing, accounting paper, minutes, working
20 paper, financial report, accounting report, work papers, drafts, facsimile, report, contract, invoice, record
21 of purchase or sale, chart, graph, index, directory, computer directory, computer disk, or any other
22 written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced.
23 DOCUMENTS also include the file, folder tabs, and labels appended to or containing any
24 DOCUMENTS.

25 4. "COMMUNICATION" means the transmission, sending and/or receipt of information of
26 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
27 foreign or otherwise), computer electronics of any kind (including, but not limited to "email"), magnetic
28 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, "floppy disks,"
compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
any kind. The term "communication" also includes, without limitation, all "Documents" (as defined

1 herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings, Meetings,
2 notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

3 5. "MEETING," "MEET," or "MET" means any assembly, convocation, encounter, or
4 contemporaneous presence of two or more PERSON for any purpose, whether planned or not planned,
5 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
6 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

7 6. "MARKETING" or "MARKET" means all activities involved in the distribution of a
8 product including, without limitation, advertising, locating and contacting prospective customers,
9 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
10 servicing customers and the supervision and management of the same.

11 7. "RELATING TO" means in whole or in part constituting, containing, concerning,
12 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

13 8. "CLASS PERIOD" refers to January 1, 2010 to the present.

14 9. "COFFEE-MATE" means the products identified in the Complaint, i.e., the line of coffee
15 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
16 added to the Complaint by amendment. "CLASS PERIOD" means January 1, 2010 to the present.

17 10. The singular form of a word should be interpreted as plural wherever necessary to bring
18 with the scope of the request any information that might otherwise be construed outside its scope.

19 11. The words "and" and "or" shall be construed either disjunctively or conjunctively
20 wherever necessary to bring within the scope of this request any information that might otherwise be
21 construed to be outside its scope.

22 12. In responding to this Request, YOU are required to furnish all Documents that are
23 available to You, including Documents in the possession, custody or control of Your attorneys, officers,
24 agents, employees, accountants, consultants, representatives, or any Persons directly or indirectly
25 employed by or connected with YOU or YOU attorneys or anyone else subject to YOUR control. All
26 DOCUMENTS that are responsive, in whole or in part, to any portion of this Request shall be produced
27 in their entirety, including all attachments.

28 13. All DOCUMENTS should be produced as they are kept in the ordinary course of business
or should be organized and labeled to correspond to the specific requests to which they are responsive.
All DOCUMENTS should be produced in any file folder or carton in which they have been maintained,
and should be stored, clipped, stapled, or otherwise arranged in the same form and manner in which they
were found.

1 14. Electronic stored information (“ESI”) should be produced in the following formats:

2 A. **NATIVE FILES.** For ESI originally created using common, off-the-shelf software (e.g.,
3 Microsoft Office products), you should produce documents in native format. If you are unable to produce
4 certain documents in native format, you should describe the reason for the inability (e.g., the document
5 was created using proprietary software).

6 B. **TIFFs/JPEGs.** For ESI created using proprietary software or otherwise unable to be
7 produced in native format, black and white images should be delivered as 300 D.P.I. Group IV
8 compression single page TIFFs and color images should be delivered as single page JPEGs. Images shall
9 be clearly labeled to show redacted, privileged material. Each image should have a unique file name and
10 should be named with the Bates number assigned to it. For any hard-copy documents scanned to ESI,
11 either for production or in the regular course of business, any such ESI images (whether in tiff, jpeg, pdf,
12 or some other format) should be produced so that they are either text-readable, or along with a concurrent
13 Optical Character Recognition (OCR) file. Extracted OCR files for scanned document should be
14 provided within the Concordance delimited file (DAT).

15 C. **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents should be
16 provided with (1) a Concordance delimited file (DAT), and (2) an Opticon delimited file (LOG or OPT).

17 D. **UNITIZING OF DOCUMENTS.** In scanning paper documents, distinct documents
18 should not be merged into a single record, and single documents should not be split into multiple records
19 (i.e., paper documents should be logically unitized).

20 E. **PARENT-CHILD RELATIONSHIPS.** Parent-child relationships (the association
21 between an attachment and its parent document) should be preserved.

22 F. **TEXT.** Extracted text for electronic files should be provided within the Concordance
23 delimited file (DAT).

24 G. **OBJECTIVE CODING FIELDS.** The following objective coding fields should be
25 provided for each electronic document converted to TIFF:

- 26 • Beginning Bates Number
- 27 • Ending Bates Number
- 28 • Beginning Attachment Number
- Ending Attachment Number
- Source/Custodian.

H. **OBJECTIVE CODING FORMAT.** The objective coding information should be provided
in the following format:

- 1 • Fields should be Pipe (|) delimited.
- 2 • String values within the file should be enclosed with Carats (^).
- 3 • Multi-entries in a field should have a semi-colon (;) delimiter.
- 4 • The first line should contain headers and below the first line there should be exactly one line
5 for each document.

6 Each line of objective coding information, corresponding to a single document, must contain the
7 same number of fields as the header row.

8 15. If and to the extent that YOU object to any request, state with specificity all grounds for
9 any such objection.

10 16. Unless otherwise indicated, each matter or request listed below shall cover the period from
11 January 1, 2007 to the present.

12 17. If YOU assert any claim of privilege to object to any request, and YOU withhold
13 documents based on that asserted privilege, state the title and nature of the DOCUMENT(s), and furnish
14 a list signed by the attorney of record giving the following information with respect to each withheld
15 DOCUMENT: (a) the name and title of the author and/or sender and the name and title of the recipient;
16 (b) the date of the DOCUMENT'S origination; (c) the name of each Person or Persons participating in
17 the preparation of the DOCUMENT; (d) the name and position, if any, of each PERSON to whom the
18 contents of the DOCUMENT have been communicated by copy, exhibition, reading, or substantial
19 summarization; (e) a statement of the specific basis on which privilege is claimed and whether or not the
20 subject matter or the contents of that DOCUMENT is limited to legal advice or information provided for
21 the purpose of securing legal advice; and (f) the identity and position, if any, of the other PERSON or
22 PERSON supplying the attorney signing the list with the information requested in subparagraphs above.

23 18. In the event that any DOCUMENT called for by these requests has been destroyed or
24 discarded, identify that DOCUMENT by stating the title (if known) and nature of the DOCUMENT and
25 furnish a list signed by the attorney of record giving the following information with respect to each
26 DOCUMENT: (a) any addressor or addressee; (b) any indicated or blind copies; (c) the DOCUMENT'S
27 date, subject matter, number of pages, and attachments or appendices; (d) all PERSONS to whom the
28 DOCUMENT was distributed, shown, or explained; (e) its date of destruction or discard and the manner
of destruction or discard; and (f) the PERSONS authorizing or carrying out such destruction or discard.

19. The following requests are continuing in nature and in the event YOU become aware of or
acquire additional information relating or referring thereto, such additional information is to be promptly
produced.

