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8
9 *Counsel for Ghirardelli Chocolate Company*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 LINDA CHESLOW and STEVEN
13 PRESCOTT, individually and on behalf of all
others similarly situated,

14 Plaintiffs,

15 v.

16 GHIRARDELLI CHOCOLATE COMPANY
and DOES 1 THROUGH 10, inclusive.

17 Defendants.
18

Case No. 3:19-cv-7467

**NOTICE OF REMOVAL BY
DEFENDANT GHIRARDELLI
CHOCOLATE COMPANY**

19 **NOTICE OF REMOVAL**

20 Defendant Ghirardelli Chocolate Company, through undersigned counsel, removes the
21 above-captioned action from the Superior Court for Sonoma County to the United States District
22 Court for the Northern District of California in accord with 28 U.S.C. §§ 1332(d), 1441, and 1446.

23 1. On September 19, 2019, plaintiffs Linda Cheslow and Steven Prescott sued
24 Ghirardelli and “DOES 1 through 10” in the Superior Court for Sonoma County.

25 2. In accord with 28 U.S.C. § 1446(a), attached as Exhibit 1 is a copy of “all process,
26 pleadings, and orders” served on Ghirardelli in this action.

27 3. In accord with 28 U.S.C. §1446(d), Ghirardelli will promptly serve this notice on
28 plaintiffs’ counsel and file a copy with the clerk of the Superior Court for Sonoma County.

1 4. On October 15, 2019, Ghirardelli executed a written acceptance of service by mail.
2 *See* Cal. Code. Civ. P. § 415.30 (“Service of a summons [by mail] is deemed complete on the date
3 a written acknowledgment of receipt of summons is executed.”).

4 5. Under 28 U.S.C. § 1446(b) and Rule 6, Federal Rules of Civil Procedure, this
5 removal is timely because Ghirardelli removed within 30 days of executing the written acceptance.
6 *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999) (clock for
7 removal not triggered by “mere receipt of the complaint unattended by any formal service”);
8 *Harper v. Little Caesar Enter., Inc.*, 2018 WL 5984841 (C.D. Cal. Nov. 14, 2018) (Staton, J.)
9 (collecting authority and explaining that the clock begins when the defendant executes acceptance
10 of service by mail).

11 6. The time for Ghirardelli to respond to the complaint has not yet expired.

12 7. Ghirardelli need not secure consent to removal from the “Doe” defendants. *See,*
13 *e.g., United Comp. Sys., Inc. v. AT&T Corp.*, 298 F.3d 756, 762 (9th Cir. 2002) (explaining that
14 the consent requirement “does not apply to” “unknown” or “fictitious” parties).

15 8. As the Supreme Court has explained, Congress enacted CAFA to ensure that federal
16 courts hear large class actions with interstate consequences. *See, e.g., Standard Fire Ins. Co. v.*
17 *Knowles*, 568 U.S. 588, 595 (2013). Where, as here, the amount in controversy exceeds \$5 million,
18 a defendant and at least one putative class member are diverse, and the proposed class exceeds 100
19 members, CAFA confers subject-matter jurisdiction. 28 U.S.C. § 1332(d).

20 9. The removing party need only provide a “short and plain statement of the grounds
21 for removal” and need not submit evidence unless and until the opposing party challenges the
22 factual allegations in the notice of removal. *See generally Dart Cherokee Basin Operating Co. v.*
23 *Owens*, 135 S. Ct. 547 (2014); *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir.
24 2019).

VENUE

25 10. Under 28 U.S.C. §§ 84(a) and 1441(a), venue is proper in the United States
26 District Court for the Northern District of California because this Court embraces the Superior
27 Court for Sonoma County, where this action was pending.
28

BRIEF OVERVIEW OF THE PLAINTIFFS’ ALLEGATIONS

1
2 11. In this putative class action under the UCL, CLRA, and FAL, the plaintiffs claim
3 that Ghirardelli “affirmatively misrepresented” the “nature and characteristics” of Ghirardelli’s
4 Classic White baking chips. *E.g.*, Compl. ¶ 33.

5 12. The plaintiffs claim that Ghirardelli deceptively advertised that the Classic White
6 chips contain “white chocolate” when in fact the Classic White chips allegedly “do[] not contain
7 any white chocolate. It is fake white chocolate.” Compl. ¶ 4.

8 13. The plaintiffs incorporate into the complaint (¶ 4) the front of the Classic White
9 chips package and suggest that the package falsely advertises that the “Classic White” chips
10 contain white chocolate. (In fact, the word “chocolate” appears nowhere on the photo incorporated
11 into the plaintiffs’ complaint.)

12 14. In addition to claiming that Ghirardelli falsely advertised that the Classic White
13 chips contain white chocolate, the plaintiffs protest the product’s use of the word “premium.”
14 According to the plaintiffs, the word “premium” misleads consumers “into thinking that the
15 [p]roduct contains premium ingredients, not fake white chocolate.” Compl. ¶ 6. The plaintiffs
16 claim that “[r]easonable consumers do not expect the [p]roduct to include fake white chocolate
17 made of inferior—not premium—ingredients like hydrogenated and palm oils.” Compl. ¶ 7.

18 15. On behalf of themselves and a putative class comprising “[a]ll persons who
19 purchased the [p]roduct in the United States or, alternatively, in California for personal
20 consumption and not for resale” from September 19, 2015 “through the present,” Cheslow and
21 Prescott sue under the UCL, FAL, and CLRA.

22 16. The plaintiffs request for themselves and the putative class restitution, an
23 attorney’s fee and costs, and an injunction. Prayer for Relief §§ A-C.

24 **THE PROPOSED CLASS EXCEEDS 100 MEMBERS**

25 17. The plaintiffs sue on behalf of a nationwide class of consumers who bought the
26 Classic White chips between September 19, 2015 and the present. Nationwide retailers, such as
27 Whole Foods, Albertson’s, and Safeway, sell the Classic White chips in at least hundreds of
28

1 stores across the United States. Without more, these facts compel concluding that more than 100
2 putative class members bought the Classic White chips.

3 18. Also, the plaintiffs allege that “the [c]lass is comprised of millions of consumers
4 throughout the United States...” Compl. ¶ 46; *see also, e.g., Roppo v. Travelers Comm. Ins. Co.*,
5 869 F.3d 568, 581 (7th Cir. 2017) (“[A defendant] may rely on the estimate of the class number
6 set forth in the complaint.”). Common sense and the plaintiffs’ allegations independently satisfy
7 the requirement to show that the putative class likely exceeds 100 members.

8 **GHIRARDELLI IS DIVERSE FROM AT LEAST ONE PUTATIVE CLASS MEMBER**

9 19. Relaxing the complete-diversity requirement, CAFA permits removal if the
10 parties are minimally diverse, that is, if the citizenship of at least one putative class member
11 differs from the citizenship of at least one defendant. 28 U.S.C. § 1332(d)(2)(A); *Dart*, 135 S. Ct.
12 at 552.

13 20. Ghirardelli Chocolate Company is a California corporation with its principal
14 place of business in California. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010)
15 (explaining what constitutes a corporation’s principal place of business). Under 28 U.S.C.
16 § 1332(c)(1), Ghirardelli Chocolate Company is a citizen of California.

17 21. The plaintiffs sue on behalf of a nationwide putative class that comprises
18 “millions of consumers throughout the United States.” Compl. ¶ 46; *accord* Compl. ¶ 45
19 (defining the class to include “[a]ll persons who purchased the [p]roduct in the United States or,
20 alternatively, in California” from September 19, 2015 to the present).

21 22. Common sense readily confirms that a putative class of consumers who bought
22 the Classic White chips throughout the United States between September 19, 2015 and the
23 present necessarily includes at least one citizen of a state other than California (and likely
24 hundreds of thousands of citizens from states other than California). *See Roe v. Michelin N. Am.*,
25 *Inc.*, 613 F.3d 1058, 1062 (11th Cir. 2010) (“[C]ourts may use...common sense in determining
26 whether the case stated in the complaint meets federal jurisdiction requirements.”); *Rosas v.*
27 *Carnegie Mortg., LLC*, 2012 WL 1865480 at *5 (C.D. Cal. May 21, 2012) (“Because the
28 complaint alleges a nationwide class, minimal diversity necessarily exists.”) (internal quotation

1 omitted); *Arias*, 936 F.3d at 922 (explaining that the invocation of CAFA jurisdiction may rely
2 on “reasonable assumptions”).

