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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Renee Walker, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

Nestlé USA, Inc., a Delaware Corporation;
and DOES 1 to 100;

Defendants.

Civil Case No.: '19CV0723 L **KSC**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff Renee Walker (“Plaintiff”) brings this action, on behalf of herself and all
2 others similarly situated against NESTLÉ USA, INC. (“Defendant” or “Nestlé”).
3 Plaintiff alleges the following based upon information and belief, the investigation of
4 counsel, and personal knowledge as to the allegations pertaining to herself.

5 I. NATURE OF THE CASE

6 1. Nestlé, the world’s largest food company, is best known for chocolate
7 products like Butterfinger, Nestlé Crunch, Baby Ruth, Nesquik, 100 Grand and Toll
8 House chocolate chips. What Nestlé is not as well known for is that it has been making
9 its chocolate fortune off the backs of child labor and child slave labor in West Africa.
10 Nestlé has been acutely aware of the magnitude of unethical labor in its supply chain for
11 more than a decade – indeed, it admits, albeit anemically, that two-thirds of its chocolate
12 supply is tainted with child labor and/or child slave labor.¹ In fact, the World Cocoa
13 Foundation, which Nestle is a member of, reports that there are approximately **10 million**
14 **children** working on the cocoa farms in Côte d’Ivoire and Ghana.²

15 2. Notwithstanding knowing full well that its chocolate is primarily procured
16 from farms using the worst forms of child labor, Nestlé slaps bogus “seals” on its
17 products claiming its cocoa is “sustainably sourced” “certified” and “supports” or
18 “helps” farmers when it knows the opposite is true. It is abhorrent to equate slavery
19 and child labor to a “sustainable” practice. Nor does Nestlé fare any better on the
20 environmental “sustainability” front: Nestlé’s supply chain has virtually no
21 environmental standards in place. To the contrary, the “[c]hocolate industry drives
22 rainforest disaster in [the] Ivory Coast.”³ This massive deforestation was documented
23 by *The Guardian*, whose investigative reporters “travelled across Ivory Coast and
24

25 ¹[https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-](https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf)
26 [sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf](https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf), at p. 11.

27 ² [https://www.worldcocoafoundation.org/blog/tackling-child-labor-in-the-cocoa-sector-an-industry-](https://www.worldcocoafoundation.org/blog/tackling-child-labor-in-the-cocoa-sector-an-industry-viewpoint-of-a-work-in-progress/)
28 [viewpoint-of-a-work-in-progress/](https://www.worldcocoafoundation.org/blog/tackling-child-labor-in-the-cocoa-sector-an-industry-viewpoint-of-a-work-in-progress/)

³[https://www.theguardian.com/environment/2017/sep/13/chocolate-industry-drives-rainforest-](https://www.theguardian.com/environment/2017/sep/13/chocolate-industry-drives-rainforest-disaster-in-ivory-coast)
[disaster-in-ivory-coast](https://www.theguardian.com/environment/2017/sep/13/chocolate-industry-drives-rainforest-disaster-in-ivory-coast)

1 documented rainforests cleared for cocoa plantation; villages and farmers occupying
2 supposedly protected national parks; enforcement officials taking kickbacks for
3 turning a blind eye to infractions and trading middlemen who supply the big brands
4 indifferent to the provenance of beans.” *Ibid.* At the current pace of deforestation,
5 there will be no forest left in the Ivory Coast by 2030. *Ibid.*

6 3. Nestlé’s deceptive labeling misleads consumers into believing their
7 products are procured in accordance with environmentally and socially responsible
8 standards, when it knows they are not. Ms. Walker was misled by the affirmative
9 misrepresentations on Nestlé’s product packaging concerning the use of fair labor and
10 environmental standards and practices. Had she been aware of the misrepresentations
11 described herein, she would not have purchased Nestlé’s products.

12 4. Plaintiff thus brings this action pursuant to: (i) California’s Business &
13 Professions Code §§ 17200, *et seq.* (the Unfair Competition Law or “UCL”); and (ii)
14 California Civil Code §§ 1750, *et seq.* (the Consumers Legal Remedies Act or
15 “CLRA”). Plaintiff brings this action on behalf of a nationwide class for restitution
16 and injunctive relief, and any other relief deemed appropriate by the court to which
17 this case is assigned.

18 **II. JURISDICTION AND VENUE**

19 5. This Court has personal jurisdiction over Nestlé because Nestlé has
20 conducted and continues to conduct business in the State of California, and because
21 Nestlé has committed the acts and omissions complained of herein in the State of
22 California.

23 6. This court has subject matter jurisdiction pursuant to the Class Action
24 Fairness Act, 28 U.S.C. 1332(d), as Plaintiff (California) and Nestlé (Delaware) are
25 diverse, there are over 100 class members, and the amount in controversy exceeds \$5
26 million.

27 7. Venue is proper in the Southern District of California, because a substantial
28 portion of the acts giving rise to this action occurred in this district.

III. PARTIES

8. Plaintiff Walker is, and at all times mentioned herein was, an individual citizen of the State of California and resident of San Diego County. Plaintiff purchased Defendant Nestlé’s chocolate products labeled with the “Nestlé Cocoa Plan” “UTZ Certified” “Certified through UTZ” and “Sustainably Sourced” labels on them purporting to, among other things, “Support[] farmers for better chocolate” and “help improve the lives of []cocoa farmers.” Plaintiff relied upon Nestlé’s misrepresentations about the social and environmental benefits of the products in making her decision to purchase the products. Plaintiff suffered injury in that she would not have bought the UTZ/Nestlé Cocoa Plan/Sustainability-labeled products had she known that the products were not sourced from sustainable farming practices but rather off the backs of child and slave labor.

9. Defendant Nestlé USA (“Nestlé”) is a Delaware corporation with its principal place of business at 1812 North Moore Street in Rosslyn, Virginia 22209. Nestlé is one of the largest food and beverage companies in the world.⁴ Nestlé purchases approximately 414,000 tons of cocoa annually.⁵ Nestlé promotes itself as “the ‘Good Food, Good Life’ company, we enhance quality of life and contribute to a healthier future.”⁶ Nestlé does no such thing in the Côte D’Ivoire.

IV. FACTUAL ALLEGATIONS

A. Child Labor and Environmental Degradation in the Côte D’Ivoire’s Chocolate Industry Are Well-Known and Undisputed by Nestlé

10. Nestlé has long been aware that cocoa farming in Côte D’Ivoire relies heavily on child labor and slavery. Children on Ivorian cocoa plantations are subjected to what the International Labor Organization (ILO) terms the “Worst Forms of Child

⁴ <https://www.nestle.com/aboutus>

⁵ <https://www.nestleprofessional.us/we-share-your-values/nestle-cocoa-plan-promotes-better-farming-better-lives-better-cocoa>

⁶ https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf, at p. 11.

1 Labor” – including trafficking, slavery, and exposure to toxic chemicals and hazardous
2 tools.⁷ In 2001, Nestlé signed the Harkin-Engel Protocol, signifying its commitment
3 to eradicating the Worst Forms of Child Labor in West Africa. Signatories pledged to
4 “develop and implement credible, mutually-acceptable, voluntary, industry-wide
5 standards of public certification” to ensure that cocoa beans were “grown and/or
6 processed without the worst forms of child labor” by July 2005.