1 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS**

2 **REQUEST NO. 1**

3 All YOUR document retention policies in effect during the CLASS PERIOD.

4 **REQUEST NO. 2**

5 Organization charts RELATING TO COFFEE-MATE.

6 **REQUEST NO. 3**

7 All DOCUMENTS describing or summarizing the sales of COFFEE-MATE in California during
8 the CLASS PERIOD.

9 **REQUEST NO. 4**

10 All DOCUMENTS RELATING TO the research and development for COFFEE-MATE created
11 during the CLASS PERIOD.

12 **REQUEST NO. 5**

13 All DOCUMENTS which evidence, memorialize, summarize or discuss any decision about how
14 to MARKET or advertise COFFEE-MATE in California during the CLASS PERIOD.

15 **REQUEST NO. 6**

16 All DOCUMENTS which evidence, reflect, or discuss any potential or actual revisions or
17 modifications made in the packaging or advertisement of COFFEE-MATE during the CLASS PERIOD.

18 **REQUEST NO. 7**

19 All DOCUMENTS which reflect, summarize, analyze, or discuss the pricing of COFFEE-MATE.

20 **REQUEST NO. 8**

21 DOCUMENTS sufficient to show total units of COFFEE-MATE YOU sold per year in California
22 for each year in the CLASS PERIOD.

23 **REQUEST NO. 9**

24 All labels used for the COFFEE-MATE during the CLASS PERIOD, and DOCUMENTS
25 sufficient to show the period of time during which each such label was used.

26 **REQUEST NO. 10**

27 DOCUMENTS sufficient to show the amount of partially hydrogenated oil used in each
28 formulation of COFFEE-MATE during the CLASS PERIOD, including any changes thereto.

REQUEST NO. 11

All DOCUMENTS in your possession RELATING TO the effects of partially hydrogenated oil or
artificial trans fat on human or animal health.

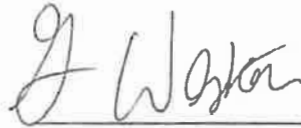
1 REQUEST NO. 12

2 Any COMMUNICATION between YOU and any customer in response to any complaint about
3 the ingredients in COFFEE-MATE.

4 REQUEST NO. 13

5 For each year of the CLASS PERIOD, documents sufficient to show the composition, source, and
6 vendors for the partially hydrogenated oil used in the manufacture of COFFEE-MATE.

7 DATED: November 15, 2018



8 **THE WESTON FIRM**
9 GREGORY S. WESTON
10 ANDREW C. HAMILTON
11 1405 Morena Blvd., Suite 201
12 San Diego, CA 92110
13 Telephone: (619) 798-2006
14 Facsimile: (619) 343-2789

15 **Counsel for Plaintiff**

1 **THE WESTON FIRM**
 2 GREGORY S. WESTON (239944)
 3 *greg@westonfirm.com*
 4 ANDREW C. HAMILTON (299877)
 5 *andrew@westonfirm.com*
 6 1405 Morena., Suite 21
 7 San Diego, CA 92110
 8 Telephone: (619) 798-2006
 9 Facsimile: (619) 343-2789

Counsel for Plaintiff

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN FRANCISCO**

12
 13 MARK BEASLEY, on behalf of himself
 14 and all others similarly situated,
 15
 16 Plaintiff,
 17
 18 v.
 19 LUCKY STORES, INC., NESTLE USA,
 20 INC., SAVE MART SUPER MARKETS,
 21 THE KROGER COMPANY, and THE
 22 SAVE MART COMPANIES, INC.,
 23
 24 Defendants.

Case No: CGC-18-570953
 Pleading Type: Class Action

**PLAINTIFF'S FIRST SET OF REQUESTS
 FOR PRODUCTION OF DOCUMENTS**

25
 26
 27
 28
 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
 RESPONDING PARTY: DEFENDANT Save Mart Companies, Inc.
 SET: ONE

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley requests that
2 Defendant Save Mart Companies, Inc. ("Defendant") produce and permit Plaintiff's counsel to inspect and
3 copy those Documents specified herein which are in the producing party's possession, custody or control
4 at the Weston Firm, 1405 Morena Blvd., Suite 201, San Diego, CA 92110.

5 **I. DEFINITIONS AND INSTRUCTIONS**

6 1. "YOU" and "YOUR" mean the defendant responding to these Requests, and, where
7 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
8 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
9 representatives and all other Persons acting under their control or on their behalf.

10 2. "PERSON" means natural persons, proprietorships, public or private corporations,
11 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
12 representatives of any such PERSON or PERSONS.

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16 revision of the foregoing is a separate DOCUMENT within the meaning of this term. DOCUMENTS
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18 instant message, report, note, Post-It, message, telephone message, telephone log, diary, journal,
19 appointment calendar, calendar, group scheduler calendar, drawing, accounting paper, minutes, working
20 paper, financial report, accounting report, work papers, drafts, facsimile, report, contract, invoice, record
21 of purchase or sale, chart, graph, index, directory, computer directory, computer disk, or any other
22 written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced.
23 DOCUMENTS also include the file, folder tabs, and labels appended to or containing any
24 DOCUMENTS.

25 4. "COMMUNICATION" means the transmission, sending and/or receipt of information of
26 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
27 foreign or otherwise), computer electronics of any kind (including, but not limited to "email"), magnetic
28 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, "floppy disks,"
compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
any kind. The term "communication" also includes, without limitation, all "Documents" (as defined

1 herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings, Meetings,
2 notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

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6 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

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8 product including, without limitation, advertising, locating and contacting prospective customers,
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10 servicing customers and the supervision and management of the same.

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12 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

13 8. "CLASS PERIOD" refers to January 1, 2010 to the present.

14 9. "COFFEE-MATE" means the products identified in the Complaint, i.e., the line of coffee
15 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
16 added to the Complaint by amendment. "CLASS PERIOD" means January 1, 2010 to the present.

17 10. The singular form of a word should be interpreted as plural wherever necessary to bring
18 with the scope of the request any information that might otherwise be construed outside its scope.

19 11. The words "and" and "or" shall be construed either disjunctively or conjunctively
20 wherever necessary to bring within the scope of this request any information that might otherwise be
21 construed to be outside its scope.

22 12. In responding to this Request, YOU are required to furnish all Documents that are
23 available to You, including Documents in the possession, custody or control of Your attorneys, officers,
24 agents, employees, accountants, consultants, representatives, or any Persons directly or indirectly
25 employed by or connected with YOU or YOU attorneys or anyone else subject to YOUR control. All
26 DOCUMENTS that are responsive, in whole or in part, to any portion of this Request shall be produced
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1 14. Electronic stored information (“ESI”) should be produced in the following formats:

2 A. **NATIVE FILES.** For ESI originally created using common, off-the-shelf software (e.g.,
3 Microsoft Office products), you should produce documents in native format. If you are unable to produce
4 certain documents in native format, you should describe the reason for the inability (e.g., the document
5 was created using proprietary software).

6 B. **TIFFs/JPEGs.** For ESI created using proprietary software or otherwise unable to be
7 produced in native format, black and white images should be delivered as 300 D.P.I. Group IV
8 compression single page TIFFs and color images should be delivered as single page JPEGs. Images shall
9 be clearly labeled to show redacted, privileged material. Each image should have a unique file name and
10 should be named with the Bates number assigned to it. For any hard-copy documents scanned to ESI,
11 either for production or in the regular course of business, any such ESI images (whether in tiff, jpeg, pdf,
12 or some other format) should be produced so that they are either text-readable, or along with a concurrent
13 Optical Character Recognition (OCR) file. Extracted OCR files for scanned document should be
14 provided within the Concordance delimited file (DAT).

