

MAYER BROWN LLP
Dale J. Giali (SBN 150382)
dgiali@mayerbrown.com
Keri E. Borders (SBN 194015)
kborders@mayerbrown.com
350 South Grand Avenue, 25th Floor
Los Angeles, California 90071-1503
Telephone: (213) 229-9509
Facsimile: (213) 625-0248

Counsel for Nestlé USA, Inc.

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

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

Plaintiffs,

v.

NESTLÉ USA, INC., and DOES 1 THROUGH
10, inclusive.

Defendants.

Case No. 5:19-cv-07471

**NOTICE OF REMOVAL BY
DEFENDANT NESTLÉ USA, INC.**

NOTICE OF REMOVAL

Defendant Nestlé USA, Inc. (“Nestlé”), through undersigned counsel, removes the above-captioned action from the Superior Court for Santa Cruz County to the United States District Court for the Northern District of California in accord with 28 U.S.C. §§ 1332(d), 1441, and 1446.

1. On September 19, 2019, plaintiffs Linda Cheslow and Steven Prescott sued Nestlé and “DOES 1 through 10” in the Superior Court for Santa Cruz County.

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

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

BRIEF OVERVIEW OF THE PLAINTIFFS' ALLEGATIONS

11. In this putative class action under the UCL, CLRA, and FAL, the plaintiffs claim that Nestlé “affirmatively misrepresented” the “nature and characteristics” of Nestlé’s Premier White Morsels. *E.g.*, Compl. ¶ 31.

12. The plaintiffs claim that Nestlé deceptively advertised that Nestlé’s Premier White Morsels contain “white chocolate” when in fact the White Morsels allegedly “do[] not contain *any* white chocolate. It is fake white chocolate.” Compl. ¶ 3.

13. The plaintiffs incorporate into the complaint (¶ 3) the front of the White Morsels package and suggest that the package falsely advertises that the “White Morsels” contain white chocolate. (In fact, the word “chocolate” appears nowhere on the package.)

14. In addition to claiming that Nestlé falsely advertised that the White Morsels contain white chocolate, the plaintiffs protest the product’s use of the word “premier.” According to the plaintiffs, the word “premier” misleads consumers “into thinking that the [p]roduct contains premier ingredients, not fake white chocolate.” Compl. ¶ 4. The plaintiffs claim that “[r]easonable consumers do not expect that the [p]roduct does not contain white chocolate, or inferior ingredients such as hydrogenated oils.” *Id.*

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

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

THE PROPOSED CLASS EXCEEDS 100 MEMBERS

17. The plaintiffs sue on behalf of a nationwide class of consumers who bought the White Morsels between September 19, 2015 and the present. Nationwide retailers, such as Walmart and Kroger, sell the White Morsels in at least hundreds of stores across the United States. Without more, these facts compel concluding that more than 100 putative class members bought the White Morsels. *See Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1062 (11th Cir.

2010) (“[C]ourts may use their judicial experience and common sense in determining whether the case stated in the complaint meets federal jurisdiction requirements.”).

18. Also, the plaintiffs allege that “the [c]lass consists of millions of persons.” Compl. ¶ 83; *see also, e.g., Roppo v. Travelers Comm. Ins. Co.*, 869 F.3d 568, 581 (7th Cir. 2017) (“[The defendant] may rely on the estimate of the class number set forth in the complaint.”). Common sense and the plaintiffs’ allegations independently satisfy the requirement to show that the putative class likely exceeds 100 members.

THE PARTIES ARE AT LEAST MINIMALLY DIVERSE

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

20. Cheslow resides in California (¶ 25), and on information and belief, Cheslow is a citizen of California. *See also Cheslow v. Monsanto Co.*, case no. 3:19-cv-3566 at Doc. 3 ¶ 57 (N.D. Cal. June 3, 2019) (Cheslow’s complaint, which alleges that Cheslow “is a citizen of California”).

21. Prescott resides in California (¶ 24), and on information and belief, Prescott is a citizen of California.

22. Nestlé USA, Inc., is a Delaware corporation with its principal place of business in Virginia. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (explaining what constitutes a corporation’s principal place of business). Under 28 U.S.C. § 1332(c)(1), Nestlé USA, Inc., is a citizen of Delaware and Virginia.

23. Because the plaintiffs are citizens of California and because defendant Nestlé USA, Inc., is a citizen of Delaware and Virginia, the parties are at least minimally diverse.

THE AGGREGATE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION

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

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

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

5 27. The plaintiffs allege that Nestlé "has sold millions of units or more of the product."
6 Compl. ¶ 43.

7 28. Between September 19, 2015 and the present, Nestlé's gross revenue from the
8 sale of the White Morsels exceeded \$5 million.

9 29. The amount paid by Cheslow and Prescott (and the putative class) exceeds
10 Nestlé's gross receipts from wholesale distribution because the plaintiffs bought the White
11 Morsels at retailers, which sell the product for more than the wholesale cost. *See, e.g.*, Compl.
12 ¶¶ 24-25 (alleging that the plaintiffs each bought the White Morsels at Target).

13 30. The plaintiffs request restitution and claim that they "would not have purchased the
14 Product but for the representations by Defendant about the product." *E.g.*, Compl. ¶ 50.

15 31. In addition to claiming that they would not have purchased the White Morsels but
16 for the alleged misrepresentations, the plaintiffs imply that consumers who bought the White
17 Morsels for baking received no benefit from the product because it "does not melt like real
18 chocolate." *E.g.* Compl. ¶¶ 11-16. For example, the plaintiffs allege that a consumer "ended up
19 throwing the whole product away." Compl. ¶ 14.