7 11. Notwithstanding the chocolate industry’s alleged commitment to
8 combating child labor and slavery, a study conducted in 2015 by Tulane University
9 concluded that the number of Ivorian children engaged in the Worst Forms of Child
10 Labor on cocoa plantations substantially *increased* between 2009 and 2014.

11 12. During the 2013-14 harvest season, 1,203,473 child laborers aged 5 to 17
12 were found to be working on cocoa farms in Côte d’Ivoire, with 95.9 percent engaged
13 in hazardous work in cocoa production. The work children engage in on the cocoa
14 farms includes burning and clearing fields, cutting down trees to expand cocoa
15 plantations, spraying pesticides, using sharp tools to break pods, and transporting
16 heavy loads of cocoa pods and water.⁸

17 13. The U.S. Department of Labor describes the conditions of forced labor in
18 chilling detail: “[s]ome children are sold by their parents to traffickers, some are
19 kidnapped, and others migrate willingly but fall victim to traffickers who sell them to
20 recruiters or farmers, where they end up in conditions of bonded labor. Some farmers
21 buy the children and refuse to let them leave the farm until the debt of their purchase
22 has been worked off. The children are frequently not paid for their work; some of their
23 wages are paid to the recruiter or trafficker. These children are held against their will
24 on isolated farms, are locked in their living quarters at night, and are threatened and
25 beaten if they attempt to escape. They are punished by their employers with physical

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27 _____
28 ⁷ <https://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm>

⁸ <https://www.dol.gov/sites/default/files/images/ilab/child-labor/CotedIvoire.pdf>, at p. 1.

1 abuse. They are forced to work long hours, including overtime, and are required to
2 work even when they are sick. Some children are denied sufficient food by their
3 traffickers and employers.”⁹

4 **B. Nevertheless, Nestlé Deceptively Labels Its Chocolate as a**
5 **Sustainable, Fair Trade Product**

6 14. Notwithstanding Nestlé’s knowledge that its supply chain is inundated
7 with child labor and child slave labor, Nestlé has the audacity to place patently false
8 “seals” on its products, purporting to be a “sustainably sourced” product. Nothing
9 could be further from the truth.

10 15. Many of Nestlé’s products prominently feature the logo of the Nestlé
11 Cocoa Plan. The Cocoa Plan, instituted in 2009, is described as “improv[ing] the lives
12 of cocoa farmers and the quality of their chocolate.”

13 16. Products advertised with the Nestlé Cocoa Plan seal are also accompanied
14 by references to UTZ, a third-party certifier which holds itself out as the “benchmark
15 for the sustainable production of . . . cocoa.”¹⁰ UTZ certified products stand for ethical
16 and sustainable farming, including better working conditions and better care for the
17 natural environment.¹¹

18 17. For example, Nesquik chocolate milk, marketed by Nestlé, boasts of
19 Nestlé’s “sustainably harvested cocoa beans.” Nestlé advertises the Nestlé Cocoa Plan
20 and claims to be working with UTZ in order to improve the lives of cocoa farmers.”

21 18. Nestlé’s Toll House Chocolate Chips products are advertised as
22 “sustainably sourced” through Nestlé’s Cocoa Plan. Nestlé also advertises its products
23 as “certified through UTZ.”

24 19. All of these claims are prominently included on the product packaging.
25 Consumers justifiably consider Nestlé’s assertions when choosing whether to purchase

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27 ⁹ https://www.dol.gov/sites/default/files/documents/ilab/EO_Report_2014.pdf, at p. 12.

28 ¹⁰ <https://utz.org/>

¹¹ See, <https://utz.org/what-we-offer/certification/the-standard/>

1 a particular product.



17 **1. Nestlé’s Sustainability Labeling is False and Misleading**

18 20. Sustainability is commonly used in the business enterprise world, and the
19 accepted sustainability management definition encompasses “managing the triple
20 bottom line - a process in which companies manage their financial, social and
21 environmental risks.”¹²

22 21. Nestlé makes both false social and environmental sustainability claims on
23 its packaging. It also makes these sustainability statements without any supporting
24 evidence.

25 ///

27 _____
28 ¹² Definition of business sustainability, Financial Times, <http://lexicon.ft.com/Term?term=business-sustainability>

1 **2. There Are No “Sustainable” Environmental Protocols in Place**
2 **in Defendant’s Cocoa Supply Chain**

3 22. Nestlé’s production and purchasing mechanisms in the Côte D’Ivoire do
4 not follow any sustainable environmental protocols, and actually adversely affect the
5 local ecosystem.

6 23. The rainforest in Côte D’Ivoire has decreased from 16 million hectares in
7 1960, making up half of the country, to less than 2 million hectares by 2010.¹³ Nestlé’s
8 overproduction and indiscriminate purchasing in Côte D’Ivoire has contributed to this
9 mass deforestation.¹⁴ An estimated 40 percent of the Ivorian cocoa harvest currently
10 comes from inside classified or protected areas. This has devastating consequences not
11 only for biodiversity and the local microclimate (including desertification and
12 changing weather patterns¹⁵).

13 24. Many of Côte D’Ivoire’s national parks and protected areas have been
14 entirely or almost entirely cleared of forest and replaced with cocoa growing
15 operations.¹⁶ For years the world’s major chocolate companies have been buying
16 cocoa grown through the illegal deforestation of national parks and other protected
17 forests, in addition to driving extensive deforestation outside of protected areas.¹⁷ In
18 the world’s two largest cocoa producing countries, Ivory Coast and Ghana, the market
19 created by the chocolate industry has been the primary source for the destruction of
20 environmentally protected areas.¹⁸ As Mighty Earth reports, “many of the country’s
21 national parks and conservation lands have been cleared of their forest to make way
22

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24 ¹³ 2018 Cocoa Barometer, at p.20
25 http://www.cocoabarometer.org/cocoa_barometer/Download_files/2018%20Cocoa%20Barometer%20180420.pdf

26 ¹⁴ *Id.*

27 ¹⁵ *Id.* p. 18-19

28 ¹⁶ Chocolate’s Dark Secret, Mighty Earth, 2017, http://www.mightyearth.org/wp-content/uploads/2017/09/chocolates_dark_secret_english_web.pdf

¹⁷ *Id.*

¹⁸ *Id.*

1 for cocoa operations to feed demand from large chocolate companies like Nestlé,
2 Cadbury, and Mars.”¹⁹

3 25. Nestlé currently has no protocols in place to prevent purchasing cocoa
4 produced on protected lands. Nestlé’s March 5, 2019 “Action Plan” highlights ending
5 deforestation but extends its original 2012 commitment to 2022.²⁰ Currently, upwards
6 of 80 percent of cocoa production and sales are done without properly tracing the
7 source of the cocoa. Accordingly, a large percentage of Nestlé’s cocoa is knowingly
8 grown in and purchased from protected nature reserves. As demand continues to
9 expand in cocoa production, rainforests are cut down for new cocoa fields.