15 C. **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents should be
16 provided with (1) a Concordance delimited file (DAT), and (2) an Opticon delimited file (LOG or OPT).

17 D. **UNITIZING OF DOCUMENTS.** In scanning paper documents, distinct documents
18 should not be merged into a single record, and single documents should not be split into multiple records
19 (i.e., paper documents should be logically unitized).

20 E. **PARENT-CHILD RELATIONSHIPS.** Parent-child relationships (the association
21 between an attachment and its parent document) should be preserved.

22 F. **TEXT.** Extracted text for electronic files should be provided within the Concordance
23 delimited file (DAT).

24 G. **OBJECTIVE CODING FIELDS.** The following objective coding fields should be
25 provided for each electronic document converted to TIFF:

- 26 • Beginning Bates Number
- 27 • Ending Bates Number
- 28 • Beginning Attachment Number
- Ending Attachment Number
- Source/Custodian.

H. **OBJECTIVE CODING FORMAT.** The objective coding information should be provided
in the following format:

- 1 • Fields should be Pipe (|) delimited.
- 2 • String values within the file should be enclosed with Carats (^).
- 3 • Multi-entries in a field should have a semi-colon (;) delimiter.
- 4 • The first line should contain headers and below the first line there should be exactly one line

for each document.

5 Each line of objective coding information, corresponding to a single document, must contain the
6 same number of fields as the header row.

7 15. If and to the extent that YOU object to any request, state with specificity all grounds for
8 any such objection.

9 16. Unless otherwise indicated, each matter or request listed below shall cover the period from
10 January 1, 2007 to the present.

11 17. If YOU assert any claim of privilege to object to any request, and YOU withhold
12 documents based on that asserted privilege, state the title and nature of the DOCUMENT(s), and furnish
13 a list signed by the attorney of record giving the following information with respect to each withheld
14 DOCUMENT: (a) the name and title of the author and/or sender and the name and title of the recipient;
15 (b) the date of the DOCUMENT'S origination; (c) the name of each Person or Persons participating in
16 the preparation of the DOCUMENT; (d) the name and position, if any, of each PERSON to whom the
17 contents of the DOCUMENT have been communicated by copy, exhibition, reading, or substantial
18 summarization; (e) a statement of the specific basis on which privilege is claimed and whether or not the
19 subject matter or the contents of that DOCUMENT is limited to legal advice or information provided for
20 the purpose of securing legal advice; and (f) the identity and position, if any, of the other PERSON or
21 PERSON supplying the attorney signing the list with the information requested in subparagraphs above.

22 18. In the event that any DOCUMENT called for by these requests has been destroyed or
23 discarded, identify that DOCUMENT by stating the title (if known) and nature of the DOCUMENT and
24 furnish a list signed by the attorney of record giving the following information with respect to each
25 DOCUMENT: (a) any addressor or addressee; (b) any indicated or blind copies; (c) the DOCUMENT'S
26 date, subject matter, number of pages, and attachments or appendices; (d) all PERSONS to whom the
27 DOCUMENT was distributed, shown, or explained; (e) its date of destruction or discard and the manner
28 of destruction or discard; and (f) the PERSONS authorizing or carrying out such destruction or discard.

19. The following requests are continuing in nature and in the event YOU become aware of or
acquire additional information relating or referring thereto, such additional information is to be promptly
produced.

1 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS**

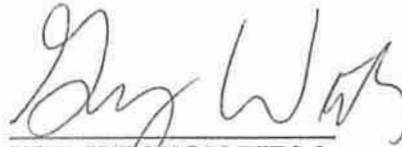
2 **REQUEST NO. 1**

3 All DOCUMENTS describing or summarizing the total sales and pricing of COFFEE-MATE in
4 YOUR grocery stores in California during the CLASS PERIOD.

5 **REQUEST NO. 2**

6 All DOCUMENTS in your possession RELATING TO the effects of artificial trans fat on human
7 or animal health.

8 DATED: November 15, 2018



9 **THE WESTON FIRM**
10 GREGORY S. WESTON
11 ANDREW C. HAMILTON
12 1405 Morena Blvd., Suite 201
13 San Diego, CA 92110
14 Telephone: (619) 798-2006
15 Facsimile: (619) 343-2789

16 **Counsel for Plaintiff**

1 **THE WESTON FIRM**
 2 GREGORY S. WESTON (239944)
 3 *greg@westonfirm.com*
 4 ANDREW C. HAMILTON (299877)
 5 *andrew@westonfirm.com*
 6 1405 Morena., Suite 21
 7 San Diego, CA 92110
 8 Telephone: (619) 798-2006
 9 Facsimile: (619) 343-2789

Counsel for Plaintiff

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN FRANCISCO**

12
 13 MARK BEASLEY, on behalf of himself
 14 and all others similarly situated,

15 Plaintiff,

16 v.

17
 18 LUCKY STORES, INC., NESTLE USA,
 19 INC., SAVE MART SUPER MARKETS,
 20 THE KROGER COMPANY, and THE
 21 SAVE MART COMPANIES, INC.,

22 Defendants.

Case No: CGC-18-570953
 Pleading Type: Class Action

**PLAINTIFF'S FIRST SET OF REQUESTS
 FOR PRODUCTION OF DOCUMENTS**

23 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
 24 RESPONDING PARTY: DEFENDANT Save Mart Super Markets
 25 SET: ONE

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley requests that
2 Defendant Save Mart Super Markets (“Defendant”) produce and permit Plaintiff’s counsel to inspect and
3 copy those Documents specified herein which are in the producing party’s possession, custody or control
4 at the Weston Firm, 1405 Morena Blvd., Suite 201, San Diego, CA 92110.

5 **I. DEFINITIONS AND INSTRUCTIONS**

6 1. “YOU” and “YOUR” mean the defendant responding to these Requests, and, where
7 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
8 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
9 representatives and all other Persons acting under their control or on their behalf.

10 2. “PERSON” means natural persons, proprietorships, public or private corporations,
11 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
12 representatives of any such PERSON or PERSONS.

13 3. “DOCUMENT” is defined to be synonymous and equal in scope to usage of this term in
14 Rule 34(a) of the Federal Rules of Civil Procedure. A copy or duplicate of a DOCUMENT which has any
15 non-conforming notes, marginal annotations or other markings, and any preliminary version, draft or
16 revision of the foregoing is a separate DOCUMENT within the meaning of this term. DOCUMENTS
17 include, by way of example only, any memorandum, letter, envelope, correspondence, electronic mail,
18 instant message, report, note, Post-It, message, telephone message, telephone log, diary, journal,
19 appointment calendar, calendar, group scheduler calendar, drawing, accounting paper, minutes, working
20 paper, financial report, accounting report, work papers, drafts, facsimile, report, contract, invoice, record
21 of purchase or sale, chart, graph, index, directory, computer directory, computer disk, or any other
22 written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced.
23 DOCUMENTS also include the file, folder tabs, and labels appended to or containing any
24 DOCUMENTS.