3 23. Because Ghirardelli is a citizen of California and because at least one putative
4 member of the putative nationwide class is a citizen of a state other than California, the parties
5 are at least minimally diverse.

6 **THE AGGREGATE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

7 24. The amount in controversy “is simply an estimate of the total amount in dispute,
8 not a prospective assessment of the defendant’s liability.” *Lewis v. Verizon Comms., Inc.*,
9 627 F.3d 395, 400 (9th Cir. 2010).

10 25. Under CAFA, determining if the amount in controversy exceeds \$5 million
11 requires aggregating the claims of the putative class members. 28 U.S.C. § 1332(d)(6).

12 26. In this action, the aggregate amount in controversy from the plaintiffs’ putative
13 nationwide class allegations far exceeds \$5 million, excluding costs and interest.

14 27. The plaintiffs allege that Ghirardelli “has sold millions of units or more of the
15 [p]roduct.” Compl. ¶ 44.

16 28. Between September 19, 2015 and the present, Ghirardelli earned more than \$5
17 million in gross revenue nationwide from the sale of the Classic White chips.

18 29. The amount paid by Cheslow and Prescott (and the putative class) likely exceeds
19 Ghirardelli’s gross receipts from wholesale distribution because the plaintiffs bought the Classic
20 White chips at retailers, which sell the product for more than the wholesale cost. *See, e.g.*,
21 Compl. ¶¶ 26-27 (alleging that the plaintiffs each bought the Classic White chips at Target).

22 30. The plaintiffs request restitution and claim that they “would not have purchased the
23 Product but for the representations by Defendant about the product.” *E.g.*, Compl. ¶ 51.

24 31. In addition to claiming that they would not have purchased the Classic White
25 chips but for the alleged misrepresentations, the plaintiffs imply that consumers who bought the
26 Classic White chips for baking received no benefit from the product because it “does not melt
27 like chocolate.” *E.g.* Compl. ¶¶ 11-16.

28

1 32. Under either theory (that the plaintiffs would not have bought the Classic White
2 chips but for the alleged misrepresentations or that consumers received no benefit from the
3 Classic White chips because they failed to “melt like chocolate”), the plaintiffs may claim that
4 damages include the purchase price. *See, e.g., Spann v. J.C. Penney Corp.*, 2015 WL 1526559 at
5 *6 (C.D. Cal. Mar. 23, 2015) (finding “complete restitution” of the purchase price a viable
6 measure of damages where the plaintiff showed that “every dollar she spent was as a result of
7 [the defendant’s] alleged false advertising”); *Allen v. Hyland’s Inc.*, 300 F.R.D. 643, 671 (C.D.
8 Cal. Aug. 1, 2014) (plaintiffs might recover “full restitution” because the products were allegedly
9 “ineffective”).

10 33. As a result, the amount in controversy just from the plaintiffs’ request for
11 restitution on behalf of themselves and the proposed nationwide class exceeds \$5 million.

12 34. Also, the attorney’s fee contributes to the amount in controversy. The amount in
13 controversy at the time of removal includes not just the attorney’s fee incurred before removal
14 but also the attorney’s fee the plaintiffs might incur in the future. *Fritsch*, 899 F.3d at 792-96.

15 35. In accord with the CLRA and the FAL, the plaintiffs request an attorney’s fee.
16 Prayer for Relief § C.

17 36. By itself, the attorney’s fee the plaintiffs might incur litigating this action in the
18 future exceeds \$5 million. Ghirardelli denies that the label and advertising of its Classic White
19 chips, which truthfully disclose the content of the product in accord with federal food-labeling
20 law, could have misled the plaintiffs. The complaint warrants dismissal for failure to state a
21 claim, but if an order finds that the complaint states a claim, Ghirardelli intends to move for
22 summary judgment at the appropriate time and, if necessary, to try the action. The plaintiffs will
23 incur a significant attorney’s fee litigating this action, attempting to defeat summary judgment,
24 and trying this action (in the unlikely event an order denies summary judgment).

25 37. The judiciary can rely on its experience in evaluating the amount in controversy,
26 and judicial experience readily confirms that plaintiffs’ counsels often incur or request an
27 attorney’s fee in the millions of dollars for litigating similar class actions. *See, e.g., Fritsch*, 899
28 F.3d at 795 (citing *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (explaining that the

1 amount in controversy includes the prospective attorney’s fee); *Roe*, 613 F.3d at 1062 (“[C]ourts
2 may use their judicial experience and common sense in determining whether the case stated in
3 the complaint meets federal jurisdiction requirements.”).

4 38. Together, the amount at stake in this putative nationwide class action for
5 restitution, damages, an injunction, and an attorney’s fee far exceeds \$5 million.

6 **CONCLUSION**

7 39. Because the amount in controversy exceeds \$5 million, because Ghirardelli’s
8 citizenship differs from at least one member of the putative nationwide class, and because the
9 proposed class exceeds 100 members, CAFA confers subject-matter jurisdiction.

10 40. If any question arises about the propriety of removal, Ghirardelli requests an
11 opportunity to submit briefing and present oral argument in support of removal before an order
12 resolves the question.

13 41. Nothing about this removal waives (or should be construed to waive) any available
14 right, argument, or objection.

15 42. Ghirardelli respectfully reserves the right to amend or supplement this notice.
16

17 DATED: November 13, 2019

MAYER BROWN LLP
DALE J. GIALI

18
19
20 By: /s/ Dale J. Giali
 Dale J. Giali

21 *Counsel for Ghirardelli Chocolate Company*
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Exhibit 1

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
9/19/2019 2:40 PM

Arlene D. Junior, Clerk of the Court
By: Diane Cheney, Deputy Clerk

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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOMONA

LINDA CHESLOW and STEVEN PRESCOTT,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
and DOES 1 through 10, inclusive,

Defendants.

Case No. SCV-265203

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
3. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. Seq.*

DEMAND FOR JURY TRIAL

Plaintiffs Linda Cheslow and Steven Prescott (“Plaintiffs”), individually and on behalf of all other similarly situated purchasers (the “Class”) of Ghirardelli’s Premium Baking Chips Classic White Chips (the “Product”) bring this class action against Ghirardelli Chocolate Company (“Ghirardelli” or “Defendant”) and Does 1 through 10, inclusive (collectively, “Defendants”), and allege as follows.

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SUMMARY OF THE ACTION

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2 1. Ghirardelli, a company synonymous with chocolate, sells fake white chocolate
3 baking chips and tries to pass them off as white chocolate.

4 2. Ghirardelli is a multi-billion-dollar company¹ and a highly visible competitor in the
5 global chocolate market. In 2018, Ghirardelli generated \$4.4 billion dollars worldwide and \$1.7
6 billion in North America.

7 3. According to its 2018 Annual Shareholder Report, Ghirardelli is the number one
8 premium brand of chocolate in the United States.

9 4. Ghirardelli’s profits are attributable, in part, to its deceptive labeling and advertising
10 of its purported white chocolate product called Ghirardelli Premium Baking Chips Classic White
11 Chips.² In reality, the Product does not contain *any* white chocolate. It is fake white chocolate.



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20 5. Upon information and belief, Ghirardelli used to sell real white chocolate baking
21 chips in the recent past. Ghirardelli used actual white chocolate to develop a loyal consumer base
22 of the Product and propel the company to the self-described #1 premium chocolate brand in the
23 U.S. But at some point, Ghirardelli pulled a classic “bait and switch,” covertly swapping out its
24 real white chocolate for fake white chocolate.

25
26 ¹ See Ghirardelli’s Annual Report to Stockholders and Other Reports, https://www.lindt-spruengli.com/fileadmin/user_upload/corporate/WEB_GB18_Gesamt_en_low.pdf (last visited August 26, 2019).

27 ² See screenshots from Defendant’s official website, <https://www.ghirardelli.com/classic-white-baking-chips-%2812-ct---11-oz-ea%29-61065cs> (last visited August 26, 2019).

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1 6. The Product packaging and official website advertises the Product as “Classic White”
2 “Premium Baking Chips” which, together with Ghirardelli’s other advertising and business
3 practices, misleads reasonable consumers into thinking that the Product contains premium
4 ingredients, not fake white chocolate. “Premium” is defined as “of exceptional quality or amount.”³

5 7. Reasonable consumers do not expect the Product to include fake white chocolate
6 made of inferior—not premium—ingredients like hydrogenated and palm oils. Ghirardelli
7 Chocolate Company is synonymous with chocolate, as it is the self-described #1 premium
8 chocolate brand in the U.S.