10 26. In addition to mass deforestation, the current known and common
11 practices around cocoa farming are not sustainable. There is excessive use of fertilizers
12 and pesticides and a loss of biodiversity.²¹ Chemicals pollute waterways, killing
13 wildlife and harming communities. Deforestation exposes shade-dependent plants to
14 full sun, which increased the biospheres susceptibility to disease.

15 3. Slavery and Forced Child Labor Are Not “Sustainable”

16 27. Nestlé contends it provides sustainable chocolate to consumers through
17 its “Cocoa Plan” and claims that the company is working toward “improving the lives
18 of farmers.”

19 28. The social prong of sustainability entails that a company is working
20 toward developing structures which meet the needs of its current members, but also
21 ensure the ability of future generations to maintain a healthy community.²²

22 29. Sustainability also refers to mitigating adverse risks on the well-being and
23

24 _____
25 ¹⁹ Id.

26 ²⁰ Nestle Action Plan, March 5th, 2019, at https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/cocoa-and-forests-initiative-nestle-initial-action-plan.pdf

27 ²¹ Chocolate’s Dark Secret, Mighty Earth, 2017, http://www.mightyearth.org/wp-content/uploads/2017/09/chocolates_dark_secret_english_web.pdf

28 ²² <http://www.businessdictionary.com/definition/social-sustainability.html>

1 human rights of the communities in which it operates.²³

2 30. As previously stated, the number of children working in dangerous
3 conditions on cocoa farms in Côte d’Ivoire has *increased* considerably in recent years
4 not made farmers' lives better as a result of Nestlé's "Cocoa Plan".²⁴

5 31. Nestlé cannot publicly claim that it adopts sustainable practices and that
6 it is working to improve the lives of farmers when its unethical practices are in fact
7 perpetuating a system that relies on and thus increases child and child slave labor.

8 4. Nestlé’s “Cocoa Plan” is a Sham

9 32. Nestlé’s own internal certification plan, the “Nestlé Cocoa Plan”, is a
10 clear attempt to vindicate the company to the public without requiring them to take
11 tangible actions to eradicate this widespread scourge. It thus deceives consumers into
12 believing that buying Nestlé’s products will benefit farmers in Côte d’Ivoire and
13 misleads them into thinking their product is child labor and slave-labor free.

14 33. Nestlé makes false assurances that it is “determined to tackle the
15 problem”²⁵ and that its Nestlé Cocoa Plan (launched in 2009) is helping to “eliminate
16 the use of child labour” and to “stamp out forced labour practices” in the Ivorian cocoa
17 industry. Nestlé also claims that it is “helping the lives of farmers” through the Plan.
18 However, Nestlé’s profiteering off child labor does not help the lives of farmers. Child
19 labor has increased in Côte d’Ivoire since Nestlé instituted its “Cocoa Plan.”²⁶ Nestlé
20 has yet to commit to paying farmers a fair price for their cocoa and does not currently
21 have any long-term plans to support farmers achieving a living income.

22

23 ²³ See Social Sustainability, UN Global Compact, <https://www.unglobalcompact.org/what-is-gc/our-work/social>

24 ²⁴ Tulane Report 2015

25 https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf

26 ²⁵ <http://www.nestlecocoaplan.com/betterlives>

27 ²⁶ School of Public Health and Tropical Medicine Tulane University, “Survey Research on Child Labor in West African Cocoa Growing Areas”, Tulane University, 30 July 2015, at page 35.

28 https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf

1 34. Nestlé's Cocoa Plan represents that it is tackling child labor but relies
2 solely on Nestlé's own Child Labor Monitoring and Remediation System (CLMRS),
3 to achieve that goal. CLMRS purports to be a community-based monitoring system to
4 identify and remediate child labor. Nestlé's plan relies on Community Liaison People
5 (community auditors) to spot children engaged in labor activities, or on the children
6 themselves who can self-declare to be engaging in a hazardous activity.²⁷

7 35. Independent monitoring visits conducted annually by the Fair Labor
8 Association ("FLA") confirm the continued presence of child labor on Nestlé Cocoa
9 Plan CLMRS-certified farms. The 2017 FLA assessment found an overall *increase* in
10 the total number of child workers on farms from the previous year. Child labor
11 constituted 21% of the labor on CLMRS farms.²⁸

12 36. Moreover, the Nestlé Cocoa Plan does not even try to certify that children
13 are not being used as forced labor. Rather, it purports to include a voluntary reporting
14 and monitoring system for identifying child labor. As of 2017, Nestlé claimed it had
15 identified over 7,000 children working on farms covered by the Nestlé Cocoa Plan.²⁹
16 However, that number is deceptively understated.

17 37. The World Cocoa Foundation states that: "The organized supply chains
18 of a handful of companies reach only a fraction of the entire cocoa-growing population
19 of Côte d'Ivoire and Ghana, and efforts to date have only reached a fraction of the
20 farmers in those supply-chains."³⁰ "There are approximately two million cocoa farmers
21 in Côte d'Ivoire and Ghana representing 6-8 million children under the age of 18."

22 38. The Plan provides that around a third of Nestlé's total global supply is
23

24 _____
25 ²⁷ <http://www.nestlecocoaplan.com/better-lives/>

26 ²⁸ http://www.fairlabor.org/sites/default/files/documents/reports/2017_nestle_cocoa_executive_summary_october-2018.pdf, at p. 4.

27 ²⁹ <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf> at p. 6.

28 ³⁰ <https://www.worldcocoaafoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>

1 currently bought from producers covered by the Nestlé Cocoa Plan.³¹ Other
2 information however suggests that as little as 25 percent of its cocoa is bought through
3 the Nestlé Cocoa Plan, with the remaining 75 percent coming from untraceable
4 sources.³²

5 39. By all sources, it has admitted that the vast majority of Nestlé’s cocoa is
6 sourced through untraceable channels, where absolutely no monitoring takes place,
7 where child labor and trafficking occur on a widespread basis.

8 40. Additionally, out of the 70 co-operatives in Côte d’Ivoire that supply the
9 small amount of traceable cocoa bought by Nestle, only 22 co-operatives have
10 implemented CLMRS.³³ In other words, even in the small number of cooperatives
11 where the cocoa is traceable to farmers, monitoring activities through the Nestlé Cocoa
12 Plan CLMRS system take place in only a fraction of them.

13 41. Moreover, the available data demonstrates that the areas covered by the
14 CLMRS constitute a minimal proportion of the total number of farmers and children
15 supplying cocoa to Nestlé in Côte d’Ivoire.

16 5. The UTZ Certification Promoted by Nestlé Is Also a Sham

17 42. Nestlé couples false assurances of its Cocoa Plan with a reference to a
18 UTZ certification. Like Nestlé, UTZ claims child labor is prohibited on its certified
19 farms.³⁴ It purports to regulate the illegal use of child labor through its “UTZ certified
20 traceability system,” the “Good Inside Portal”. It boasts consumers can trust that “the
21 sustainable ingredients sourced for the product has been traced all the way from field
22 to shop shelf, every stage of its journey documented.”³⁵

23
24 ³¹ <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf>, at p. 11.