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

1 40. If any question arises about the propriety of removal, Nestlé requests an opportunity
2 to submit briefing and present oral argument in support of removal before an order resolves the
3 question.

4 41. Nothing about this removal waives (or should be construed to waive) any available
5 right, argument, or objection, including an objection to the lack of personal jurisdiction.

6 42. Nestlé respectfully reserves the right to amend or supplement this notice.
7

8 DATED: November 13, 2019

MAYER BROWN LLP
DALE J. GIALI

11 By: /s/ Dale J. Giali
12 Dale J. Giali

13 *Counsel for Nestlé USA, Inc.*
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Exhibit 1

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
9/19/2019 6:15 PM
Alex Calvo, Clerk
By: Helena Hanson, Deputy



CLARKSON LAW FIRM, P.C.
Ryan J. Clarkson (SBN 257074)
rclarkson@clarksonlawfirm.com
Shireen M. Clarkson (SBN 237882)
sclarkson@clarksonlawfirm.com
Matthew T. Theriault (SBN 244037)
mtheriault@clarksonlawfirm.com
Bahar Sodaify (SBN 289730)
bsodaify@clarksonlawfirm.com
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069
Tel: (213) 788-4050
Fax: (213) 788-4070

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

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

Plaintiffs,

vs.

NESTLE USA, INC., and DOES 1 through 10,
inclusive,

Defendants.

Case No. 19CV02857

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 Steven Prescott and Linda Cheslow (“Plaintiffs”), individually and on behalf of all other similarly situated purchasers (the “Class”) of Nestle® Toll House’s Premier White Morsels (the “Product”) brings this class action against Nestle USA, Inc. (“Nestle” or “Defendant”) and Does 1 through 10, inclusive (collectively, “Defendants”), and allege as follows:

SUMMARY OF THE ACTION

1. Nestle, a company known for its chocolate, sells fake white chocolate baking chips and tries to market them as white chocolate.

2. Nestle is a multi-billion-dollar company¹ and a highly visible competitor in the global chocolate market. In 2018, Nestle generated approximately \$92 billion dollars worldwide and approximately \$27 billion dollars in the United States.

3. Nestle's profits are attributable, in part, to deceptive labeling and advertising of the Product as containing white chocolate.² In reality, the Product does not contain *any* white chocolate. It is fake white chocolate.



4. Nestle advertises on its Product packaging and official website that the Product has white chocolate chips and labels it “*Premier White*,” misleading consumers into thinking that the Product contains premier ingredients, not fake white chocolate. In fact, “premier” is defined as “first in position, rank, or importance.”³ Reasonable consumers do not expect that the Product does not contain white chocolate, or inferior ingredients such as hydrogenated oils. Indeed, Nestle is synonymous with *chocolate*, not oil.

¹ See Nestle's Annual Report to Stockholders and Other Reports, https://www.nestle.com/asset-library/documents/library/documents/financial_statements/2018-financial-statements-en.pdf (last visited August 22, 2019).

² See screenshots from Defendant's official website, <https://www.verybestbaking.com/products/4028/tollhouse/nestle-toll-house-premier-white-morsels> (last visited August 22, 2019).

³ *Premier*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/premier> (last visited on August 22, 2019).

5. Nestle manufactures other chocolate varieties of the Product and labels them by type of chocolate: “milk chocolate,” “dark chocolate,” and “semi-sweet.” The “white” in “white morsels” deceives reasonable consumers to believe it represents the type of chocolate in the Product, white chocolate. True and correct representations of some of Defendant’s other versions of the Product within the same product line⁴ are depicted below.



⁴ There are nine versions of the Product within the same product line, including the Product: Dark Chocolate, Milk Chocolate, Semi-Sweet Chunks, Premier White, Bittersweet Chocolate, Peanut Butter & Milk Chocolate, Semi-Sweet Chocolate₃Minis, Semi-Sweet Chocolate, and Triple Chip.

6. Consumers are indeed interested in the type of chocolate when it comes to baking and rely on Nestle's product packaging and labeling to determine which product to purchase.

7. Nestle is aware that reasonable consumers are misled into believing the Product contains white chocolate when it actually contains fake white chocolate but has thus far refused to make any labeling and advertising changes to dispel the consumer deception.

8. For example, one consumer complained directly on Nestle's official website, stating, "[N]ot white chocolate so what makes these 'premium'? These don't have chocolate in them and don't taste like white chocolate. When looking they aren't real white chocolate chips. I was fooled by the 'premium' label. There's nothing premium about this product at all. It isn't chocolate and it still has artificial flavors in it and hydrogenated oils!" True and correct representations of the consumer reviews of the Product on Nestle's official website are depicted in Figure 1 below.

9. Another consumer complained, "I love white chocolate, but these don't melt[.] I was making white chocolate covered buckeyes and ran out of white chocolate melting discs. I had a couple bags of Nestle Toll House white chocolate chips and figured it would work the same. WRONG! I melted slowing in 30-45 second intervals, and it just ended up as one big clump. So disappointed." *See* Figure 1, *infra*.

10. Yet another consumer complained on Nestle's website, "Note: this is not white chocolate. I wish the label included the word 'imitation' or 'chocolate flavored' like the fake semi-sweet morsels do. Then I wouldn't have expected it to melt like white chocolate. I threw it out after trying to melt it for peppermint bark. I added whipping cream in an attempt to save the dry crumbles and it turned to creamy rubber. Not spreadable. They'd probably be good in cookies, if you're into imitation white chocolate. I'll know next time to look for a product that has cocoa butter in the ingredients list." *See* Figure 1, *infra*.