9 8. Ghirardelli manufactures other chocolate varieties of the Product, which it sells
10 alongside its fake white chocolate Product at retail outlets throughout California and the United
11 States. Ghirardelli labels these other products by type of chocolate: “milk chocolate,” “bittersweet
12 chocolate,” and “semi-sweet.” Therefore, the “white” in “white baking chips” deceives reasonable
13 consumers into thinking it represents the type of chocolate in the Product, *white* chocolate. True
14 and correct representations of some of Defendant’s other versions of the Product within the same
15 line of products⁴ are depicted below.



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25 ³ *Premium*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/premium>
(last visited on August 26, 2019).

26 ⁴ There are six versions of the Product within the same line of products, including the Product:
27 Milk Chocolate, Bittersweet Chocolate, Semi-Sweet Chocolate, Classic White, Grand Chips Semi-
28 Sweet Chocolate, and Semi-Sweet Chocolate Mini.

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9. Consumers reasonably and detrimentally rely on Ghirardelli’s representations of the Products as real chocolate, not fake chocolate, in making their purchase decisions.

10. Ghirardelli is aware that reasonable consumers are misled into believing the Product contains real white chocolate but refuses to make any labeling and advertising changes, such as labeling its Product “Vanilla Flavored Chips,” or “Vanilla Chips,” or “Does not contain chocolate,” or “not white chocolate,” or the like, to dispel the consumer deception.

11. In fact, consumers have complained about the Product on numerous consumer protection and retailer websites, such as Amazon.com, stating, “Because of Ghirardelli’s reputation, I didn’t look at the ingredient list when I purchased the white chips; this was a big

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1 mistake. There is no cocoa butter in them, and I was disgusted by the end product. I wasted over
 2 \$50 and hours of my time using this in a product that I was giving as a holiday gift. Needless to
 3 say, I threw the end product away [...].” True and correct screenshots of the consumer reviews of
 4 the Product on the third party website Amazon.com are depicted below in Figure 1.

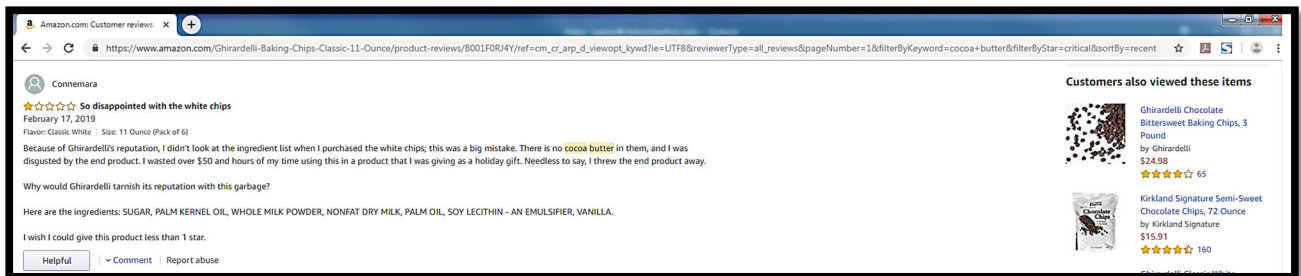
5 12. Another consumer complained that the Product is “Not white chocolate. ... [T]hey
 6 are made from Palm Kernel oil, not cocoa butter. They are not white chocolate and they do not taste
 7 like white chocolate.” See Figure 1, *infra*.

8 13. Yet another consumer complained, “They don’t show you the ingredient list because
 9 there is no chocolate in them.” See Figure 1, *infra*.

10 14. The Product misrepresents it contains white chocolate, as a consumer complained,
 11 “There is no cocoa butter in this product.” See Figure 1, *infra*.

12 **Figure 1-3:** Screenshots below taken from Amazon.com revealing that consumers are
 13 misled by Ghirardelli’s labeling and advertising of the Product to think that the Product contains
 14 white chocolate when it does not.

15 **Figure 1.**



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21 **Figure 2.**

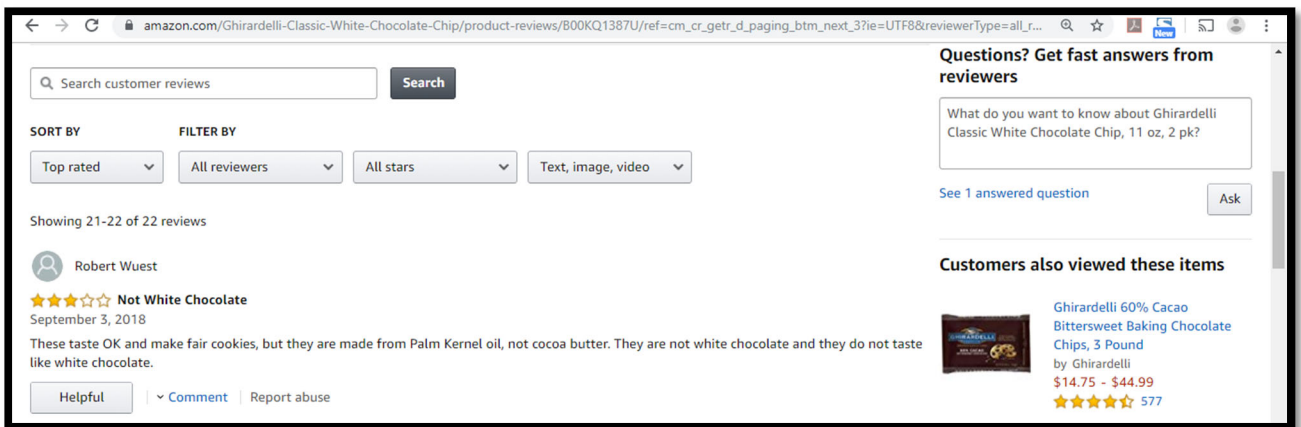
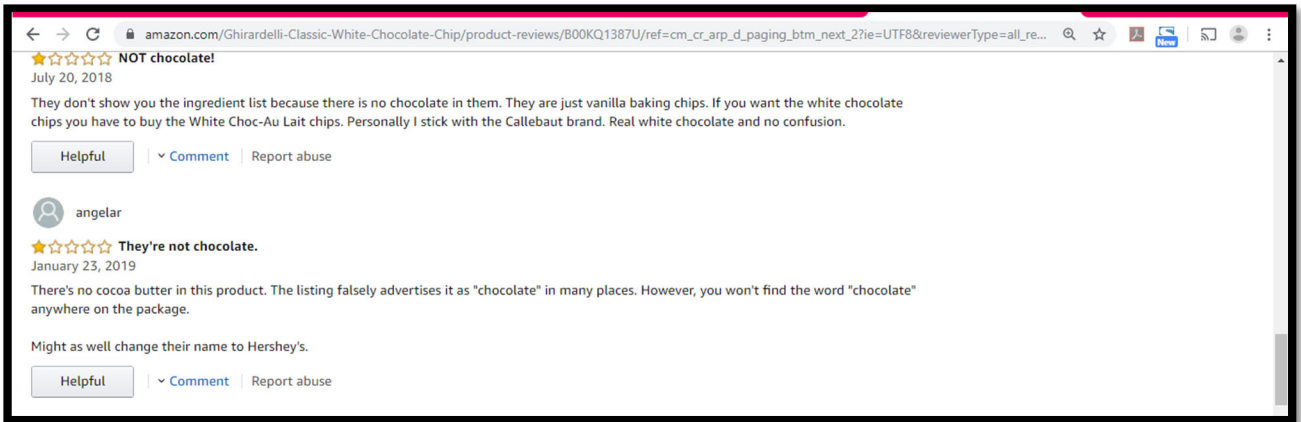


Figure 3.



15. Most consumers purchase the Product to bake with, as Plaintiffs did. Defendant advertises on its official website, as well on the Product packaging, baking recipes that require the use of the Product. However, because the Product does not contain white chocolate, it does not melt like chocolate. Yet, the Product’s deceptive labeling and advertising leads reasonable consumers to believe that the Product is white chocolate and should therefore melt during baking. Thus, consumers are surprised when the Product does not melt. True and correct representations of the consumer reviews of the Product not melting as expected are depicted in Figures 4-5 below.