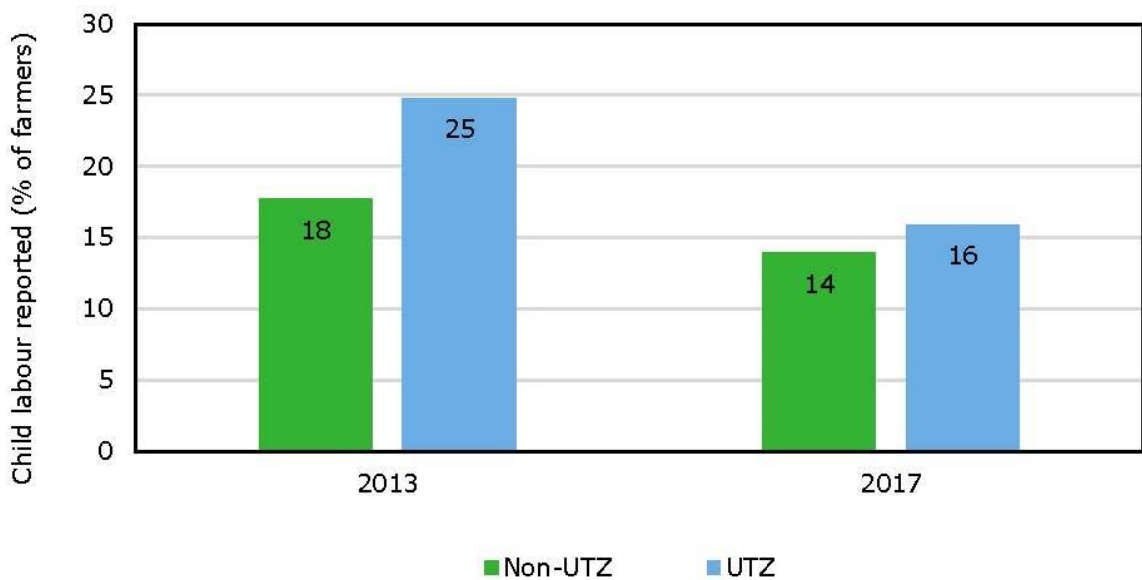
25 ³² Fair Labor Association,
26 http://www.fairlabor.org/sites/default/files/documents/reports/assessment_nestle_standard_supply_chain_ivory_coast_august_2016.pdf

27 ³³ <http://www.nestlecocoaplan.com/better-lives/>

28 ³⁴ <https://utz.org/what-we-offer/sector-change/child-labor/>

³⁵ <https://utz.org/what-we-offer/traceability-system/traceability-system/>

1 43. These assurances are false. A 2018 study co-sponsored in part by both
 2 Nestlé and UTZ entitled, “*Towards sustainable cocoa in Cote d’Ivoire—The impacts*
 3 *and contribution of UTZ certification combined with services provided by companies*”
 4 found widespread use of child labor on UTZ certified farms and a lack of oversight on
 5 those farms.³⁶ The study found that in 2017, only 38 percent of UTZ farmers had been
 6 inspected for the use of child labor.³⁷ That same year, 16 percent of UTZ farmers
 7 reported children doing prohibited hazardous or unhealthy work³⁸



18 **Figure 7.9** Percentage of cocoa farms where children conduct hazardous
 19 activities

20 prohibited by the UTZ Code of Conduct.³⁹ **This figure was two percent higher than**
 21 **for non-UTZ farms.**⁴⁰ Further, only 35 percent of UTZ farmers were aware of the
 22 minimum age for children to work on their farms.⁴¹

24 _____
 25 ³⁶ See generally, <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>

26 ³⁷ <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 64.

27 ³⁸ *Towards sustainable cocoa in Côte d’Ivoire*,
<http://library.wur.nl/WebQuery/wurpubs/fulltext/450223> at p. 62

28 ³⁹ <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 62.

⁴⁰ <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223> at p. 62

⁴¹ <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 64

1 44. Further deceiving consumers, UTZ purports to pay farmers a premium for
2 joining cooperatives which allegedly use fair labor. In fact, the premium is not paid to
3 farmers. Instead, it is paid directly to the cooperatives, who retain it for their own
4 benefit with no financial remuneration to the cocoa farmers.

5 45. By placing the UTZ certification label on its cocoa products, Nestlé
6 knowingly misleads consumers into believing they are purchasing sustainable,
7 ethically sourced chocolate which couldn't be further from the truth.

8 **6. Child Labor and Trafficked Labor Are So Widespread in Côte**
9 **d'Ivoire That No Chocolate Can Be Labeled As Sustainable**
10 **Labor Practices**

11 46. Nestlé admits that the use of child labor and trafficking remains
12 widespread and endemic. Nestle cannot claim it is even using primarily or close to
13 50% child labor free cocoa. As stated in the latest Cocoa Barometer Report: "Not a
14 single company or government is anywhere near reaching the sector-wide objective of
15 the elimination of child labour, and not even near their commitments of a 70%
16 reduction of child labour by 2020."⁴²

17 47. In the almost 20 years since the execution of the Harkin-Engel protocol,
18 no significant advancements have been made in Côte d'Ivoire. Rather than decreasing,
19 child labor has increased in West Africa. According to the 2015 Tulane Report, the
20 increase in cocoa production has also led to an increase of child laborers to 2.1 million
21 children in Côte d'Ivoire and a total of more than 3.7 million children in the country.
22 Of this number, 1,153,672 children working the cocoa sector are involved in hazardous
23 work,⁴³ including using machetes to cut trees or cocoa pods, burning fields, carrying
24

25 _____
26 ⁴² Fountain, A.; Huetz-Adams, F. "Cocoa Barometer 2018", Voice Network, The Netherlands,
2018, at page 5.

27 ⁴³ School of Public Health and Tropical Medicine Tulane University, "Survey Research on Child
28 Labor in West African Cocoa Growing Areas", Tulane University, 30 July 2015, at page 35.
https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf

1 heavy loads, handling agro-pharmaceutical products, as well as being deprived of
 2 schooling.⁴⁴ Around 90,000 children and adults are estimated to be trafficked to Côte
 3 d'Ivoire from neighboring countries such as Mali and Burkina Faso and subjected to
 4 forced labor on cocoa plantations.⁴⁵ Rather than eliminate the problem, the industry
 5 has merely pledged to reduce child labor in Côte d'Ivoire and Ghana by 70 percent by
 6 2020.⁴⁶

7 **a. The Cocoa Supply Chain is Comprised of Two Million**
 8 **Disperse Small Farms**

9 48. The number of cocoa farmers in Côte d'Ivoire and Ghana is estimated to
 10 be around 2 million.⁴⁷ Most of them are small farms with a size normally of no more
 11 than 3.5 hectares (10,000 square meters).⁴⁸ The majority of these farmers are also
 12 dispersed around the country in a region called the “cocoa belt,” located across the
 13 southern region of Côte d'Ivoire.

14 49. Their small operation and fragmented presence across the country favor a
 15 system in which farmers sell to intermediaries who will collect the beans and gather
 16 them in warehouses. These intermediaries are either cooperatives, where the farmers
 17 are part of a cooperative system, or individuals called “middlemen”, who are not part
 18 of any formal organization. Middlemen collect beans across diverse farms in the cocoa
 19 belt, where no monitoring takes place, to sell to grinders or traders, and then to
 20 manufacturers such as Nestlé.