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Figures 1-2 (below): Screenshots taken from Nestle's official website revealing that consumers are misled by Nestle's labeling and advertising of the Product to believe the Product contains white chocolate, not fake white chocolate.

Figure 1.

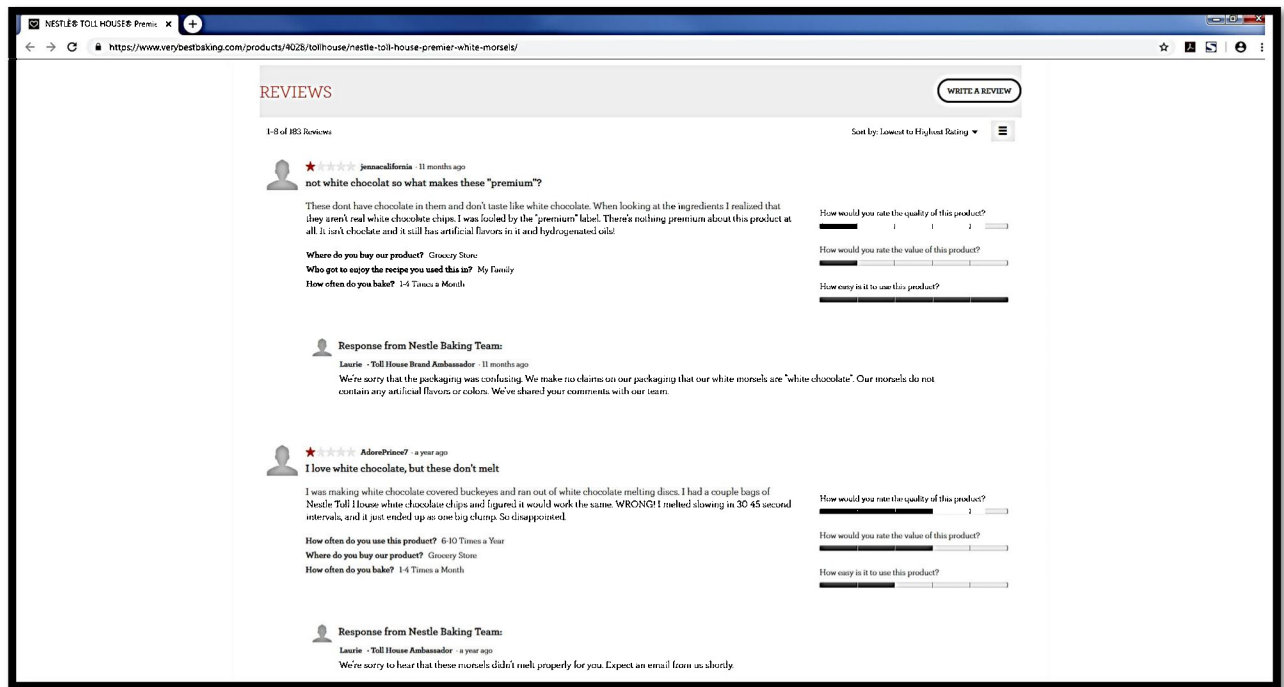
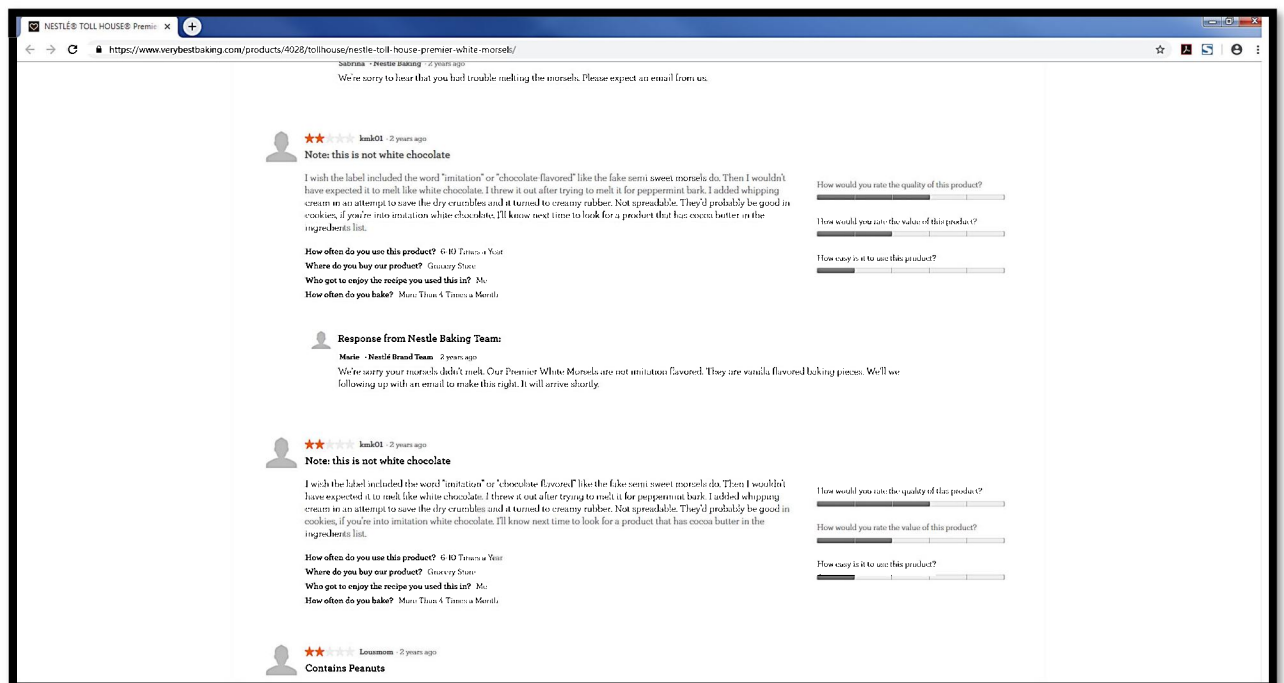


Figure 2.