16. In fact, Defendant advertises on its Product packaging that the Product will “[e]levate your baking from great to extraordinary with our top quality, premium ingredients to create a rich, smooth flavor and silky texture. [B]ake to impress.” There is nothing “premium” about fake white chocolate and consumers cannot “bake to impress” because the Product does not contain, let alone taste or melt like, white chocolate.

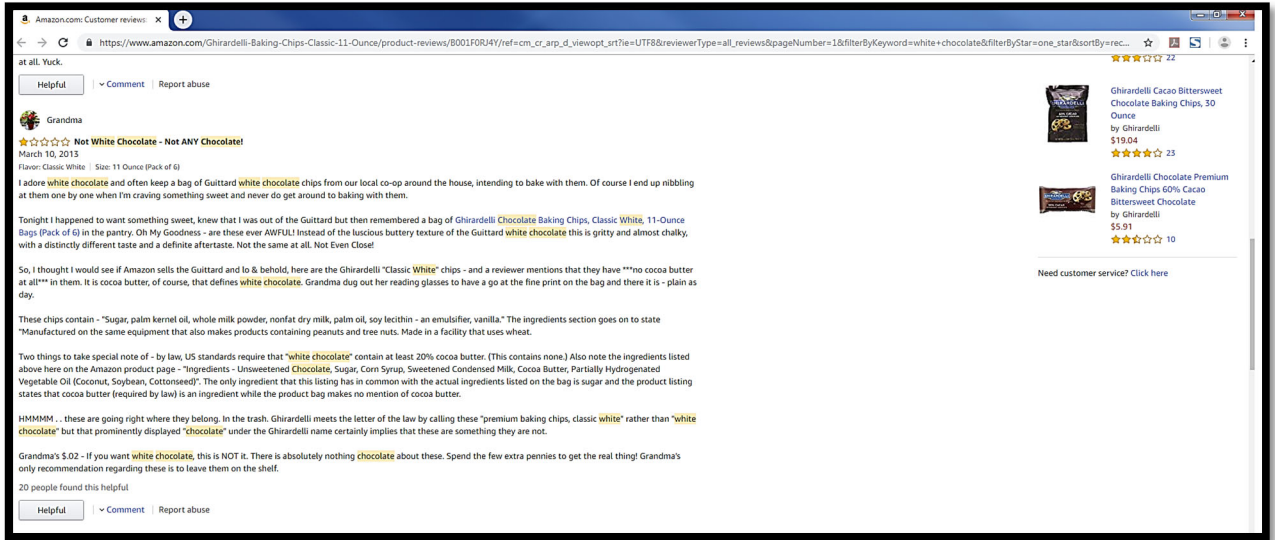
17. For example, one consumer complained, “...I cooked the white chocolate in a double boiler for 20 minutes, without any result, the chips turned into a mush the consistency of cream cheese, but wouldn’t melt further. I have now learned that these chips aren’t chocolate at all, it was such a waste of money!” See Figure 4, *infra*.

18. Another consumer complained, “...They don’t melt worth a darn, so don’t try using them for dipping. I’m very unsatisfied!” See Figure 5, *infra*.

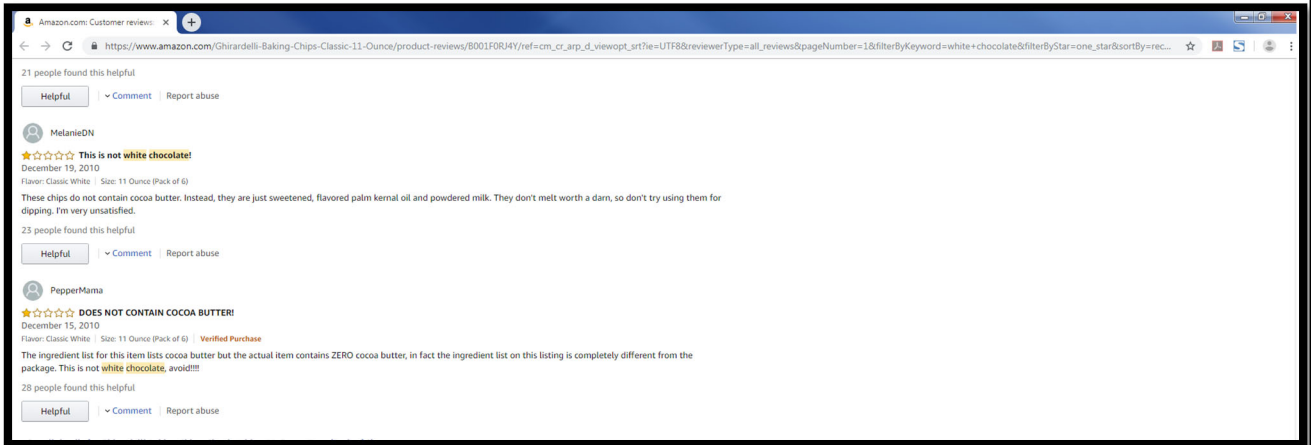
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1 **Figure 4-5:** Screenshots below taken from Amazon.com revealing that consumers are
2 misled by Ghirardelli’s labeling and advertising of the Product as containing white chocolate and
3 are therefore surprised when the Product does not melt as expected from white chocolate.

4 **Figure 4.**



14 **Figure 5.**



23 19. The Product is labeled “white” and advertised as “Premium Classic White,” on
24 Defendant’s official website, point of purchase display, and is offered for sale side-by-side with
25 Defendant’s milk chocolate and semi-sweet chocolate baking chips. Taken as a whole, the
26 Product’s labeling and advertising misleads reasonable consumers into believing it contains white
27 chocolate, not fake chocolate.

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20. Plaintiffs seek injunctive relief and restitution against Defendant for false and misleading advertising in violation of Business and Professions Code Section 17200, *et seq.*, Business and Professions Code Section 17500, *et seq.*, and Civil Code Section 1750, *et seq.* Defendant made and continues to make these false and misleading statements in its labeling and advertising of the Product. Compliance with remedial statutes like those underlying this lawsuit will benefit Plaintiffs, the putative class, consumers, and the general public.

21. The false and misleading labeling and advertising of the Product violates the California Consumers Legal Remedies Act, particularly California Civil Code Sections 1770(a)(5), 1770(a)(7), and 1770(a)(9). As such, Defendant has committed *per se* violations of Business and Professions Code Section 17200, *et seq.*, and Business and Professions Code Section 17500.

22. On June 12, 2019, the putative class provided Defendant with notice of these violations via certified U.S. mail pursuant to Civil Code Section 1750, *et seq.*

JURISDICTION AND VENUE

23. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10, because this case is a cause not given by statute to other trial courts. Plaintiffs have standing to bring this action pursuant to Business and Professions Code Section 17200, *et seq.*

24. Venue is proper in this Court because Plaintiff Cheslow purchased the Product in Sonoma County; Defendant receives substantial compensation from sales in Sonoma County; and Defendant made numerous misrepresentations which had a substantial effect in Sonoma County, including, but not limited to, label, point of purchase displays, and internet advertisements.

25. Defendant is subject to personal jurisdiction in California based upon sufficient minimum contacts which exist between Defendants and California. Defendants are authorized to do and doing business in California.

///
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PARTIES

1
2 26. Plaintiff Cheslow is an individual residing in Santa Rosa, California. Plaintiff
3 purchased the Product in California within the last four (4) years of the filing of this Complaint.
4 Specifically, Plaintiff Cheslow purchased the Product in or around December 2018 at a Target store
5 located at 950 Coddington Center in Santa Rosa, California. In making her purchase decision,
6 Plaintiff Cheslow relied upon the labeling and advertising of the Product, which she reasonably
7 believed to be “white chocolate,” not fake white chocolate.

8 27. Plaintiff Prescott is an individual residing in Santa Cruz, California. Plaintiff Prescott
9 purchased the Product in California within the last four (4) years of the filing of this Complaint.
10 Specifically, Plaintiff Prescott purchased the Product in late 2018 or early 2019 at a Target store
11 located at 1825 41st Avenue in Capitola, California. In making his purchase decision, Plaintiff
12 Prescott relied upon the labeling and advertising of the Product, which he reasonably believed to
13 be “white chocolate,” not fake white chocolate.