21
 22
 23 ⁴⁴ Id. at page 60-61.

24 ⁴⁵ “Our Story”, Tony Chocolonely, <https://tonyschocolonely.com/us/en/our-story>, (Consulted on 26
 March 2019)

25 ⁴⁶ Chocolate’s Dark Secret, Might Earth, 2017, [http://www.mightyearth.org/wp-
 content/uploads/2017/09/chocolates_dark_secret_english_web.pdf](http://www.mightyearth.org/wp-content/uploads/2017/09/chocolates_dark_secret_english_web.pdf) at p. 14

26 ⁴⁷ Fountain, A.; Huetz-Adams, F. “Cocoa Barometer 2018”, Voice Network, The Netherlands,
 2018.

27 ⁴⁸ Macek, Paul et al., “Farmer Livelihoods” World Cocoa Foundation,
 28 <https://www.worldcocoafoundation.org/focus-areas/farmer-livelihoods/>, (consulted on 23 March
 2019).

1 55. The chocolate oligopolists have repeatedly broken promises to eliminate
2 child slavery in Côte D'Ivoire. In 2001, Senator Tom Harkin and Congressman Eliot
3 Engel established the Harkin-Engel Protocol aimed at eliminating the worst forms of
4 child labor in the cocoa sector. The worst forms of child labor are defined by the
5 International Labor Organization (ILO)'s Convention 182 to include all forms of slavery
6 or practices similar to slavery, such as the sale and trafficking of children, debt bondage
7 and forced or compulsory labor.⁵¹

8 56. While grossly misrepresenting the abhorrence and scale of child slavery,
9 Nestlé has proven to be unable or unwilling to eliminate the practice. The Harkin-Engel
10 Protocol committed to eliminating the worst forms of child labor in Côte d'Ivoire and
11 Ghana by July 2005.⁵² In 2005, cocoa industry leaders admitted the goals would not be
12 "fully met" but assured Sen. Harkin and Rep. Engel they were "committed to achieving
13 a certification system...within three years."⁵³ Then in 2008, industry leaders again
14 extended their self-imposed deadline by two years.⁵⁴ In 2010, the industry delayed the
15 implementation date by a full decade to 2020.

16 57. Nestlé is a member of the World Cocoa Foundation.⁵⁵ At the most recent
17 8th Annual World Cocoa Foundation Meeting in August 2018 the industry admitted it
18 could not make its 2020, or even 2025 goal of eradicating child labor in the cocoa supply
19 chain. Effectively abandoning any set date, the Foundation admitted it was not likely it
20 would meet its "aspiration for 2020" nor other targets "for the eradication of child labor
21 by 2025."⁵⁶

22 _____
23 ⁵¹https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

24 ⁵² <http://fortune.com/big-chocolate-child-labor/>

25 ⁵³ <http://www.cacao.gouv.ci/commun/documents/jointstatementSenateurTomHarkin.pdf>

26 ⁵⁴ http://www.csrwire.com/press_releases/14132-Joint-Statement-from-U-S-Senator-Tom-Harkin-Representative-Eliot-Engel-and-the-Chocolate-and-Cocoa-Industry-on-the-Implementation-of-the-Harkin-Engel-Protocol-#

27 ⁵⁵ <https://www.worldcocoaafoundation.org/about-wcf/members/>

28 ⁵⁶ <https://www.worldcocoaafoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>

1 **V. THE REGULATORY FRAMEWORK**

2 **A. The FTC Greenguides Prohibit Nestlé’s Misleading Statements**

3 58. The Federal Trade Commission has issued guidelines for companies that
4 market their products as environmentally-friendly.

5 59. The FTC Green Guides (“Guides”) apply to claims about the
6 “environmental attributes” of products. The FTC does not define the phrase
7 “environmental attributes,” but California has interpreted this to include claims that
8 products are earth friendly, environmentally friendly, or green. (Cal. Bus. & Prof.
9 Code) § 17580.5. Claims may be asserted directly or by implication, such as through
10 the use of symbols, logos, or certifications. 16 C.F.R. § 260.1.

11 60. The Guides prohibit “deceptive acts” or representations which are “likely
12 to mislead consumers acting reasonably under the circumstances and [are] material to
13 consumers’ decisions.” This includes representations made through labeling,
14 advertising, or other promotional activities. 16 C.F.R. § 260.1.

15 61. “Unqualified general environmental benefit claims” - including terms like
16 “eco-friendly” - typically qualify as deceptive, because they tend to convey that a
17 product has “no negative environmental impact.” Marketers are almost invariably
18 unable to substantiate such broad assertions, as required by the FTC in order to
19 demonstrate that a claim was not misrepresentative. 16 C.F.R. § 260.4.

20 62. To avoid deceiving consumers, marketers should use “clear and
21 prominent qualifying language” explaining that a general environmental claim refer
22 only to specific, limited benefits. This is important when marketers utilize
23 environmental certifications or seals, which might otherwise convey a broad meaning.
24 16 C.F.R. § 260.6.

25 63. Marketers retain responsibility for substantiating all claims that are
26 reasonably communicated by a third-party certification. 16 C.F.R. § 260.6.

27 64. To the extent Nestlé cocoa products are advertised as “certified by UTZ,”
28 Nestle is responsible for qualifying any claims reasonably conveyed to consumers

1 through the use of the UTZ name.

2 65. Sustainability is a broad concept that encompasses a wide range of
 3 environmental and social practices. The term generally connotes a combination of
 4 environmental, social, and ethical concerns.⁵⁷ For example, Unilever describes its
 5 sustainable sourcing strategy as an “an unwavering commitment to deeper
 6 transparency and traceability on climate and social impact issues,” which includes “a
 7 focus on living conditions and economic viability for the smallholders in [its] supply
 8 chain.”⁵⁸ Similarly, PepsiCo’s sustainable sourcing efforts include a focus on “health,
 9 safety, and hygiene, environmental and management system, and working hours.”⁵⁹
 10 In the context of the chocolate industry, Nestlé’s competitor, Barry Callebaut, defines
 11 sustainability to include human rights as well as environmental impact.⁶⁰

12 66. By labeling its products as “sustainably sourced,” Nestlé advances an
 13 unqualified general environmental claim. Based on Nestlé’s representation of its
 14 products as “sustainably sourced,” Plaintiff reasonably inferred that Nestlé’s
 15 “sustainably sourced” cocoa was produced in a socially and environmentally conscious
 16 manner.

17 67. Nestlé cannot substantiate its claims to use “sustainably sourced cocoa.”
 18 To the extent that “sustainably sourced” encompasses a concern for social as well as
 19 environmental welfare, Nestlé’s reliance on the worst forms of child labor contradicts
 20 any such claim. Labor involving hazardous and environmentally-destructive
 21 chemicals, dangerous machinery, and victims of trafficking is the subject of
 22 international condemnation.⁶¹ A reasonable consumer would not view such practices
 23 as “sustainable” in any sense of the word.