25 4. “COMMUNICATION” means the transmission, sending and/or receipt of information of
26 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
27 foreign or otherwise), computer electronics of any kind (including, but not limited to “email”), magnetic
28 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, “floppy disks,”
compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
any kind. The term “communication” also includes, without limitation, all “Documents” (as defined

1 herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings, Meetings,
2 notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

3 5. "MEETING," "MEET," or "MET" means any assembly, convocation, encounter, or
4 contemporaneous presence of two or more PERSON for any purpose, whether planned or not planned,
5 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
6 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

7 6. "MARKETING" or "MARKET" means all activities involved in the distribution of a
8 product including, without limitation, advertising, locating and contacting prospective customers,
9 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
10 servicing customers and the supervision and management of the same.

11 7. "RELATING TO" means in whole or in part constituting, containing, concerning,
12 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

13 8. "CLASS PERIOD" refers to January 1, 2010 to the present.

14 9. "COFFEE-MATE" means the products identified in the Complaint, i.e., the line of coffee
15 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
16 added to the Complaint by amendment. "CLASS PERIOD" means January 1, 2010 to the present.

17 10. The singular form of a word should be interpreted as plural wherever necessary to bring
18 with the scope of the request any information that might otherwise be construed outside its scope.

19 11. The words "and" and "or" shall be construed either disjunctively or conjunctively
20 wherever necessary to bring within the scope of this request any information that might otherwise be
21 construed to be outside its scope.

22 12. In responding to this Request, YOU are required to furnish all Documents that are
23 available to You, including Documents in the possession, custody or control of Your attorneys, officers,
24 agents, employees, accountants, consultants, representatives, or any Persons directly or indirectly
25 employed by or connected with YOU or YOU attorneys or anyone else subject to YOUR control. All
26 DOCUMENTS that are responsive, in whole or in part, to any portion of this Request shall be produced
27 in their entirety, including all attachments.

28 13. All DOCUMENTS should be produced as they are kept in the ordinary course of business
or should be organized and labeled to correspond to the specific requests to which they are responsive.
All DOCUMENTS should be produced in any file folder or carton in which they have been maintained,
and should be stored, clipped, stapled, or otherwise arranged in the same form and manner in which they
were found.

1 14. Electronic stored information (“ESI”) should be produced in the following formats:

2 A. **NATIVE FILES.** For ESI originally created using common, off-the-shelf software (e.g.,
3 Microsoft Office products), you should produce documents in native format. If you are unable to produce
4 certain documents in native format, you should describe the reason for the inability (e.g., the document
5 was created using proprietary software).

6 B. **TIFFs/JPEGs.** For ESI created using proprietary software or otherwise unable to be
7 produced in native format, black and white images should be delivered as 300 D.P.I. Group IV
8 compression single page TIFFs and color images should be delivered as single page JPEGs. Images shall
9 be clearly labeled to show redacted, privileged material. Each image should have a unique file name and
10 should be named with the Bates number assigned to it. For any hard-copy documents scanned to ESI,
11 either for production or in the regular course of business, any such ESI images (whether in tiff, jpeg, pdf,
12 or some other format) should be produced so that they are either text-readable, or along with a concurrent
13 Optical Character Recognition (OCR) file. Extracted OCR files for scanned document should be
14 provided within the Concordance delimited file (DAT).

15 C. **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents should be
16 provided with (1) a Concordance delimited file (DAT), and (2) an Opticon delimited file (LOG or OPT).

17 D. **UNITIZING OF DOCUMENTS.** In scanning paper documents, distinct documents
18 should not be merged into a single record, and single documents should not be split into multiple records
19 (i.e., paper documents should be logically unitized).

20 E. **PARENT-CHILD RELATIONSHIPS.** Parent-child relationships (the association
21 between an attachment and its parent document) should be preserved.

22 F. **TEXT.** Extracted text for electronic files should be provided within the Concordance
23 delimited file (DAT).

24 G. **OBJECTIVE CODING FIELDS.** The following objective coding fields should be
25 provided for each electronic document converted to TIFF:

- 26 • Beginning Bates Number
- 27 • Ending Bates Number
- 28 • Beginning Attachment Number
- Ending Attachment Number
- Source/Custodian.

H. **OBJECTIVE CODING FORMAT.** The objective coding information should be provided
in the following format:

- 1 • Fields should be Pipe (|) delimited.
- 2 • String values within the file should be enclosed with Carats (^).
- 3 • Multi-entries in a field should have a semi-colon (;) delimiter.
- 4 • The first line should contain headers and below the first line there should be exactly one line
5 for each document.

6 Each line of objective coding information, corresponding to a single document, must contain the
7 same number of fields as the header row.

8 15. If and to the extent that YOU object to any request, state with specificity all grounds for
9 any such objection.

10 16. Unless otherwise indicated, each matter or request listed below shall cover the period from
11 January 1, 2007 to the present.

12 17. If YOU assert any claim of privilege to object to any request, and YOU withhold
13 documents based on that asserted privilege, state the title and nature of the DOCUMENT(s), and furnish
14 a list signed by the attorney of record giving the following information with respect to each withheld
15 DOCUMENT: (a) the name and title of the author and/or sender and the name and title of the recipient;
16 (b) the date of the DOCUMENT'S origination; (c) the name of each Person or Persons participating in
17 the preparation of the DOCUMENT; (d) the name and position, if any, of each PERSON to whom the
18 contents of the DOCUMENT have been communicated by copy, exhibition, reading, or substantial
19 summarization; (e) a statement of the specific basis on which privilege is claimed and whether or not the
20 subject matter or the contents of that DOCUMENT is limited to legal advice or information provided for
21 the purpose of securing legal advice; and (f) the identity and position, if any, of the other PERSON or
22 PERSON supplying the attorney signing the list with the information requested in subparagraphs above.

23 18. In the event that any DOCUMENT called for by these requests has been destroyed or
24 discarded, identify that DOCUMENT by stating the title (if known) and nature of the DOCUMENT and
25 furnish a list signed by the attorney of record giving the following information with respect to each
26 DOCUMENT: (a) any addressor or addressee; (b) any indicated or blind copies; (c) the DOCUMENT'S
27 date, subject matter, number of pages, and attachments or appendices; (d) all PERSONS to whom the
28 DOCUMENT was distributed, shown, or explained; (e) its date of destruction or discard and the manner
of destruction or discard; and (f) the PERSONS authorizing or carrying out such destruction or discard.

19. The following requests are continuing in nature and in the event YOU become aware of or
acquire additional information relating or referring thereto, such additional information is to be promptly
produced.

1 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS**


2 **REQUEST NO. 1**

3 All DOCUMENTS describing or summarizing the total sales and pricing of COFFEE-MATE in
4 YOUR grocery stores in California during the CLASS PERIOD.