1 11. Many consumers purchase the Product to bake with. In fact, Defendant advertises on
2 its official website, as well on the Product packaging, baking recipes that require the use of the
3 Product. However, because the Product contains fake white chocolate, it does not melt like real
4 chocolate. Yet, the Product’s deceptive labeling and advertising leads reasonable consumers to
5 believe that the Product is real white chocolate and should therefore melt during baking. Thus,
6 consumers are surprised when the Product does not melt. True and correct representations of the
7 consumer reviews of the Product not melting as expected on Nestle’s official website are depicted
8 in Figures 3-5 below.

9 12. Nestle is aware that the Product does not melt because consumers have complained
10 directly on its website that the Product does not melt as expected from real white chocolate. *See*
11 Figures 3-5, *infra*.

12 13. For example, one consumer complained, “I put the premier white morsels in my
13 Wilton chocolate pro candy melting pot and it never melted. It was just a lumpy, clumpy blob.” *See*
14 Figure 3, *infra*.

15 14. Another consumer complained, “I had such a hard time melting and never got it
16 melted down where I was able to use. I ended up just throwing the whole product away, and never
17 finished my cake balls. After reading the reviews, I know it was [the] product and not me lol.” *See*
18 Figure 3, *infra*.

19 15. Another consumer wrote, “What a disaster! I wish I’d gone to this site before
20 attempting to melt these things! I tried to melt them in the microwave, a double boiler and even he
21 [sic] oven. All I got was a glob.” *See* Figure 4, *infra*.

22 16. Yet another consumer complained, “tried to melt white chocolate on double broiler
23 after quiet [sic] a while gave up!” *See* Figure 5, *infra*.

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26 ///

27 ///

Figures 3-5 (below): Screenshots taken from Nestle's official website revealing that consumers are misled by Nestle's labeling and advertising of the Product as containing white chocolate and are therefore surprised when the Product does not melt as expected from real white chocolate.

Figure 3.

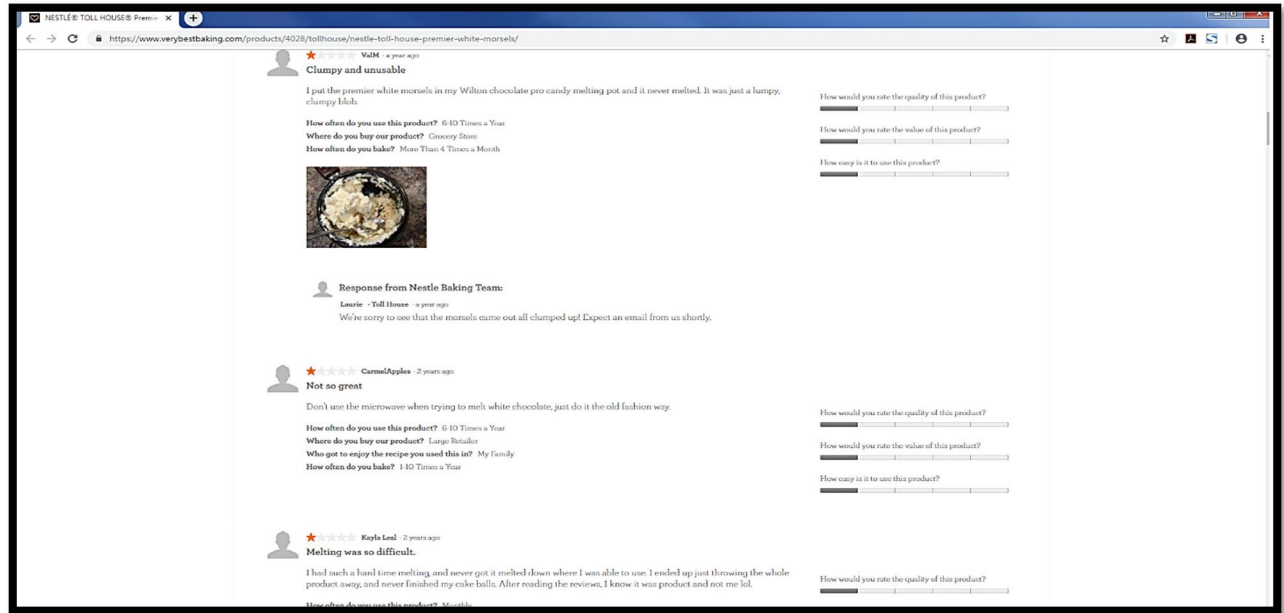


Figure 4.