24 _____
 25 ⁵⁷ <https://www.ecovadis.com/us/sustainable-sourcing/>

26 ⁵⁸ <https://www.unilever.com/sustainable-living/reducing-environmental-impact/sustainable-sourcing/>

27 ⁵⁹ <https://www.pepsico.com/sustainability/sustainable-sourcing>

28 ⁶⁰ <https://www.barry-callebaut.com/en/group/forever-chocolate/ethical-sourcing-and-business/sustainable-sourcing>

⁶¹ *See, e.g.* <https://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm>

1 68. Nestlé’s misrepresentations materially influenced Plaintiff’s decision to
2 purchase their chocolate products.

3 **B. California Environmental Marketing Claims Act**

4 69. Under the California Environmental Marketing Claims Act (EMCA), it is
5 unlawful to make “any untruthful, deceptive, or misleading environmental marketing
6 claim, whether explicit or implied” Cal. Bus. & Prof. Code § 17580.5.

7 70. California has incorporated the provisions of the Guides into the
8 California Environmental Marketing Claims Act. The phrase “environmental
9 marketing claims” includes, but is not explicitly limited to, all claims described in the
10 Guides. Cal. Bus. & Prof. Code § 17580.5.

11 71. Nestlé’s claims that its products are sustainably sourced constitute
12 deceptive claims within the meaning of the Guides and violate the terms of the EMCA.
13 By claiming to use “sustainably sourced” beans, Nestlé violates the FTC provisions
14 relating to general environmental claims and implicitly puts forward the deceptive
15 notion that its supply chain relies on environmentally and socially responsible policies.
16 Nestlé cannot substantiate these claims.

17 **C. Intent of California Transparency in Supply Chain Act**

18 72. The California Transparency in Supply Chain Act, California Civil Code
19 § 1714.43 requires companies that do business in California and have worldwide gross
20 receipts exceeding \$100 million to disclose on their websites their efforts to eradicate
21 slavery and human trafficking from their direct supply chain for tangible goods offered
22 for sale. It requires companies subject to the Act to post disclosures related to five
23 specific areas: verification, audits, certification, internal accountability, and training.

24 73. Nestlé’s website page on the Transparency in Supply Chain Act provides
25 that the company “fully support[s] the United Nations Global Compact’s (UNGC)
26 guiding principles on human rights and labour and aim[s] to provide an example of
27
28

1 good human rights and labour practices throughout our business activities”.⁶²

2 74. Nestlé’s Transparency in Supply Chain Act website page also provides
3 hyperlinks to Nestlé’s corporate business principles and to Nestlé Supplier Code,
4 which both provide more detailed information about the standards to which the Nestlé
5 and its suppliers pretend they are adhering to.

6 75. Nestlé identifies the protection of human rights in its business activities
7 as one of its Corporate Business Principles stating that they “make sure that [they] are
8 not complicit in human rights abuses (UNGC Principle 2)”.⁶³ However, Nestlé is
9 continuously complicit in human rights abuses by not setting real measures or
10 programs to eradicate child labor from its supply chain and profiting directly from the
11 cheap labor provided by child and slave labor.

12 76. The Nestlé Supplier Code of Conduct also explicitly forbids child labor
13 by its suppliers: “In accordance with international labour standards, no person shall be
14 employed under the age of 15 or under the age for completion of compulsory
15 education, whichever is higher, except in the strict frame of the Family Farm
16 Work[...]”.⁶⁴ It also prohibits its suppliers to use young workers to work night shifts
17 or engage in work with hazardous conditions and equally prohibits the use of forced
18 labor in their operations.⁶⁵ However, Nestlé knowingly buys most of its cocoa in Côte
19 d’Ivoire from untraceable farms on which child labor and trafficking are happening.

20 77. Nestlé’s use of Ivorian cocoa in the supply for its chocolate violates the
21 publicly available statements made through its Supply Chain Act website page, as well
22 as its Corporate Business Principles and its Supplier Code. The website is designed to
23 create the impression that Nestlé monitors its supply chain and takes measures to obtain
24

25 ⁶² The Nestlé Corporate Business Principles, June 2010, [https://www.nestle.com/asset-](https://www.nestle.com/asset-library/documents/library/documents/corporate_governance/corporate-business-principles-en.pdf)
26 [library/documents/library/documents/corporate_governance/corporate-business-principles-en.pdf](https://www.nestle.com/asset-library/documents/library/documents/corporate_governance/corporate-business-principles-en.pdf)

27 ⁶³ Id.

28 ⁶⁴ The Nestlé Supplier Code of Conduct, July 2018, [http://www.nestle.com/asset-](http://www.nestle.com/asset-library/Documents/Library/Documents/Suppliers/nestle-responsible-sourcing-standard-english.pdf)

[library/Documents/Library/Documents/Suppliers/nestle-responsible-sourcing-standard-english.pdf](http://www.nestle.com/asset-library/Documents/Library/Documents/Suppliers/nestle-responsible-sourcing-standard-english.pdf)
⁶⁵ Id.

1 compliance with its codes. Nestlé states that “we do not tolerate child labour in our
2 supply chain.”⁶⁶ However, it not only on tolerating but in fact on profiting from child
3 labor.

4 78. Plaintiff read this website page and the affirmative statements that appear
5 in both Nestlé’s Corporate Business Principles as well as in its Supplier Code of
6 Conduct that contain affirmative misrepresentations about the Nestlé’s efforts to
7 eradicate slavery and human trafficking from their cocoa supply chain.

8 79. Although the California Transparency in Supply Chain Act does not
9 require companies to take action to mitigate human trafficking or forced labor risks in
10 their supply chains, it does require companies to disclose true and verifiable
11 information. By making false affirmative statements to the public, Nestlé has violated
12 the very purpose of this Act, which was intended to “provides consumers with critical
13 information about the efforts that companies are undertaking to prevent and root out
14 human trafficking and slavery in their product supply chains – whether here or
15 overseas”.⁶⁷

16 **1. Nestle Fails to Comply with the CTSA by Greenwashing Slave**
17 **Labor**

18 80. Nestlé blatantly greenwashes its products in order to increase its own sales
19 and deceptively earn the goodwill and support of the public. “Greenwashing” is
20 commonly known as the practice of making an unsubstantiated or misleading claim
21 about the environmental or social benefits of a product, service, technology or
22 company practice.⁶⁸ Nestlé claims, among others, that its products are sustainable and
23 its relationship with the suppliers improves the lives of the cocoa farmers in the Côte
24

25 ⁶⁶ [http://www.nestle.com/asset-](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF)
26 [library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF)
27 [cocoa_report.PDF](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF), at 1.

27 ⁶⁷ Kamala D. Harris, *The California Transparency in Supply Chains : Act A Resource Guide*, 2015,
28 <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>, p. 7

28 ⁶⁸ *See* Definition of Greenwashing: <https://whatis.techtarget.com/definition/greenwashing>.

1 D'Ivoire region. This could not be further from the truth. Nestlé's products were not
2 sourced from sustainable farming practices but rather off the backs of child slave and
3 trafficked labor.