5 **REQUEST NO. 2**

6 All DOCUMENTS in your possession RELATING TO the effects of artificial trans fat on human
7 or animal health.

8 DATED: November 15, 2018



9 **THE WESTON FIRM**
10 GREGORY S. WESTON
11 ANDREW C. HAMILTON
12 1405 Morena Blvd., Suite 201
13 San Diego, CA 92110
14 Telephone: (619) 798-2006
15 Facsimile: (619) 343-2789

16 **Counsel for Plaintiff**

1 **THE WESTON FIRM**
GREGORY S. WESTON (239944)
2 *greg@westonfirm.com*
ANDREW C. HAMILTON (299877)
3 *andrew@westonfirm.com*
4 1405 Morena., Suite 201
San Diego, CA 92110
5 Telephone: (619) 798-2006
Facsimile: (619) 343-2789
6

7 **Counsel for Plaintiff**

8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**
11

12 MARK BEASLEY, on behalf of himself
13 and all others similarly situated,

14 Plaintiff,

15 v.

16
17 LUCKY STORES, INC., NESTLE USA,
18 INC., SAVE MART SUPER MARKETS,
19 THE KROGER COMPANY, and THE
SAVE MART COMPANIES, INC.,

20 Defendants.

Case No: CGC-18-570953
Pleading Type: Class Action

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

21 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
22 RESPONDING PARTY: DEFENDANT Lucky Stores, Inc.
23 SET: ONE
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1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley hereby serves the
2 following Interrogatories on Defendant Lucky Stores, Inc. (“Lucky” or “Defendant”). Defendant is
3 required to respond to these Interrogatories according to the California Rules of Civil Procedure.
4 Defendant shall serve such responses upon Plaintiff by and through his attorneys of record herein.

4 **I. DEFINITIONS AND INSTRUCTIONS**

5 A. “YOU” and “YOUR” mean the Defendant responding to these Interrogatories, and, where
6 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
7 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
8 representatives and all other PERSONS acting under their control or on their behalf.

9 B. “PERSON” means natural persons, proprietorships, public or private corporations,
10 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
11 representatives of any such PERSON or PERSONS.

12 C. “RELATING TO” means in whole or in part constituting, containing, CONCERNING,
13 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

14 D. “CONCERNING” means and includes relating to, referring to, describing, discussing,
15 analyzing, identifying, evidencing, containing, stating, or constituting.

16 E. “COFFEE-MATE” means the products identified in the Complaint, i.e., the line of coffee
17 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
18 added to the Complaint by amendment.

19 F. “CLASS PERIOD” means on or after January 1, 2010.

20 G. “COMMUNICATION” means the transmission, sending and/or receipt of information of
21 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
22 foreign or otherwise), computer electronics of any kind (including, but not limited to “email”), magnetic
23 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, “floppy disks,”
24 compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
25 teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
26 any kind. The term “COMMUNICATION” also includes, without limitation, all “DOCUMENTS” (as
27 defined herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings,
28 Meetings, notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

H. “POSSESSION, CUSTODY, OR CONTROL” of a DOCUMENT means that YOU have
the legal right, authority, or ability to obtain the DOCUMENT on demand even if YOU have no copy.

I. “MEETING,” “MEET,” or “MET” means any assembly, convocation, encounter, or

1 contemporaneous presence of two or more PERSONS for any purpose, whether planned or not planned,
2 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
3 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

4 J. "MARKETING" or "MARKET" means all activities involved in the distribution of a
5 product including, without limitation, advertising, locating and contacting prospective customers,
6 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
7 servicing customers and the supervision and management of the same.

8 K. "LABEL" means a display of written, printed, or graphic matter upon the immediate
9 container of any article of COFFE-MATE.

10 L. "LABELING" means all labels and other written, printed, or graphic matter (1) upon any
11 article of COFFEE-MATE or any of its containers or wrappers, or (2) accompanying such article of
12 COFFEE-MATE.

13 M. "CHALLENGED STATEMENT" means the words appearing on the COFFEE-MATES'
14 LABEL, LABELING or ADVERTISING that are identified in paragraphs 74-77 of the operative
15 complaint, specifically: "0g Trans Fat."

16 N. "PERFORMED SERVICES" means helping, assisting, managing, overseeing, supervising
17 directing, administrating, or generally bearing responsibility, for working on the specified subject matter
18 including but not limited to creating, drafting, analyzing, examining, studying, commenting or reporting
19 on, editing, altering, or modifying, managing, maintaining, inspecting, planning, evaluating, surveying, or
20 consulting.

21 O. "PHO" means partially hydrogenated oil(s).

22 P. The singular form of a word should be interpreted as plural wherever necessary to bring
23 within the scope of the request any information that might otherwise be construed outside its scope.

24 Q. The words "and" and "or" shall be construed either disjunctively or conjunctively
25 wherever necessary to bring within the scope of this request any information that might otherwise be
26 construed out of scope.

27 R. If and to the extent that YOU object to any request, state with specificity all grounds for
28 any such objection.

II. INTERROGATORIES

INTERROGATORY NO. 1

For each year of the CLASS PERIOD, state or estimate your unit sales of COFFEE-MATE in California and the total revenue derived therefrom.

1 INTERROGATORY NO. 2

2 For each year of the CLASS PERIOD, state the average retail price of COFFEE-MATE.

3 DATED: November 15, 2018



4 THE WESTON FIRM
5 GREGORY S. WESTON
6 ANDREW C. HAMILTON
7 1405 Morena Blvd., Suite 201
8 San Diego, CA 92110
9 Telephone: (619) 798-2006

10 Counsel for Plaintiff

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6
7 **Counsel for Plaintiff**

8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
13 and all others similarly situated,

14 Plaintiff,

15 v.

16
17 LUCKY STORES, INC., NESTLE USA,
18 INC., SAVE MART SUPER MARKETS,
19 THE KROGER COMPANY, and THE
SAVE MART COMPANIES, INC.,

20 Defendants.

Case No: CGC-18-570953
Pleading Type: Class Action

21
22 **PLAINTIFF'S FIRST SET OF**
23 **INTERROGATORIES**

24
25
26
27
28
PROPOUNDING PARTY: PLAINTIFF Mark Beasley
RESPONDING PARTY: DEFENDANT Nestle USA, Inc.
SET: ONE

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley hereby serves the
2 following Interrogatories on Defendant Nestle USA, Inc. (“Nestle” or “Defendant”). Defendant is
3 required to respond to these Interrogatories according to the California Rules of Civil Procedure.
4 Defendant shall serve such responses upon Plaintiff by and through his attorneys of record herein.

5 **I. DEFINITIONS AND INSTRUCTIONS**

6 A. “YOU” and “YOUR” mean the Defendant responding to these Interrogatories, and, where
7 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
8 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
9 representatives and all other PERSONS acting under their control or on their behalf.

10 B. “PERSON” means natural persons, proprietorships, public or private corporations,
11 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
12 representatives of any such PERSON or PERSONS.

13 C. “RELATING TO” means in whole or in part constituting, containing, CONCERNING,
14 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

15 D. “CONCERNING” means and includes relating to, referring to, describing, discussing,
16 analyzing, identifying, evidencing, containing, stating, or constituting.

17 E. “COFFEE-MATE” means the products identified in the Complaint, i.e., the line of coffee
18 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
19 added to the Complaint by amendment.