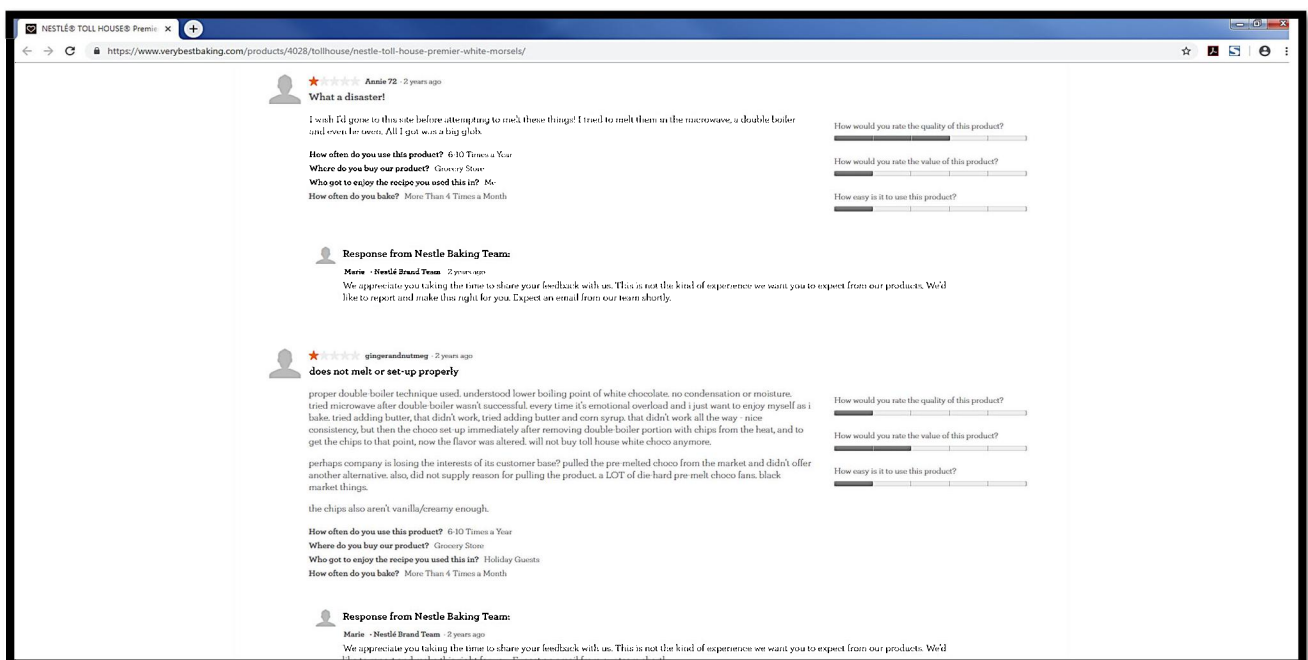
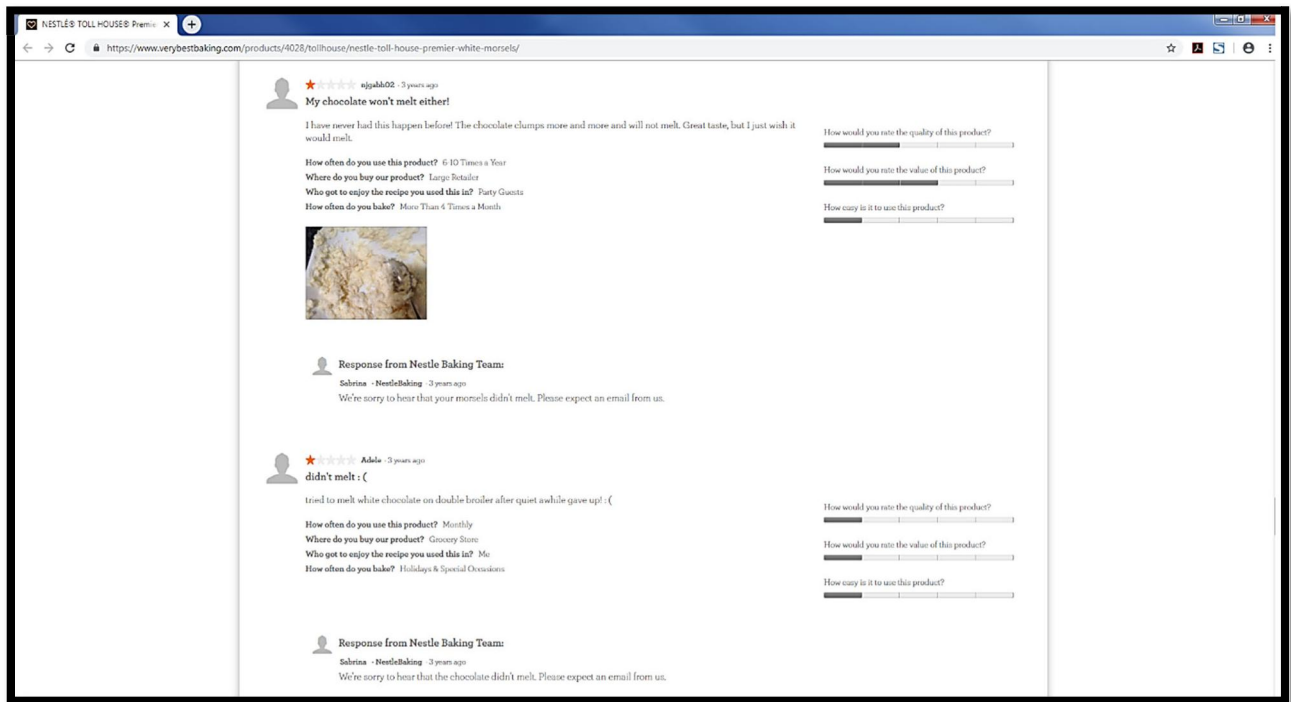


Figure 5.

17. The Product is labeled and advertised as “Premier White” on its packaging and Nestle’s official website, and is offered for sale side-by-side with Nestle’s other chocolate morsels. There is nothing premier about fake white chocolate. Taken as a whole, the Product’s labeling and advertising misleads reasonable consumers into believing it contains white chocolate, not fake white chocolate.