14 28. The labeling and advertising of the Product were prepared and approved by
15 Defendant and its agents and disseminated through its packaging, label, and national advertising
16 media, containing the misrepresentations alleged herein and designed to encourage consumers to
17 purchase the Product. Plaintiffs purchased the Product in reasonable and detrimental reliance upon
18 these “white chocolate” misrepresentations. Had Plaintiffs known the Product was not white
19 chocolate, they would not have purchased the Product. Plaintiffs would purchase the Product again
20 in the future if they could be sure that the Product was white chocolate or if Defendant dispelled
21 any confusion that the Product does not contain white chocolate in its labeling, packaging, and
22 advertising of the Product.

23 29. Ghirardelli Chocolate Company is a corporation headquartered in California.
24 Ghirardelli maintains its principal place of business at 1111 139th Avenue, San Leandro, California
25 94578. Ghirardelli offers the Products for sale at stores and retailers as well as through the internet,
26 throughout the nation, including the State of California. Ghirardelli, directly and through its agents,
27 has substantial contacts with and receives substantial benefits and income from and through the
28

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1 State of California. Ghirardelli is one of the owners and distributors of the Product and is the
2 company that created and/or authorized the false, misleading, and deceptive advertisements and
3 packaging for the Product.

4 30. The true names and capacities, whether individual, corporate, associate, or otherwise
5 of certain manufacturers, distributors, and/or their alter egos sued herein as DOES 1 through 10
6 inclusive are presently unknown to Plaintiffs who therefore sue these Defendants by fictitious
7 names. Plaintiffs will seek leave of this Court to amend the Complaint to show their true names
8 and capacities when the same have been ascertained. Plaintiffs are informed and believe and based
9 thereon allege that DOES 1 through 10 were authorized to do and did business in Sonoma County.
10 Plaintiffs are further informed and believe and based thereon allege that DOES 1 through 10 were
11 and/or are, in some manner or way, responsible for and liable to Plaintiffs for the unfair business
12 practices set forth herein.

13 31. Plaintiffs are informed and believe and based thereon allege that at all times relevant
14 herein each of the Defendants was the agent, servant, employee, subsidiary, affiliate, partner,
15 assignee, successor-in-interest, alter ego, or other representative of each of the remaining
16 Defendants and was acting in such capacity in doing the things herein complained of and alleged.

17 32. In committing the wrongful acts alleged herein, Defendants planned and participated
18 in and furthered a common scheme by means of false, misleading, deceptive, and fraudulent
19 representations to induce members of the public to purchase the Product. Defendants participated
20 in the making of such representations in that each did disseminate or cause to be disseminated said
21 misrepresentations.

22 33. Defendants, upon becoming involved with the manufacture, distribution, advertising,
23 labeling, marketing, and sale of the Product, knew or should have known that the claims about the
24 Product and, in particular, the claims suggesting that the Product is white chocolate when it is not.
25 Defendants affirmatively misrepresented the nature and characteristics of the Product in order to
26 convince the public to purchase and consume the Product, resulting in, upon information and belief,
27 profits of millions of dollars or more to Defendants, all to the detriment of the consuming public.

1 Thus, in addition to the wrongful conduct herein alleged as giving rise to primary liability,
2 Defendants further aided and abetted and knowingly assisted each other in breach of their respective
3 duties and obligations as herein alleged.

4 **FACTS AND DEFENDANTS' COURSE OF CONDUCT**

5 34. Defendant's labeling, advertising, marketing, and packaging of the Product as
6 containing white chocolate is false, misleading, and deceptive because the Product does not contain
7 any white chocolate. Accordingly, reasonable consumers are consistently misled into paying for
8 the Product without knowing that it is devoid of white chocolate.

9 35. The Food and Drug Administration ("FDA") has issued regulations defining "white
10 chocolate," and those regulations have been adopted by the State of California as part of the
11 Sherman Food, Drug, and Cosmetic Law, California Health and Safety Code § 109875, *et seq.*
12 Specifically, the FDA defines white chocolate as follows:

13 (1) White chocolate is the solid or semi plastic food prepared by intimately mixing and
14 grinding cacao fat with one or more of the optional dairy ingredients specified in
15 paragraph (b)(2) of this section and one or more optional nutritive carbohydrate
16 sweeteners and may contain one or more of the other optional ingredients specified in
17 paragraph (b) of this section. White chocolate shall be free of coloring material. (2)
18 White chocolate contains not less than 20 percent by weight of cacao fat... The finished
19 white chocolate contains not less than 3 .5 percent by weight of milkfat...

20 Title 21 Code of Federal Regulations Section 163.124.

21 36. One of the reasons the FDA established the foregoing standard of identity for white
22 chocolate was due in part to "[r]educing economic deception and promoting honesty and fair
23 dealing in the interest of consumers."⁵ Yet, Defendant has done the opposite here by misleading
24 unsuspecting consumers about the purported presence of white chocolate in its Product.

25 37. Plaintiffs are not alleging non-compliance with the FDCA or the FDA's standard of
26 identity for white chocolate; Plaintiffs are alleging that Defendant misrepresents the Product as
27 white chocolate when it is not.

28 ///

⁵ See, *White Chocolate; Establishment of a Standard of Identity* (October 4, 2002), Federal Register: The Daily Journal of the United States Government, <https://www.federalregister.gov/d/02-25252/p-7> (last visited August 26, 2019).

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1 38. The Product does not contain any white chocolate, cocoa butter, cocoa fat, or other
2 cocoa derivative as required by the FDA. Instead, the Product contains: Sugar, Palm Kernel Oil,
3 Whole Milk Powder, Nonfat Dry Milk, Palm Oil, Soy Lecithin, and Vanilla Extract. Despite the
4 foregoing, the Product is advertised as if it contains white chocolate.

5 39. Plaintiffs and reasonable consumers reasonably believed the Product contains white
6 chocolate based on the labeling, advertising, and marketing of the Product. Also, there are other
7 versions of the Product within the same line of products, such as milk chocolate, semi-sweet
8 chocolate, and bittersweet chocolate, which are displayed for sale directly adjacent to the Product,
9 thereby further adding to the deception that the Product is white chocolate.

10 40. The Product is marketed and sold at retail stores throughout California and the United
11 States.

12 41. In addition to the packaging and labeling of the Products, Defendant's official
13 website (<https://www.ghirardelli.com/>) misleads consumers to believe that the Product contains
14 white chocolate.

15 42. After receiving statutory notice of these claims on June 12, 2019, Ghirardelli
16 implemented advertising changes on its official website in regards to the Product. The screenshots
17 that appear herein were included in said June 12 letter and show what the website looked like prior
18 to Defendant receiving statutory notice and making subsequent changes.