20 F. “CLASS PERIOD” means on or after January 1, 2010.

21 G. “COMMUNICATION” means the transmission, sending and/or receipt of information of
22 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
23 foreign or otherwise), computer electronics of any kind (including, but not limited to “email”), magnetic
24 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, “floppy disks,”
25 compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
26 teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
27 any kind. The term “COMMUNICATION” also includes, without limitation, all “DOCUMENTS” (as
28 defined herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings,
Meetings, notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

H. “POSSESSION, CUSTODY, OR CONTROL” of a DOCUMENT means that YOU have
the legal right, authority, or ability to obtain the DOCUMENT on demand even if YOU have no copy.

I. “MEETING,” “MEET,” or “MET” means any assembly, convocation, encounter, or

1 contemporaneous presence of two or more PERSONS for any purpose, whether planned or not planned,
2 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
3 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

4 J. "MARKETING" or "MARKET" means all activities involved in the distribution of a
5 product including, without limitation, advertising, locating and contacting prospective customers,
6 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
7 servicing customers and the supervision and management of the same.

8 K. "LABEL" means a display of written, printed, or graphic matter upon the immediate
9 container of any article of COFFE-MATE.

10 L. "LABELING" means all labels and other written, printed, or graphic matter (1) upon any
11 article of COFFEE-MATE or any of its containers or wrappers, or (2) accompanying such article of
12 COFFEE-MATE.

13 M. "CHALLENGED STATEMENT" means the words appearing on the COFFEE-MATES'
14 LABEL, LABELING or ADVERTISING that are identified in paragraphs 74-77 of the operative
15 complaint, specifically: "0g Trans Fat."

16 N. "PERFORMED SERVICES" means helping, assisting, managing, overseeing, supervising
17 directing, administrating, or generally bearing responsibility, for working on the specified subject matter
18 including but not limited to creating, drafting, analyzing, examining, studying, commenting or reporting
19 on, editing, altering, or modifying, managing, maintaining, inspecting, planning, evaluating, surveying, or
20 consulting.

21 O. "PHO" means partially hydrogenated oil(s).

22 P. The singular form of a word should be interpreted as plural wherever necessary to bring
23 within the scope of the request any information that might otherwise be construed outside its scope.

24 Q. The words "and" and "or" shall be construed either disjunctively or conjunctively
25 wherever necessary to bring within the scope of this request any information that might otherwise be
26 construed out of scope.

27 R. If and to the extent that YOU object to any request, state with specificity all grounds for
28 any such objection.

29 **II. INTERROGATORIES**

30 **INTERROGATORY NO. 1**

31 Provide YOUR best estimate of YOUR unit sales and revenue from the sale of COFFEE-MATE
32 for each year of the CLASS PERIOD.

1 INTERROGATORY NO. 2

2 IDENTIFY every COFFEE-MATE size and flavor YOU manufactured or sold that contained
3 PHO during the CLASS PERIOD, and for each, IDENTIFY (a) the time period during which the product
4 contained PHO, (b) the amount of PHO contained in the product per 100 grams to the nearest tenth of a
5 gram during the CLASS PERIOD, and (c) to the extent the amount was not the same during the CLASS
PERIOD, list the dates and amounts during those dates.

6 INTERROGATORY NO. 3

7 IDENTIFY the locations, including the full address and your internal name for the facility, where
8 COFFEE-MATE was manufactured and for each location, state the approximate percentage of COFFEE-
9 MATE that was manufactured at that location for each year of the CLASS PERIOD.

10 INTERROGATORY NO. 4

11 IDENTIFY the name of all PHO or PHO blends used to manufacture COFFEE-MATE during the
12 CLASS PERIOD, e.g., "Cargill Olympic S-100 Partially Hydrogenated Soybean Oil" or "Wesson Crystal
Clear Shortening Frying Oil."

13
14 DATED: November 15, 2018



THE WESTON FIRM
GREGORY S. WESTON
ANDREW C. HAMILTON
1405 Morena Blvd., Suite 201
San Diego, CA 92110
Telephone: (619) 798-2006

Counsel for Plaintiff

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5 Facsimile: (619) 343-2789
6

7 **Counsel for Plaintiff**

8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
13 and all others similarly situated,

14 Plaintiff,

15 v.

16
17 LUCKY STORES, INC., NESTLE USA,
INC., SAVE MART SUPER MARKETS,
18 THE KROGER COMPANY, and THE
19 SAVE MART COMPANIES, INC.,

20 Defendants.

Case No: CGC-18-570953
Pleading Type: Class Action

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

21 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
22 RESPONDING PARTY: DEFENDANT Save Mart Companies, Inc.
23 SET: ONE
24
25
26
27
28

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley hereby serves the
2 following Interrogatories on Defendant Save Mart Companies, Inc. (“Save Mart Companies” or
3 “Defendant”). Defendant is required to respond to these Interrogatories according to the California Rules
4 of Civil Procedure. Defendant shall serve such responses upon Plaintiff by and through his attorneys of
5 record herein.

6 **I. DEFINITIONS AND INSTRUCTIONS**

7 A. “YOU” and “YOUR” mean the Defendant responding to these Interrogatories, and, where
8 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
9 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
10 representatives and all other PERSONS acting under their control or on their behalf.

11 B. “PERSON” means natural persons, proprietorships, public or private corporations,
12 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
13 representatives of any such PERSON or PERSONS.

14 C. “RELATING TO” means in whole or in part constituting, containing, CONCERNING,
15 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

16 D. “CONCERNING” means and includes relating to, referring to, describing, discussing,
17 analyzing, identifying, evidencing, containing, stating, or constituting.

18 E. “COFFEE-MATE” means the products identified in the Complaint, i.e., the line of coffee
19 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
20 added to the Complaint by amendment.

21 F. “CLASS PERIOD” means on or after January 1, 2010.

22 G. “COMMUNICATION” means the transmission, sending and/or receipt of information of
23 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
24 foreign or otherwise), computer electronics of any kind (including, but not limited to “email”), magnetic
25 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, “floppy disks,”
26 compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
27 teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
28 any kind. The term “COMMUNICATION” also includes, without limitation, all “DOCUMENTS” (as
defined herein) and all inquiries, discussions, conversations, negotiations, agreements, understandings,
Meetings, notices, requests, responses, demands, complaints, and/or press, publicity or trade releases.

H. “POSSESSION, CUSTODY, OR CONTROL” of a DOCUMENT means that YOU have
the legal right, authority, or ability to obtain the DOCUMENT on demand even if YOU have no copy.

1 I. "MEETING," "MEET," or "MET" means any assembly, convocation, encounter, or
2 contemporaneous presence of two or more PERSONS for any purpose, whether planned or not planned,
3 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
4 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

5 J. "MARKETING" or "MARKET" means all activities involved in the distribution of a
6 product including, without limitation, advertising, locating and contacting prospective customers,
7 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
8 servicing customers and the supervision and management of the same.

9 K. "LABEL" means a display of written, printed, or graphic matter upon the immediate
10 container of any article of COFFE-MATE.

11 L. "LABELING" means all labels and other written, printed, or graphic matter (1) upon any
12 article of COFFEE-MATE or any of its containers or wrappers, or (2) accompanying such article of
13 COFFEE-MATE.