18. 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.

19. 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.

20. On June 5, 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

21. 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.*

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

23. 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.

PARTIES

24. Plaintiff Prescott is an individual residing in Santa Cruz, California. Plaintiff Prescott purchased the Product in California within the last four (4) years of the filing of this Complaint. Specifically, Plaintiff Prescott purchased the Product in or around December 2018 at a Target store located at 1825 41st Ave in Capitola, California. In making his purchase decision, Prescott relied upon the labeling and advertising of the Product as containing white chocolate, including a photo of a white chocolate chip cookie and the label claim “Premier White” prominently displayed, front and center, on each and every Product package and the fact that it was displayed side-by-side next to Nestle’s other chocolate morsel types, among other misrepresentations, which he reasonably interpreted to mean white chocolate, not fake white chocolate.

25. Plaintiff Cheslow is an individual residing in Santa Rosa, California. Plaintiff purchased the Product in California within the last four (4) years of the filing of this Complaint. Specifically, Plaintiff Cheslow purchased the Product in or around late 2018 at a Target store

1 located at 950 Coddington Center in Santa Rosa, California. In making her purchase decision,
2 Plaintiff Cheslow relied upon the labeling and advertising of the Product as containing white
3 chocolate, including a photo of a white chocolate chip cookie and the label claim “Premier White”
4 prominently displayed, front and center, on each and every Product package and the fact that it was
5 displayed side-by-side next to Nestle’s other chocolate morsel types, among other
6 misrepresentations, which she reasonably interpreted to mean white chocolate, not fake white
7 chocolate.

8 26. The label and advertising statements were prepared and approved by Defendant and
9 its agents and disseminated through its packaging, label, and national advertising media, containing
10 the misrepresentations alleged herein and designed to encourage consumers to purchase the
11 Product. In reasonable and detrimental reliance upon these white chocolate misrepresentations,
12 Plaintiffs purchased the Product. Had Plaintiffs known the Product contained fake white chocolate,
13 they would not have purchased the Product. Plaintiffs would purchase the Product again in the
14 future if they could be sure that the Product was white chocolate or if Defendant dispelled any
15 confusion that the Product does not contain white chocolate in its labeling, packaging, and
16 advertising of the Product.

17 27. Nestle USA, Inc. is a corporation headquartered in Virginia. Nestle maintains its
18 principal place of business at 1812 N. Moore Street, Arlington, Virginia 22209. Nestle offers the
19 Products for sale at stores and retailers as well as through the internet, throughout the nation,
20 including the State of California. Nestle, directly and through its agents, has substantial contacts
21 with and receives substantial benefits and income from and through the State of California. Nestle
22 is one of the owners and distributors of the Product and is the company that created and/or
23 authorized the false, misleading, and deceptive advertisements and packaging for the Product.

24 28. The true names and capacities, whether individual, corporate, associate, or otherwise
25 of certain manufacturers, distributors, and/or their alter egos sued herein as DOES 1 through 10
26 inclusive are presently unknown to Plaintiffs who therefore sue these Defendants by fictitious
27 names. Plaintiffs will seek leave of this Court to amend the Complaint to show their true names
28

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Ste. 804
Los Angeles, CA 90069

and capacities when the same have been ascertained. Plaintiffs are informed and believe and based thereon allege that DOES 1 through 10 were authorized to do and did business in Santa Cruz County. Plaintiffs are further informed and believe and based thereon alleges that DOES 1 through 10 were and/or are, in some manner or way, responsible for and liable to Plaintiffs for the unfair business practices set forth herein.

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

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

31. Defendants, upon becoming involved with the manufacture, distribution, advertising, labeling, marketing, and sale of the Product, knew or should have known that the claims about the Product and, in particular, the claims misrepresenting that the Product contains white chocolate, not fake white chocolate. Defendants affirmatively misrepresented the nature and characteristics of the Product in order to convince the public to purchase and consume the Product, resulting in, upon information and belief, profits of millions of dollars or more to Defendants, all to the detriment of the consuming public. Thus, in addition to the wrongful conduct herein alleged as giving rise to primary liability, Defendants further aided and abetted and knowingly assisted each other in breach of their respective duties and obligations as herein alleged.

FACTS AND DEFENDANTS' COURSE OF CONDUCT

32. Defendant's labeling, advertising, marketing, and packaging of the Product as containing white chocolate is false, misleading, and deceptive because the Product does not contain

any white chocolate. Accordingly, reasonable consumers are consistently misled into paying for the Product without knowing that it is devoid of white chocolate.

33. Defendant is aware that reasonable consumers are confused by its labeling and advertising of its Product as evidenced by consumer complaints on Defendant's official website of the Product not containing white chocolate and that the Product failed to melt when heated since it is not white chocolate. *See* Figures 1 through 5, *supra*.

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

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

Title 21 Code of Federal Regulations Section 163.124.

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

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

37. The Product does not contain any white chocolate, cocoa butter, cocoa fat, or other cocoa derivative as required by the FDA. Instead, the Product contains: Sugar, Palm Kernel Oil,

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).

1 Milk, Nonfat Milk, Hydrogenated Palm Oil, Soy Lecithin, and Natural Flavor. Despite the
2 foregoing, the Product is advertised as if it contains white chocolate.

3 38. Plaintiffs and reasonable consumers reasonably believe the Product contains white
4 chocolate based on the labeling and advertising of the Product. Also, there are other versions of
5 the Product, such as milk chocolate, dark chocolate, and semi-sweet chocolate, which are
6 displayed for sale directly adjacent to the Product thereby further adding to the deception that the
7 Product is white chocolate.