4 **a. Equating Slave Labor to an Environmentally Sustainable**
5 **Practice is Abhorrent**

6 81. Greenwashing in its own right can be an extremely misleading and
7 oftentimes harmful practice. In Nestlé's case, its actions have perpetuated and funded
8 child slave labor. Nestlé represents that its products not only support sustainable
9 farming practices but provide other general environmental and social benefits. This is
10 difficult to reconcile with the fact that Nestlé actively exploits child slaves in order to
11 obtain an ongoing, cheap supply of cocoa. Nestlé maintains exclusive supplier/buyer
12 relationships with local farms and/or farmer cooperatives in Côte d'Ivoire and dictates
13 the terms by which such farms produce and supply cocoa to them, including
14 specifically the labor conditions under which the beans are produced.



Child laborer carrying pesticides on his back to spray on cocoa crops

1 match the increasing demand for chocolate. It is estimated that the demand for
2 chocolate will increase twofold by the year 2050.⁷¹ As a result, farmers have shifted
3 towards unsustainable, less environmentally conscious practices to meet these
4 demands.⁷²

5 87. For instance, farmers now use large amounts of pesticides to rid the crops
6 of pests and create larger yields in shorter periods of time. The pesticides employed
7 damage the land and the health of the sprayers applying the pesticide – mainly the child
8 laborers. Furthermore, this excessive spraying of pesticides can also cause the weeds
9 and insects to build up a resistance which will eventually create more harm to the crops
10 and the opposite of its intended effect.⁷³

11 88. Cocoa farming also contributes to rainforest and old growth forest
12 deforestation.⁷⁴ By clearing land in these forests, farmers decrease the biodiversity and
13 interactions between the many different organisms that naturally live in the area. Not
14 only are numerous habitats destroyed, but nutrient levels overall begin to fall as a result
15 of the poor irrigation and inadequate soil protection.⁷⁵ As fresh land becomes scarce,
16 the farmers cut down more forests and destroy more and more of the ecosystem. Nestlé
17 cannot reasonably claim that its products are the result of environmentally sustainable
18 practices when it works in conjunction with these local farms and/or farmer
19 cooperatives in Côte d’Ivoire for its supply while dictating the terms by which such
20

21 _____
22 Production. [https://www.confectionerynews.com/Article/2015/04/29/What-is-the-environmental-
23 impact-of-cocoa-production](https://www.confectionerynews.com/Article/2015/04/29/What-is-the-environmental-impact-of-cocoa-production).

24 ⁷¹ Bisseleua, D.H.B., Missoup, A.D., Vidal, S. (2009). Biodiversity Conservation, Ecosystem
25 Functioning, and Economic Incentives under Cocoa Agroforestry Intensification. *Conservation
26 Biology*, 23(5), 1176-1184. [https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1523-
27 1739.2009.01220.x](https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1523-1739.2009.01220.x)

28 ⁷² Slomkowski, K. (2005). Chocolate’s Dark Side. *E: The Environmental Magazine*, 16(6), 33-342.

⁷³ Rice, R.A., Greenburg, R. (2000). Cacao Cultivation and the Conservation of Biological
Diversity. *Ambio*, 29(3), 167-173.

<https://repository.si.edu/bitstream/handle/10088/391/Rice2000.pdf>

⁷⁴ England, P. (1993). Forest Protection and the Rights of Cocoa Farmers in Western Ghana.
Journal of African Law, 37(2), 164-176.

⁷⁵ Piasentin, F., Klare-Repnik, L. (2004). Gro-Cocoa: Global Research on
Cocoa. <http://www.cabi.org/Uploads/File/Gro%20Cocoa%20pdfs/gro-cocoa5.pdf>.

1 farms produce and supply cocoa to Nestlé.

2 89. In short, Nestlé greenwashes its products in order to gain consumer
3 support and approval of its “sustainable” practices. In reality, Nestlé contributes to
4 environmentally damaging practices that affect the health of the surrounding
5 ecosystems as well as the child laborers forced to participate in this hazardous work.
6 Nestlé attempts to turn a blind eye as it actively exploits child slaves in order to obtain
7 an ongoing, cheap supply of cocoa, all the while fostering the exclusive relationships
8 in Côte d’Ivoire that perpetuate these harmful operations.

9 **VI. NESTLE HAS THE ABILITY TO SOLVE THIS PROBLEM**

10 **A. Don’t Put Bogus Seals or Statements on Products**

11 90. No one forced Nestlé to make false statements on its packaging. While
12 admitting that “no company sourcing cocoa in Côte d’Ivoire and Ghana can fully
13 remove the risk of child labor in its supply chain,” Nestlé should not make misleading
14 sustainability claims on its product packaging.

15 **B. Technological Capability Exists to Achieve Greater Accountability**

16 91. There are a variety of technological innovations that have been developed
17 to help cocoa producers eradicate child labor, forced labor and trafficking, through true
18 transparency in their global, complex supply chains. These technologies are already
19 used in the supply chains of other commodities, demonstrating that their
20 implementation and application is within the reach of what a large, profitable company
21 like Nestlé can do. As one of the leaders and largest transnational corporations in the
22 agriculture sector, Nestlé has no excuse to turn its back to these solutions while
23 continuing to claim and advertise that it sustainably sources cocoa in Côte d’Ivoire.

24 **CLASS ACTION ALLEGATIONS**

25 92. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of
26 Civil Procedure on behalf of herself and all other similarly situated individuals (the
27 “Class”), defined as follows:

28 ///

1 All United States residents who purchased Nestle Products marked
2 with the “Nestle Cocoa Plan”, “UTZ” seals, “sustainably sourced”,
3 or “improv[ing] the lives of farmers” within the United States from
4 the period of April 18, 2015 to the present. Excluded from the Class
5 are any of Defendant’s officers, directors, or employees; officers,
6 directors, or employees of any entity in which Defendant currently
7 has or has had a controlling interest; and Defendant’s legal
8 representatives, heirs, successors, and assigns.

9 93. At this time, Plaintiff does not know the exact number of Class members;
10 however, given the nature of the claims and the number of stores in the United States
11 selling Nestlé’s Products, Plaintiff believes that the Class members are so numerous
12 that joinder of all members is impracticable.

13 94. There is a well-defined community of interest in the questions of law and
14 fact involved in this case. The following questions of law and fact are common to the
15 Class members and predominate over questions that may affect individual Class
16 members:

- 17 1. whether Nestlé misrepresented the environmental and social
18 benefits of products labeled with fair trade, environmentally
19 sustainable and socially beneficial labeling;
- 20 2. whether Nestlé’s labeling, marketing, advertising, and/or selling
21 of its products with fair trade, environmentally sustainable and
22 socially beneficial representations constituted an unfair and/or
23 deceptive trade practice;
- 24 3. whether Nestlé participated in and pursued the common course of
25 conduct complained of herein;
- 26 4. whether Nestlé was enriched as a result of the unlawful,
27 fraudulent, and unfair conduct alleged in this Complaint such that
28

1 it would be inequitable for Nestlé to retain the benefits conferred
2 upon it by Plaintiff and the other Class members; and

3 95. Plaintiff's claims are typical of those of the Class because Plaintiff, like
4 all Class members, purchased Nestlé's products bearing the fair trade, environmentally
5 sustainable and socially beneficial labeling, seals or certifications in a typical consumer
6 setting and sustained damages from Nestlé's wrongful conduct.