14 M. "CHALLENGED STATEMENT" means the words appearing on the COFFEE-MATES'
15 LABEL, LABELING or ADVERTISING that are identified in paragraphs 74-77 of the operative
16 complaint, specifically: "0g Trans Fat."

17 N. "PERFORMED SERVICES" means helping, assisting, managing, overseeing, supervising
18 directing, administrating, or generally bearing responsibility, for working on the specified subject matter
19 including but not limited to creating, drafting, analyzing, examining, studying, commenting or reporting
20 on, editing, altering, or modifying, managing, maintaining, inspecting, planning, evaluating, surveying, or
21 consulting.

22 O. "PHO" means partially hydrogenated oil(s).

23 P. The singular form of a word should be interpreted as plural wherever necessary to bring
24 within the scope of the request any information that might otherwise be construed outside its scope.

25 Q. The words "and" and "or" shall be construed either disjunctively or conjunctively
26 wherever necessary to bring within the scope of this request any information that might otherwise be
27 construed out of scope.

28 R. If and to the extent that YOU object to any request, state with specificity all grounds for
any such objection.

II. INTERROGATORIES

INTERROGATORY NO. 1

For each year of the CLASS PERIOD, state or estimate your unit sales of COFFEE-MATE in

1 California and the total revenue derived therefrom.

2 INTERROGATORY NO. 2

3 For each year of the CLASS PERIOD, state the average retail price of COFFEE-MATE.

4 DATED: November 15, 2018



6 **THE WESTON FIRM**
7 GREGORY S. WESTON
8 ANDREW C. HAMILTON
9 1405 Morena Blvd., Suite 201
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11 Telephone: (619) 798-2006
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13 **Counsel for Plaintiff**

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 9 Facsimile: (619) 343-2789

Counsel for Plaintiff

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN FRANCISCO**

12
 13
 14 MARK BEASLEY, on behalf of himself
 and all others similarly situated,

15 Plaintiff,

16 v.

17
 18 LUCKY STORES, INC., NESTLE USA,
 19 INC., SAVE MART SUPER MARKETS,
 20 THE KROGER COMPANY, and THE
 SAVE MART COMPANIES, INC.,

21 Defendants.

Case No: CGC-18-570953
 Pleading Type: Class Action

PLAINTIFF'S FIRST SET OF INTERROGATORIES

22
 23 PROPOUNDING PARTY: PLAINTIFF Mark Beasley
 24 RESPONDING PARTY: DEFENDANT Save Mart Super Markets
 SET: ONE

1 Pursuant to the California Rules of Civil Procedure, Plaintiff Mark Beasley hereby serves the
2 following Interrogatories on Defendant Save Mart Super Markets (“Save Mart” or “Defendant”).
3 Defendant is required to respond to these Interrogatories according to the California Rules of Civil
4 Procedure. Defendant shall serve such responses upon Plaintiff by and through his attorneys of record
5 herein.

6 **I. DEFINITIONS AND INSTRUCTIONS**

7 A. “YOU” and “YOUR” mean the Defendant responding to these Interrogatories, and, where
8 applicable, any predecessors and/or successors in interest, present and former parents, subsidiaries,
9 divisions and affiliates, and present and former directors, employers, employees, attorneys, agents, other
10 representatives and all other PERSONS acting under their control or on their behalf.

11 B. “PERSON” means natural persons, proprietorships, public or private corporations,
12 partnerships, trusts, joint ventures, groups, associations, organizations or other legal entities, including
13 representatives of any such PERSON or PERSONS.

14 C. “RELATING TO” means in whole or in part constituting, containing, CONCERNING,
15 discussing, referring, describing, analyzing, identifying, evidencing, or stating.

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17 analyzing, identifying, evidencing, containing, stating, or constituting.

18 E. “COFFEE-MATE” means the products identified in the Complaint, i.e., the line of coffee
19 creamer products under the Coffee-mate brand name, and shall further include any products subsequently
20 added to the Complaint by amendment.

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23 any kind by and/or through any means including, but not limited to speech, writings, language (computer,
24 foreign or otherwise), computer electronics of any kind (including, but not limited to “email”), magnetic
25 tape, videotape, photographs, graphs, symbols, signs, magnetic and/or optical disks, “floppy disks,”
26 compact discs, CD ROM discs, sound, radio and/or video signals, telecommunication, telephone,
27 teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types and/or other media of
28 any kind. The term “COMMUNICATION” also includes, without limitation, all “DOCUMENTS” (as
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1 I. "MEETING," "MEET," or "MET" means any assembly, convocation, encounter, or
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3 arranged or scheduled in advance during which a communication of any kind occurred and shall include,
4 but not be limited to, formal gatherings, conversations, video conferences, and telephone calls.

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6 product including, without limitation, advertising, locating and contacting prospective customers,
7 attempting to sell, making sales presentations, selling, preparing and submitting bids, shipping products,
8 servicing customers and the supervision and management of the same.

9 K. "LABEL" means a display of written, printed, or graphic matter upon the immediate
10 container of any article of COFFEE-MATE.

11 L. "LABELING" means all labels and other written, printed, or graphic matter (1) upon any
12 article of COFFEE-MATE or any of its containers or wrappers, or (2) accompanying such article of
13 COFFEE-MATE.

14 M. "CHALLENGED STATEMENT" means the words appearing on the COFFEE-MATES'
15 LABEL, LABELING or ADVERTISING that are identified in paragraphs 74-77 of the operative
16 complaint, specifically: "0g Trans Fat."

17 N. "PERFORMED SERVICES" means helping, assisting, managing, overseeing, supervising
18 directing, administrating, or generally bearing responsibility, for working on the specified subject matter
19 including but not limited to creating, drafting, analyzing, examining, studying, commenting or reporting
20 on, editing, altering, or modifying, managing, maintaining, inspecting, planning, evaluating, surveying, or
21 consulting.

22 O. "PHO" means partially hydrogenated oil(s).

23 P. The singular form of a word should be interpreted as plural wherever necessary to bring
24 within the scope of the request any information that might otherwise be construed outside its scope.

25 Q. The words "and" and "or" shall be construed either disjunctively or conjunctively
26 wherever necessary to bring within the scope of this request any information that might otherwise be
27 construed out of scope.

28 R. If and to the extent that YOU object to any request, state with specificity all grounds for
any such objection.

29 **II. INTERROGATORIES**

30 **INTERROGATORY NO. 1**

For each year of the CLASS PERIOD, state or estimate your unit sales of COFFEE-MATE in

1 California and the total revenue derived therefrom.

2 INTERROGATORY NO. 2

3 For each year of the CLASS PERIOD, state the average retail price of COFFEE-MATE.

4 DATED: November 15, 2018



5
6 **THE WESTON FIRM**
7 GREGORY S. WESTON
8 ANDREW C. HAMILTON
9 1405 Morena Blvd., Suite 201
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26
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28
Counsel for Plaintiff

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2 *greg@westonfirm.com*
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6 Facsimile: (619) 343-2789

7 **Counsel for Plaintiff**

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 v.