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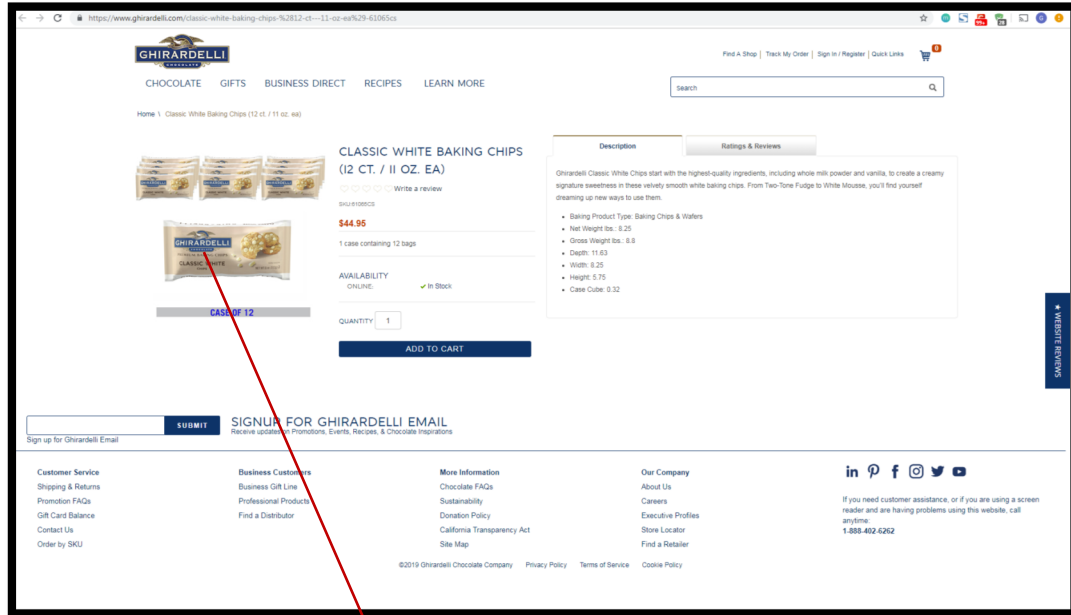
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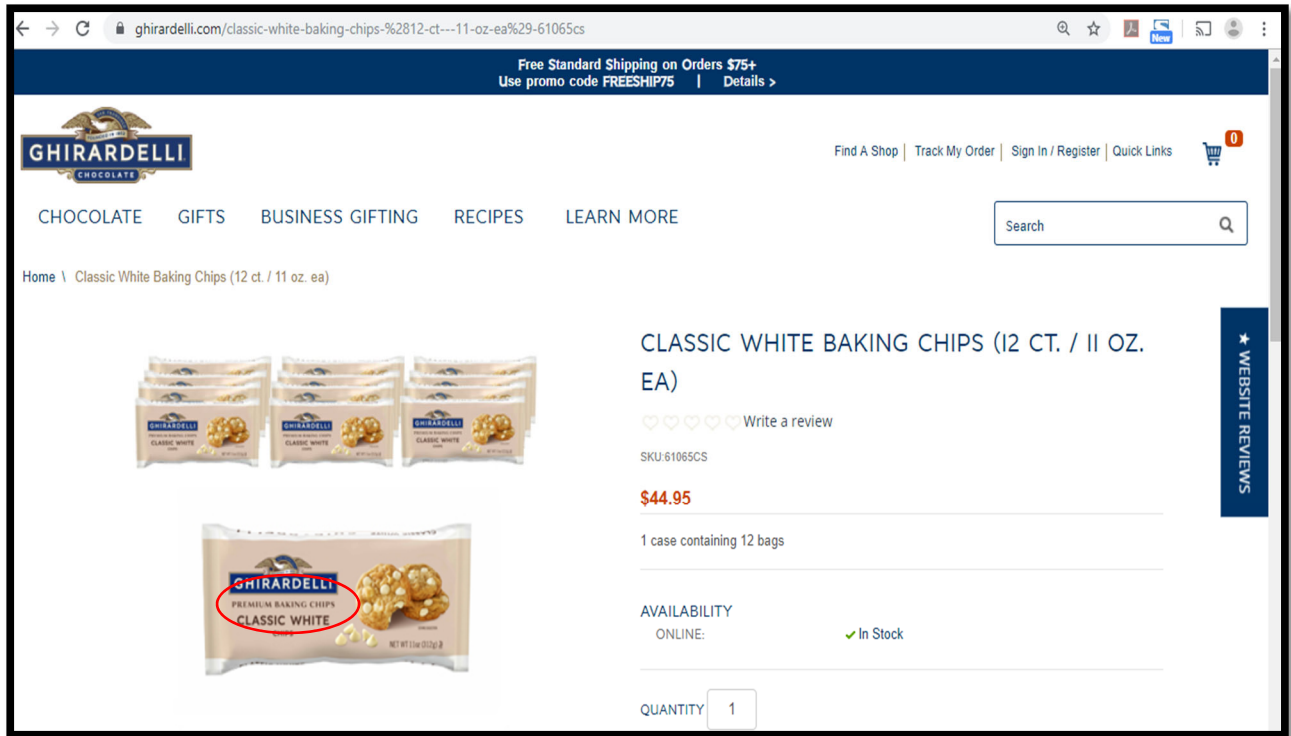
1 **Figure 3:** Screenshot below of Defendant’s official website taken June 12, 2019 depicts the
2 word “chocolate” on the Product packaging (circled in red).



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Figure 4: Screenshot below of Defendant’s official website taken September 5, 2019 reveals that the word “chocolate” on the Product packaging has been removed (circled in red).



43. When purchasing the Product, Plaintiffs relied upon the label “white” and “Premium White” and “Classic White” as well as the overall labeling, advertising, and marketing of the Product as white chocolate, and was led to reasonably believe based on the foregoing, that the Product contains white chocolate. Had Plaintiffs known the Product did not contain white chocolate, then they would not have purchased it. However, if the Product were to actually contain white chocolate or Defendant would dispel the deception that the Product does not contain white chocolate in its labeling, packaging, and advertising, Plaintiffs would repurchase it in the future.

44. Upon information and belief, during the course of its false, misleading, and deceptive labeling and advertising campaign, Defendant has sold millions of units or more of the Product based upon Defendant’s false promises. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant’s false representations.

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CLASS ACTION ALLEGATIONS

1
2 45. Plaintiff brings this action on her own behalf and on behalf of all other persons
3 similarly situated. The Class which Plaintiff seeks to represent comprises:

4 “All persons who purchased the Product in the United States or,
5 alternatively, in California, for personal consumption and not for
6 resale during the time period of four years prior to the filing of the
7 complaint through the present.”

8 Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a
9 class certification hearing, and orders of this Court.

10 46. The Class is comprised of millions of consumers throughout United States and/or
11 State of California. The Class is so numerous that joinder of all members is impracticable and the
12 disposition of their claims in a class action will benefit the parties and the Court.

13 47. There is a well-defined community of interest in the questions of law and fact
14 involved affecting the parties to be represented in that the Class was exposed to the same common
15 and uniform false and misleading advertising and omissions. The questions of law and fact common
16 to the Class predominate over questions which may affect individual Class members. Common
17 questions of law and fact include, but are not limited to, the following:

- 18 a. Whether Defendant’s conduct is an unlawful business act or practice within the
19 meaning of Business and Professions Code section 17200, *et seq.*;
- 20 b. Whether Defendant’s conduct is a fraudulent business act or practice within the
21 meaning of Business and Professions Code section 17200, *et seq.*;
- 22 c. Whether Defendant’s conduct is an unfair business act or practice within the meaning
23 of Business and Professions Code section 17200, *et seq.*;
- 24 d. Whether Defendant’s advertising is untrue or misleading within the meaning of
25 Business and Professions Code section 17500, *et seq.*;
- 26 e. Whether Defendant made false and misleading representations in its advertising and
27 labeling of the Product;

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1 f. Whether Defendant knew or should have known that the representations were false;
2 and,

3 g. Whether Defendant represented that the Products have characteristics, benefits,
4 uses, or quantities which they do not have.

5 48. Plaintiff's claims are typical of the claims of the proposed Class, as the
6 representations and omissions made by Defendant are uniform and consistent and are contained in
7 advertisements and on packaging that was seen and relied on by Plaintiffs and members of the
8 Class.

9 49. Plaintiffs will fairly and adequately represent and protect the interests of the proposed
10 Class. Plaintiffs have retained competent and experienced counsel in class action and other
11 complex litigation.

12 50. Plaintiffs and the Class have suffered injury in fact and lost money as a result of
13 Defendant's false, deceptive, and misleading representations.

14 51. Plaintiffs would not have purchased the Product but for the representations by
15 Defendant about the Product.

16 52. The Class is identifiable and readily ascertainable. Notice can be provided to such
17 purchasers using techniques and a form of notice similar to those customarily used in class actions,
18 and by internet publication, radio, newspapers, and magazines.

19 53. A class action is superior to other available methods for fair and efficient adjudication
20 of this controversy. The expense and burden of individual litigation would make it impracticable
21 or impossible for proposed members of the Class to prosecute their claims individually.

22 54. The trial and the litigation of Plaintiffs' claims are manageable.

23 55. Defendant has acted on grounds generally applicable to the entire Class, thereby
24 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to
25 the Class as a whole. The prosecution of separate actions by individual Class members would create
26 the risk of inconsistent or varying adjudications with respect to individual member of the Class that
27 would establish incompatible standards of conduct for Defendant.

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63. As alleged in the preceding paragraphs, the misrepresentations by Defendant of the material facts detailed above constitute an unfair, unlawful, and fraudulent business practice within the meaning of California Business and Professions Code Section 17200.

64. In addition, Defendant's use of various forms of advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise which are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the meaning of Business and Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in violation of Business and Professions Code Section 17200.

65. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

66. All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

67. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiffs and the members of the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice of labeling and advertising the sale and use of the Product and/or to disclose such misrepresentations. Plaintiffs also seek restitution.