8 39. The Product is marketed and sold at retail stores throughout California and the United
9 States.

10 40. In addition to the packaging and labeling of the Product, Defendant's official website
11 (<https://www.verybestbaking.com/toll-house/>) misleads consumers to believe the Product contains
12 white chocolate.

13 41. When purchasing the Product, Plaintiffs relied upon the label and advertising of the
14 Product as white chocolate, not fake white chocolate. Had Plaintiffs known the Product did not
15 contain white chocolate, then they would not have purchased it. However, if the Product were to
16 actually contain white chocolate or Defendant would dispel the deception that the Product does not
17 contain white chocolate in its labeling, packaging, and advertising, Plaintiffs would repurchase in
18 the future.

19 42. Defendant's labeling and advertising claims lead consumers to reasonably believe
20 that the Product contains white chocolate, not fake white chocolate.

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

25 **CLASS ACTION ALLEGATIONS**

26 44. Plaintiffs bring this action on his own behalf and on behalf of all other persons
27 similarly situated. The Class which Plaintiffs seek to represent comprises:

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

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

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

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

- a. Whether Defendant’s conduct is an unlawful business act or practice within the meaning of Business and Professions Code Section 17200, *et seq.*;
 - b. Whether Defendant’s conduct is a fraudulent business act or practice within the meaning of Business and Professions Code Section 17200, *et seq.*;
 - c. Whether Defendant’s conduct is an unfair business act or practice within the meaning of Business and Professions Code Section 17200, *et seq.*;
 - d. Whether Defendant’s advertising is untrue or misleading within the meaning of Business and Professions Code Section 17500, *et seq.*;
 - e. Whether Defendant made false and misleading representations in its advertising and labeling of the Product;
 - f. Whether Defendant knew or should have known that the representations were false;
- and,

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

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

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

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

50. Plaintiffs would not have purchased the Product but for the representations by Defendant about the Product.

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

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

53. The trial and the litigation of Plaintiff's claims are manageable.

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

55. Absent a class action, Defendant will likely retain the benefits of its wrongdoing. Because of the small size of the individual Class members' claims, few, if any, Class members

could afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the Class members will continue to suffer losses and Defendant will be allowed to continue these violations of law and to retain the proceeds of its ill-gotten gains.

FIRST CAUSE OF ACTION:

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

BUSINESS & PROFESSIONS CODE § 17200, et seq.

(By Plaintiff against all Defendants)

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

57. This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiffs and a Class consisting of all persons residing in the United States and/or State of California who purchased the Product for personal use and not for resale during the time period of four years prior to the filing of the complaint through the present.

58. 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, not fake white chocolate. Such claims appear on the label and packaging of the Product which are sold at retail stores nationwide, point-of-purchase displays, as well as Nestle's official website, and other retailers' advertisements which have adopted Nestle's advertisements.

59. Defendant's labeling and advertising of the Product led and continues to lead reasonable consumers to believe that the Product contains white chocolate, not fake white chocolate.

60. Defendant does not have any reasonable basis for labeling and advertising the Product as if it contains white chocolate when it does not.

61. Defendant knew that the white chocolate representations it made and continues to make about the Product are false and misleading and deceives reasonable consumers. *See Figures 1 through 5, supra.*

62. 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.

63. 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.

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

65. 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.

66. 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 Product as white chocolate. Plaintiffs also seek restitution.

67. 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.

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

69. 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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CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Ste. 804
Los Angeles, CA 90069

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

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

71. 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.

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

73. Defendant's claims about the Product lead reasonable consumers to believe that the Product contains white chocolate, not fake white chocolate.

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

75. Defendant knew or should have known that its white chocolate representations are false and misleading. *See* Figures 1 through 5, *supra*.

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

77. 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.

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

79. 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 17500.

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

THIRD CAUSE OF ACTION:

VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,

CALIFORNIA CIVIL CODE § 1750, et seq.

(By Plaintiff against all Defendants)

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

82. This cause of action is brought pursuant to Civil Code Section 1750, *et seq.*, the Consumers Legal Remedies Act (“CLRA”), on behalf of Plaintiffs and a 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.

83. Upon information and belief, the Class consists of millions of persons, the joinder of whom is impracticable.

84. There are questions of law and fact common to the class, which questions are substantially similar and predominate over questions affecting the individual members, as set forth *supra*.

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

86. Defendant fraudulently deceived Plaintiffs and the Class by representing that the Product has certain characteristics, benefits, and qualities which it does not have. In doing so, Defendant intentionally misrepresented and concealed material facts from Plaintiffs and the Class, specifically by advertising that the Product contains white chocolate when in fact it contains a cheap blend of sugars and hydrogenated oils. Said misrepresentations and concealment were done with the intention of deceiving Plaintiffs and the Class, and depriving them of their legal rights and money.

87. Defendant's claims about the Product led and continues to lead consumers like Plaintiffs to reasonably believe that the Product contains white chocolate.

88. Defendant knew or should have known that advertising and labeling the Product as "Premier White" would confuse reasonable consumers into thinking the Product actually contains white chocolate. *See* Figure 1 and Figure 2, *supra*.

89. Plaintiffs and the Class have suffered injury in fact as a result of and in reliance upon Defendant's false representations.

90. Plaintiffs would not have purchased the Product but for the misrepresentations by Defendant about the Product containing white chocolate.

91. Pursuant to Section 1780(a) of the CLRA, Plaintiffs seek injunctive relief in the form of an order enjoining the above-described wrongful acts and practices of Defendant, including, but not limited to, an order enjoining Defendant from continuing to make the representations set forth above as if the Product contains white chocolate. Plaintiffs also seek restitution.