15
16 LUCKY STORES, INC., NESTLE USA,
17 INC., SAVE MART SUPER MARKETS,
18 THE KROGER COMPANY, and THE
SAVE MART COMPANIES, INC.,

19 Defendants.

Case No: CGC-18-570953

CERTIFICATE OF SERVICE

1 I am a citizen of the United States and a resident of the State of California. I am over the age of
2 eighteen years, and not a party to this action. My business address is The Weston Firm, 1405 Morena
3 Blvd., Suite 201, San Diego, CA 92110. On November 15, 2018, I served the documents described
4 below via First Class Mail:

- 5 1) PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION ADDRESSED TO LUCKY STORES, INC.;
- 6 2) PLAINTIFF'S FIRST SET OF INTERROGATORIES ADDRESSED TO LUCKY STORES, INC.;
- 7 3) PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION ADDRESSED TO SAVE MART SUPER
MARKETS;
- 8 4) PLAINTIFF'S FIRST SET OF INTERROGATORIES ADDRESSED TO SAVE MART SUPER MARKETS;
- 9 5) PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION ADDRESSED TO SAVE MART
COMPANIES, INC.; AND
- 6) PLAINTIFF'S FIRST SET OF INTERROGATORIES ADDRESSED TO SAVE MART COMPANIES, INC.

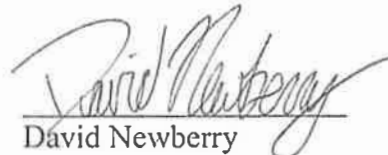
10 On the following parties:

11 Lucky Stores, Inc.
12 Save Mart Super Markets
13 Save Mart Companies, Inc.
14 c/o Cogency Global
1325 J Street, Suite 1550
Sacramento, CA 95814

15 Lucky Stores, Inc.
16 Save Mart Super Markets
17 Save Mart Companies, Inc.
18 c/o Dale Giali
Mayer Brown
19 350 South Grand Ave., 25th Floor
Los Angeles, CA 90071

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

22 Executed on November 15, 2018 in San Diego, California.

23
24 
25 David Newberry

1 **THE WESTON FIRM**
GREGORY S. WESTON (239944)
2 *greg@westonfirm.com*
ANDREW C. HAMILTON (299877)
3 *andrew@westonfirm.com*
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6 Facsimile: (619) 343-2789

7 **Counsel for Plaintiff**

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 MARK BEASLEY, on behalf of himself
and all others similarly situated,

13
14 Plaintiff,

15 v.

16 LUCKY STORES, INC., NESTLE USA,
17 INC., SAVE MART SUPER MARKETS,
18 THE KROGER COMPANY, and THE
SAVE MART COMPANIES, INC.,

19 Defendants.

Case No: CGC-18-570953

CERTIFICATE OF SERVICE

1 I am a citizen of the United States and a resident of the State of California. I am over the age of
2 eighteen years, and not a party to this action. My business address is The Weston Firm, 1405 Morena
3 Blvd., Suite 201, San Diego, CA 92110. On November 15, 2018, I served the documents described
4 below via First Class Mail:

- 5 1) PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION ADDRESSED TO NESTLE USA, INC.
6 AND
7 2) PLAINTIFF'S FIRST SET OF INTERROGATORIES ADDRESSED TO NESTLE USA, INC.

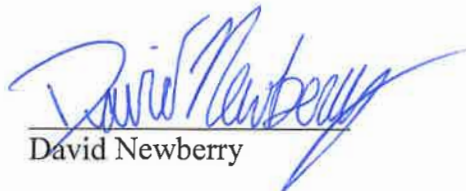
8 On the following party:

9 Dale Giali
10 Mayer Brown
11 350 South Grand Ave., 25th Floor
12 Los Angeles, CA 90071

13 **Counsel for Defendant Nestle USA, Inc.**

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

16 Executed on November 15, 2018 in San Diego, California.

17 
18 David Newberry

CIVIL COVER SHEET

JS 44 (Rev. 08/18)

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

MARK BEASLEY, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff State of California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
THE WESTON FIRM
1405 Morena Boulevard., Suite 201 / San Diego, CA 92110
Telephone: (619) 798-2006

DEFENDANTS

LUCKY STORES, INC., NESTLE USA, INC., SAVE MART SUPER MARKETS, THE KROGER COMPANY, and THE SAVE MART COMPANIES, INC.

County of Residence of First Listed Defendant Stanislaus County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
MAYER BROWN LLP
350 South Grand Avenue, 25th Floor / Los Angeles, CA 90071
Telephone: (213) 229-9500

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)

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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-Transfer
 - 8 Multidistrict Litigation - Direct File
- (Specify)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

1332, 1441, 1446, 1453

Brief description of cause:
Mislabeling of product

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

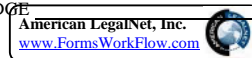
(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE November 26, 2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Dale J. Giali

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



1 MAYER BROWN LLP
2 CARMINE ZARLENGA (D.C. Bar No. 386244)
3 *czarlenga@mayerbrown.com*
4 1999 K Street, N.W.
5 Washington, D.C. 20006-1101
6 Telephone: (202) 263-3000
7 Facsimile: (202) 263-3300

8 DALE J. GIALI (SBN 150382)
9 *dgiali@mayerbrown.com*
10 KERI E. BORDERS (SBN 150382)
11 *kborders@mayerbrown.com*
12 350 South Grand Avenue, 25th Floor
13 Los Angeles, CA 90071-1503
14 Telephone: (213) 229-9500
15 Facsimile: (213) 625-0248

16 Attorneys for Defendant
17 NESTLE USA, INC.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 MARK BEASLEY, on behalf of himself and
21 all others similarly situated,

Case No. 18-07144

22 Plaintiff,

CERTIFICATE OF SERVICE

23 v.

24 LUCKY STORES, INC., NESTLE USA,
25 INC., SAVE MART SUPER MARKETS,
26 THE KROGER COMPANY, and THE SAVE
27 MART COMPANIES, INC.,

28 Defendants.

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CERTIFICATE OF SERVICE

I, Simoné Hernandez, declare:

I am employed in Mayer Brown LLP. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 S. Grand Ave., Suite 2500, Los Angeles, CA 90071.

On November 26, 2018, I served a copy of the following document(s):

- DEFENDANT NESTLE USA, INC.’S NOTICE TO PLAINTIFF OF FILING OF NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1332, 1441 1446, AND 1453;**
- DECLARATION OF DALE J. GIALI IN SUPPORT OF DEFENDANT NESTLE USA, INC.’S NOTICE OF REMOVAL;**
- CIVIL CASE COVER SHEET; AND**
- DEFENDANT NESTLÉ USA, INC.’S CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

by placing the document(s) listed above in a sealed UPS envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.

Gregory S. Weston
Andrew C. Hamilton
The Weston Firm
1405 Morena Blvd., Suite 201
San Diego, CA 92110
Telephone: (619) 798-2006
Facsimile (619) 343-2789
greg@westonfirm.com
andrew@westonfirm.com

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

Executed on November 26, 2018, at Los Angeles, California.



Simoné Hernandez

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nestlé, Grocers Hit with Class Action Over Allegedly PHO-, Trans Fat-Containing Coffee-mate Creamer \[UPDATE\]](#)