68. Plaintiffs and the Class have suffered injury in fact and have lost money or property as a result of and in reliance upon Defendant's false representations.

69. Plaintiffs would not have purchased the Product but for the representations by Defendant about the Product as containing white chocolate.

70. Plaintiffs would repurchase the Product in the future if it actually contained white chocolate or if Defendant dispelled any confusion that the Product does not contain white chocolate in its labeling, packaging, and advertising of the Product.

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SECOND CAUSE OF ACTION:
FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17500, et seq.
(By Plaintiff against all Defendants)

71. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs and incorporates the same as if set forth herein at length.

72. This cause of action is brought pursuant to Business and Professions Code Section 17500, *et seq.*, on behalf of Plaintiffs and the Class consisting of all persons residing in the United States and/or State of California who purchased the Product for personal consumption and not for resale during the time period of four years prior to the filing of the complaint through the present.

73. Defendant in its advertising and packaging of the Product make false and misleading statements regarding the quality and characteristics of the Product, particularly that it contains white chocolate. Such representations appear on the Product packaging and official website.

74. Defendant's claims about the Product lead reasonable consumers to believe that the Product contains white chocolate.

75. Defendant does not have any reasonable basis for its white chocolate representations.

76. Defendant knew or should have known that its white chocolate representations are false and misleading. *See* Paragraph 31, *supra*.

77. Plaintiffs would not have purchased the Product but for the representations by Defendant that the Product is white chocolate.

78. Plaintiffs and the Class have suffered injury in fact and lost money as a result of and in reasonable and detrimental reliance upon Defendant's false representations.

79. As alleged in the preceding paragraphs, the misrepresentations by Defendant of the material facts detailed above constitute an unfair, unlawful, and fraudulent business practice within the meaning of California Business and Professions Code Section 17500.

80. In addition, Defendant's use of various forms of advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise which are not as represented in

1 any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and
2 an unlawful business practice within the meaning of Business and Professions Code sections 17200
3 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in
4 violation of Business and Professions Code Section 17500.

5 81. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiffs and
6 the members of the Class seek a court order enjoining Defendant from continuing to deceptively
7 advertise and label the Product as if it is white chocolate. Plaintiffs also seek restitution.

8 **THIRD CAUSE OF ACTION:**

9 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,**

10 **CALIFORNIA CIVIL CODE § 1750, et seq.**

11 **(By Plaintiff against all Defendants)**

12 82. Plaintiffs repeat and re-alleges the allegations set forth in the preceding paragraphs
13 and incorporates the same as if set forth herein at length.

14 83. This cause of action is brought pursuant to Civil Code Section 1750, *et seq.*, the
15 Consumers Legal Remedies Act (“CLRA”), on behalf of Plaintiff and a Class consisting of all
16 persons residing in the United States and/or State of California who purchased the Product for
17 personal consumption and not for resale during the time period of four years prior to the filing of
18 the complaint through the present.

19 84. The Class consists of millions of persons, the joinder of whom is impracticable.

20 85. There are questions of law and fact common to the class, which questions are
21 substantially similar and predominate over questions affecting the individual members, as set forth
22 in Paragraph 3, *supra*.

23 86. The white chocolate misrepresentations described herein were intended to increase
24 sales to the consuming public, and violated and continue to violate Section 1770(a)(5) of the CLRA
25 by representing that the Product has characteristics and benefits which it does not have.

26 87. Defendants fraudulently deceived Plaintiffs and the Class by representing that the
27 Product has certain characteristics, benefits, and qualities which it does not have. In doing so,
28

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for judgment and relief on all Causes of Action as follows:

- A. An order enjoining Ghirardelli from labeling and advertising the Product as if it is white chocolate;
- B. Restitution; and
- C. Reasonable attorneys’ fees and costs.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: September 19, 2019

CLARKSON LAW FIRM, P.C.



Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Matthew T. Theriault, Esq.
Bahar Sodaify, Esq.

Attorneys for Plaintiffs

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Los Angeles, CA 90069
Tel: (213) 788-4050
Fax: (213) 788-4070

Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
9/19/2019 2:40 PM
Arlene D. Junior, Clerk of the Court
By: Diane Cheney, Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SONOMA

LINDA CHESLOW and STEVEN PRESCOTT,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
and DOES 1 through 10, inclusive,

Defendants.

Case No. **SCV-265203**

CLASS ACTION

**DECLARATION OF RYAN J.
CLARKSON REGARDING VENUE
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE SECTION 1780(d)**

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I, Ryan J. Clarkson, do hereby declare as follows:

1. I am the managing partner of Clarkson Law Firm, P.C., counsel of record for Plaintiffs, and am licensed to practice in all courts within the State of California. I have personal knowledge of the facts stated herein, and if called to testify as a witness, I could and would competently testify to them.

2. Pursuant to California Civil Code Section 1780(d), this Court is proper for trial of this action because Defendants are doing business in Sonoma County and the transaction at issue and the subject matter of the above-captioned action occurred in Sonoma County.

I declare and state under penalty of perjury that the foregoing is true and correct. Executed on September 19, 2019 at Los Angeles, California.

CLARKSON LAW FIRM, P.C.



Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Matthew T. Theriault, Esq.
Bahar Sodaify, Esq.

Attorneys for Plaintiffs

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
9/19/2019 2:40 PM
Arlene D. Junior, Clerk of the Court
By: Diane Cheney, Deputy Clerk

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

GHIRARDELLI CHOCOLATE COMPANY, and DOES 1 through 10, inclusive,

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

LINDA CHESLOW and STEVEN PRESCOTT, individually and on behalf of all others similarly situated,

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 quede 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 cumpla 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 ó 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): **Hall of Justice**
 600 Administration Drive, Room 107J, Santa Rosa, CA 95403

CASE NUMBER:
 (Número del Caso): **SCV-265203**

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):
 Ryan J. Clarkson (SBN 257074) 9255 Sunset Blvd., Ste. 804, Los Angeles, CA 90069 (213) 788-4050

DATE: 9/19/2019 2:40 PM **ARLENE D. JUNIOR** Clerk, by Diane Cheney, Deputy
 (Fecha) (Secretario) (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):
 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):

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Ryan J. Clarkson (SBN 257074); Matthew T. Theriault (SBN 244037) FIRM NAME: CLARKSON LAW FIRM, P.C. STREET ADDRESS: 9255 Sunset Blvd., Suite 804 CITY: Los Angeles STATE: CA ZIP CODE: 90069 TELEPHONE NO.: (213) 788-4050 FAX NO.: (213) 788-4070 E-MAIL ADDRESS: rclarkson@clarksonlawfirm.com, mtheriault@clarksonlawfirm.com ATTORNEY FOR (Name): Plaintiffs Linda Cheslow and Steven Prescott	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma STREET ADDRESS: 600 Administration Dr., Room 107J MAILING ADDRESS: 600 Administration Dr., Room 107J CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Hall of Justice	
Plaintiff/Petitioner: Plaintiffs Linda Cheslow and Steven Prescott Defendant/Respondent: Ghirardelli Chocolate Company	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	
CASE NUMBER: SCV-265203	

TO (insert name of party being served): Ghirardelli Chocolate Company

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 09/24/2019

Ryan J. Clarkson
 (TYPE OR PRINT NAME)


 (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. A copy of the summons and of the complaint.
2. Other (specify):

(To be completed by recipient):

Date this form is signed: _____

 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)



 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Ryan J. Clarkson (SBN 257074); Matthew T. Theriault (SBN 244037) FIRM NAME: CLARKSON LAW FIRM, P.C. STREET ADDRESS: 9255 Sunset Blvd., Suite 804 CITY: Los Angeles STATE: CA ZIP CODE: 90069 TELEPHONE NO.: (213) 788-4050 FAX NO.: (213) 788-4070 E-MAIL ADDRESS: rclarkson@clarksonlawfirm.com, mtheriault@clarksonlawfirm.com ATTORNEY FOR (Name): Plaintiffs Linda Cheslow and Steven Prescott	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma STREET ADDRESS: 600 Administration Dr., Room 107J MAILING ADDRESS: 600 Administration Dr., Room 107J CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Hall of Justice	
Plaintiff/Petitioner: Plaintiffs Linda Cheslow and Steven Prescott Defendant/Respondent: Ghirardelli Chocolate Company	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: SCV-265203

TO (insert name of party being served): Ghirardelli Chocolate Company


NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 09/24/2019

Ryan J. Clarkson
 (TYPE OR PRINT NAME)


 (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. A copy of the summons and of the complaint.
2. Other (specify):

(To be completed by recipient):

Date this form is signed: Oct. 15, 2019
Dale J. Giali, Mayor Brown
 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)


 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

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PROOF OF SERVICE

I, Theresa Struwe, declare:

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Mayer Brown LLP, 350 South Grand Avenue, 25th Floor, Los Angeles, California 90071-1503. On October 15, 2019 served a copy of the within document(s):

NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL



by transmitting electronically in portable document format (PDF) the document(s) listed above to the e-mail addresses set forth below on this date. The transmission of the document was reported as complete and without error.