92. Plaintiffs shall suffer irreparable harm if such an order is not granted.

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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 Nestle from labeling and advertising the Product as 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

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Ste. 804
Los Angeles, CA 90069

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson (SBN 257074)
rclarkson@clarksonlawfirm.com
Shireen M. Clarkson (SBN 237882)
sclarkson@clarksonlawfirm.com
Matthew T. Theriault (SBN 244037)
mtheriault@clarksonlawfirm.com
Bahar Sodaify (SBN 289730)
bsodaify@clarksonlawfirm.com
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069
Tel: (213) 788-4050
Fax: (213) 788-4070

Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
9/19/2019 6:15 PM
Alex Calvo, Clerk
By: Helena Hanson, Deputy



SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

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

Plaintiffs,

vs.

NESTLE USA, INC., and DOES 1 through 10,
inclusive,

Defendants.

Case No. 19CV02857

CLASS ACTION

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

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

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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 Santa Cruz County and the transaction at issue and the subject matter of the above-captioned action occurred in Santa Cruz 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

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): Plaintiffs Steven Prescott and Linda Cheslow		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California County of Santa Cruz 9/19/2019 6:15 PM Alex Calvo, Clerk By: Helena Hanson, Deputy 						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Cruz STREET ADDRESS: 701 Ocean Street, Room 110 MAILING ADDRESS: 701 Ocean Street, Room 110 CITY AND ZIP CODE: Santa Cruz, CA 95060 BRANCH NAME: County of Santa Cruz Civil Division		CASE NUMBER: 19CV02857 JUDGE: DEPT:						
CASE NAME: Prescott, et al. v. Nestle USA, Inc., et al.								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center; padding: 5px;">CIVIL CASE COVER SHEET</td> <td style="text-align: center; padding: 5px;">Complex Case Designation</td> </tr> <tr> <td style="padding: 5px;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="padding: 5px;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="padding: 5px;"> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder 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)
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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) 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) 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) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	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) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) 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)	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) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <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
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
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
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): 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-015.)

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.

Page 1 of 2

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

**SUMMONS
(CITACION JUDICIAL)**

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

NESTLE USA, INC., and DOES 1 through 10, inclusive,

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

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

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

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
9/19/2019 6:15 PM

Alex Calvo, Clerk
By: Helena Hanson, Deputy

Helena J. Hanson

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): County of Santa Cruz Civil Division
701 Ocean Street, Room 110, Santa Cruz, CA 95060

CASE NUMBER:
(Número del Caso): 19CV02857

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
(Fecha)

ALEX CALVO

Clerk, by
(Secretario)

Helena J. Hanson

, 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)).

Helena Hanson

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):

under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

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., Ste. 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 Steven Prescott and Linda Cheslow		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Cruz STREET ADDRESS: 701 Ocean Street, Room 110 MAILING ADDRESS: 701 Ocean Street, Room 110 CITY AND ZIP CODE: Santa Cruz, CA 95060 BRANCH NAME: County of Santa Cruz Civil Division		
Plaintiff/Petitioner: Plaintiffs Steven Prescott and Linda Cheslow Defendant/Respondent: Nestle USA, Inc.		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL		CASE NUMBER: 19CV02857

TO (insert name of party being served): Nestle USA, Inc.

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):

- ☒ A copy of the summons and of the complaint.
- ☐ 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)

Page 1 of 1

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 P. Struwe

Theresa Struwe

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ Santa Cruz Branch 701 Ocean Street, Room 110 Santa Cruz, CA 95060	FILED 09/19/2019 Alex Calvo, Clerk By: Helena Hanson Deputy, Santa Cruz County
Steven Prescott, et al vs Nestle USA, Inc.	
CASE MANAGEMENT INFORMATION AND SETTING	CASE NO: 19CV02857

DEFENDANT: YOU HAVE 30 CALENDAR DAYS TO FILE A WRITTEN RESPONSE WITH THE COURT ONCE YOU HAVE BEEN SERVED WITH THE SUMMONS AND COMPLAINT.

The date below is for a Case Management Conference. If you have not responded within 30 days, this hearing MAY NOT take place.

It is the duty of each party to be familiar with the California Rules of Court and the date, time and place of the first case management conference.

A written response is not always necessary. To make this determination it is important to seek legal advice and information. Some options are:

1. Santa Cruz County Bar Association Lawyer Referral Service: 831-425-4755 (Fee Based service)
2. Santa Cruz Superior Court Self Help Center: 1 Second Street, Room 301 Watsonville, CA 95076. 831-786-7200 option 4. www.santacruzcourt.org for hours.
3. Santa Cruz Law Library: 701 Ocean Street, Room 70 (Basement), Santa Cruz, CA 95060 831-420-2205 www.lawlibrary.org for hours.
4. Watsonville Law Center: 831-722-2845

PLAINTIFF: This notice **MUST** be served with the summons on all defendants and cross-defendants. Notice of any other pending case management conference must be served on subsequently named defendants and cross defendants.

YOUR CASE MANAGEMENT CONFERENCE DATE:

DATE: 01/21/2020 TIME: 8:30 A.M. Santa Cruz Department 10

Address of the Court: 701 Ocean Street, Santa Cruz, California

To appear by telephone at your Case Management Conference you **MUST** contact CourtCall at least 5 (five) **COURT** days before your hearing. Please call them at (888) 882-6878. Do NOT call the Court.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nestlé Deceives Consumers with Toll House 'Premier White' Morsels Packaging, Class Action Alleges](#)