Ryan J. Clarkson
Shireen M. Clarkson
Matthew T. Theriault
Bahar Sodaify
Clarkson Law Firm, P.C.
9255 Sunset Boulevard, Suite 804
Los Angeles, CA 90069
Tel : (213) 788-4050
Fax : (213) 788-4070
rclarkson@clarksonlawfirm.com
sclarkson@clarksonlawfirm.com
mtheriault@clarksonlawfirm.com
bsodaify@clarksonlawfirm.com

Plaintiffs

I declare under penalty of perjury under the laws of the State of Florida that the above is true and correct. Executed on October 15, 2019 at Los Angeles, California.

Theresa Struwe

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA CIVIL DIVISION 600 ADMINISTRATION DRIVE, ROOM 107-J SANTA ROSA, CALIFORNIA 95403-2878 (707) 521-6500 www.sonoma.courts.ca.gov Cheslow vs Ghirardelli Chocolate Company	(FOR COURT USE ONLY) ENDORSED FILED SEP 19 2019 SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA
NOTICE OF ASSIGNMENT TO ONE JUDGE FOR ALL PURPOSES, NOTICE OF CASE MANAGEMENT CONFERENCE, and ORDER TO SHOW CAUSE	Case number: SCV-265203

**A COPY OF THIS NOTICE MUST BE SERVED WITH THE SUMMONS AND COMPLAINT
AND WITH ANY CROSS-COMPLAINT**

1. THIS ACTION IS ASSIGNED TO HON. Patrick Broderick FOR ALL PURPOSES.

Pursuant to California Rules of Court, Rule 2.111(7), the assigned judge's name must appear below the number of the case and the nature of the paper on the first page of each paper presented for filing.

2. EACH DEFENDANT MUST FILE A WRITTEN RESPONSE TO THE COMPLAINT AS REQUIRED BY THE SUMMONS.

A Case Management Conference has been set at the time and place indicated below:

Date: 01/21/2020	Time: 3:00 PM	Courtroom 16
Location: Empire College Court Annex 3035 Cleveland Avenue Santa Rosa, CA 95403		

3. No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement [Judicial Council form #CM-110] and serve it on all other parties in the case. In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.

4. At the conference, counsel for each party and each self-represented party must appear personally or by telephone [California Rules of Court, Rule 3.670(c)(2)]; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in California Rules of Court, Rule 3.727.

5. Pre-approved dispositions are recorded three (3) court days prior to the case management conference. These may be obtained by calling (707) 521-6883 or by going to <http://sonoma.courts.ca.gov/online-services/tentative-rulings>.

ORDER TO SHOW CAUSE

To Plaintiff(s), Cross-complainants, and/or their attorneys of record:

If, on the date shown above, you are not in compliance with the requirements stated in the California Rules of Court, rules 2.30, 3.110, and/or 3.720 through 3.771 inclusive, you must then and there show cause why this court should not impose monetary and/or terminating sanctions in this matter.

Pursuant to California Rule of Court, rule 3.221(b), information and forms related to Alternative Dispute Resolution are available on the Court's website at <http://sonoma.courts.ca.gov/self-help/adr>.

ELECTRONIC SERVICE OF DOCUMENTS**Enabled by Local Rule 18.16**

Voluntary e-service is available in Sonoma County. The Court has pre-approved a Stipulation for cases in which the attorneys or parties choose e-service. A copy of the Stipulation is available under the "Civil" section in the "Division" tab of the Court website: <http://www.sonoma.courts.ca.gov>. The advantages of e-service to the parties include:

SAVE MONEY	Reduction in costs related to photocopying, retrieving, storing, messenger and postage fees. No special software is needed to use e-service
SAVE TIME	Instant service of your documents on all parties
SAVE SPACE	With 24/7 internet access to all documents, you do not need to house paper copies
GAIN CERTAINTY	Immediate confirmation of service for your records. Documents are not delayed in the mail or blocked by email spam blockers and firewalls

To take advantage of e-service, select an e-service provider and file the signed Stipulation with the Court. Parties can then e-serve documents through the selected provider. Information about e-service providers is available at the website for the Sonoma County Bar Association: <http://www.sonomacountybar.org>. The Court does not endorse one provider over another.

To learn more about available e-service providers and their fees, please visit their website

***Note:** Hard-copy pleadings are required to be filed with the Court in accordance with applicable provisions of the Code of Civil Procedure, California Rules of Court and local rules. You do not need to provide a courtesy copy of a served document to the specific department in which the matter has been assigned.*

DISCOVERY FACILITATOR PROGRAM

Effective January 1, 2008, the Sonoma County Superior Court promulgated Sonoma County Local Rule 4.14 which established the Discovery Facilitator Program. Participation in the Discovery Facilitator Program shall be deemed to satisfy a party's obligation to meet and confer under Sonoma County Local Rule 5.5 and applicable provisions of the Code of Civil Procedure and California Rules of Court. This program has been providing assistance in resolving discovery disputes and reducing the backlog of matters on the law and motion calendars in our civil law departments. The Sonoma County Superior Court encourages all attorneys and parties to utilize the Discovery Facilitator Program in order to help resolve or reduce the issues in dispute whether or not a discovery motion is filed.

There is a link to Local Rule 4.14 and the list of discovery facilitator volunteers on the official website of the Sonoma County Superior Court at <http://www.sonoma.courts.ca.gov>. On the home page, under the "AVAILABLE PROGRAMS & HELP" section, click on »[Discovery Facilitator Program](#). You can then click on either "Local Rule 4.14" to obtain the language of the local rule, or "List of Facilitators" for a list of the volunteer discovery facilitators and accompanying contact and biographical information.

Pursuant to Local Rule 5.1.C:

The moving party shall, on the date of filing, hand-deliver to the Assigned Judge a courtesy copy, which need not be file-endorsed, of any motion filed. The responding party shall, on the date of filing, hand-deliver to the Assigned Judge a courtesy copy, which need not be file-endorsed, of all opposition papers. Finally, the moving party shall, on the date of filing, hand-deliver to the Assigned Judge a courtesy copy, which need not be file-endorsed, of all reply papers.

Pursuant to Local Rule 5.1.C.1:

If any matter scheduled on the law and motion calendar is resolved, dismissed, settled or becomes moot for any reason, the moving party shall immediately notify the judicial assistant for the Assigned Judge if the motion is to be dropped from the law and motion calendar. Said notification may be made by telephone, followed by a letter of confirmation.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Ryan J. Clarkson (SBN 257074); Matthew T. Theriault (SBN 244037)
CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069
TELEPHONE NO: (213) 788-4050 FAX NO: (213) 788-4070
ATTORNEY FOR (Name): Plaintiff Linda Cheslow

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
9/19/2019 2:40 PM
Arlene D. Junior, Clerk of the Court
By: Diane Cheney, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma
STREET ADDRESS: 600 Administration Dr., Room 107J
MAILING ADDRESS: 600 Administration Dr., Room 107J
CITY AND ZIP CODE: Santa Rosa, CA 95403
BRANCH NAME: Hall of Justice

CASE NAME:
Cheslow, et al. v. Ghirardelli Chocolate Company, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
SCV-265203
JUDGE:
DEPT:

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:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <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)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <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)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <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-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <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)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

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. Large number of separately represented parties d. Large number of witnesses
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. Substantial amount of documentary evidence f. 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): Three (3): CLRA, FAL, UCL
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-010.)

Date: September 19, 2019
Ryan J. Clarkson
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First 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. 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

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
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

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Ghirardelli 'Classic White' Baking Chips Contain No White Chocolate](#)