7 96. Plaintiff will adequately protect the interests of the Class and has retained
8 counsel who are experienced in litigating complex class actions. Plaintiff has no
9 interests that conflict with those of the Class.

10 97. A class action is superior to other available methods for the fair and
11 efficient adjudication of this controversy.

12 98. The prerequisites to maintaining a class action for injunctive or equitable
13 relief pursuant to Fed. R. Civ. P. 23(b)(2) are met, as Nestlé has acted or refused to act
14 on grounds that apply generally to the Class, so that final injunctive relief or
15 corresponding declaratory relief is appropriate with respect to the Class as a whole.

16 99. Nestlé's conduct is generally applicable to the Class as a whole and
17 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As
18 such, Nestlé's systematic policies and practices make declaratory relief with respect to
19 the Class as a whole appropriate.

20 100. The requirements of Fed. R. Civ. P. 23(b)(3) are met as common issues
21 predominate over any individual issues, and treatment of this matter as a class action
22 is superior to numerous individual actions.

23 101. The litigation of separate actions by Class members would create a risk
24 of establishing inconsistent rulings and/or incompatible standards of conduct for
25 Nestlé. For example, one court might enjoin Nestlé from performing the challenged
26 acts, whereas another might not. Additionally, individual actions may be dispositive
27 of the interests of the Class, although certain Class members are not parties to such
28 actions.

COUNT I

**(Unfair and Deceptive Acts and Practices In Violation of
the California Consumers Legal Remedies Act)
(For Injunctive Relief Only)**

102. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint and further alleges as follows:

103. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

104. Plaintiff and the other Class members are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought the products at issue for personal, family, or household purposes.

105. Plaintiff and Nestlé, and the other Class members and Nestlé, have engaged in “transactions,” as that term is defined by California Civil Code §1761(e).

106. The conduct alleged in this complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Nestlé in transactions intended to result in, and which did result in, the sale of goods to consumers.

107. As alleged more fully above, Nestlé has violated the CLRA by falsely representing to Plaintiff and the other Class members that Nestlé’s products labeled with the Environmental and socially beneficial seals or certifications were independently verified as having been produced using environmentally sound and socially responsible practices.

108. As a result of engaging in such conduct, Nestlé has violated California Civil Code § 1770(a)(5), (a)(7), and (a)(9).

109. Pursuant to California Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks an order of this Court that includes, but is not limited to, an order requiring Nestlé to:

1 a. remove and/or refrain from making statements representing that products
2 derived from alleged certified cocoa farms support sustainable farming or
3 provide other general environmental and social benefits; and/or

4 b. remove and/or refrain from making representations that the fair trade,
5 environmentally sustainable and socially beneficial seals or certifications
6 indicate that a product has been independently verified as having been
7 produced using environmentally sound and socially responsible practices.

8 110. Plaintiff and the other Class members may be irreparably harmed and/or
9 denied an effective and complete remedy if such an order is not granted.

10 111. The unfair and deceptive acts and practices of Nestlé, as described above,
11 present a serious threat to Plaintiff and the other Class members.

12 112. Plaintiff seeks injunctive relief for violation of this Act.

13 113. On April 15, 2019, Plaintiff sent a letter to Nestlé via certified mail that
14 provided notice of Nestlé’s violation of the CLRA and demanded that within thirty
15 (30) days from that date, Nestlé correct, repair, replace or otherwise rectify the
16 unlawful, unfair, false and/or deceptive practices complained of herein. The letter also
17 stated that if Nestlé refused to do so, a complaint seeking damages in accordance with
18 the CLRA would be filed. If Nestlé fails to rectify the unlawful, unfair, false, and/or
19 deceptive practices alleged herein, Plaintiff will seek leave to amend the Complaint to
20 seek damages for violation of this Act.

21 **COUNT II**

22 **(Violation of California’s Unfair Competition Law)**

23 114. Plaintiff incorporates by reference each of the allegations contained in the
24 preceding paragraphs of this Complaint and further alleges as follows:

25 115. By committing the acts and practices alleged herein, Nestlé has violated
26 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-
27 17210, as to the Class as a whole, by engaging in unlawful, fraudulent, and unfair
28 conduct.

1 116. **Unlawful Conduct.** Nestlé has violated the UCL’s proscription against
2 engaging in *unlawful* conduct as a result of:

- 3 (a) violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and
4 (a)(9), as alleged above; and
5 (b) violations of California’s Environmental Marketing Claims Act, Cal.
6 Bus. & Prof. Code §§ 17580-17581, as alleged below:

7 117. Nestlé has made misrepresentations that the environmental and socially
8 beneficial seals or certifications indicate that a product has been independently verified
9 as having been produced using environmentally sound and socially responsible
10 practices.

11 118. Plaintiff and the other Class members have suffered injury in fact and
12 have lost money or property as a result of Nestlé’s violations of California’s
13 Environmental Marketing Claims Act (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-
14 17581.

15 119. In particular, Nestlé has violated and continue to violate California
16 Business and Professions Code § 17580.5, which makes it “unlawful for any person to
17 make any untruthful, deceptive, or misleading environmental marketing claim,
18 whether explicit or implied” and which defines an environmental marketing claim to
19 include “any claim contained in the [the FTC’s Green Guides].”

20 120. The Federal Trade Commission (FTC), whose mission is partly “[t]o
21 prevent business practices that are anticompetitive or deceptive or unfair to
22 consumers,” has promulgated industry guidelines, known as the “FTC Green
23 Guides,”⁷⁶ that apply to the unfair and deceptive nature of Nestlé’s environmental
24 marketing claims.

25
26
27 ⁷⁶ See, FTC, *GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS*, 16 C.F.R. §
28 260, available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf> (last visited May 13, 2014).

1 221. Environmental marketing claims that violate the standards of the Green
2 Guides are *per se* unlawful under California’s Environmental Marketing Claims Act
3 (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-17581. The acts and omissions alleged
4 herein are in contravention of the FTC Green Guides and in violation of the EMCA in
5 several respects. The FTC Green Guides lay out three applicable principles. First,
6 manufacturers should avoid making general environmental claims without noting
7 specific benefits.⁷⁷ Second, endorsements that appear to be from third-party
8 organizations must be independent and any material connections with the manufacturer
9 must be disclosed.⁷⁸ Additionally, any representations that appear to be endorsement
10 must also comply with the FTC Guide on Endorsements.⁷⁹

11 222. Nestlé’s use of the environmental and socially beneficial seals or
12 certifications is in contravention of the FTC’s Guides on Endorsements because Nestle
13 Cocoa Plan and UTZ do not exercise the expertise that consumers reasonably expect
14 from experts in sustainable farming.⁸⁰ These seals/certifications do not evaluate
15 certified farms as extensively as an expert group on farm sustainability would.

16 223. Pursuant to California Business and Professions Code §§ 17203 and
17 17535, Plaintiff and the other Class members seek an order of this Court that includes,
18 but is not limited to, an order requiring Nestlé to:

19
20 _____
21 ⁷⁷ 16 C.F.R. § 260.3(a) Additionally, such specific claims should be clear, prominent, and specific.
Id.

22 ⁷⁸ *See* 16 C.F.R. § 260.6. The subsection on certifications and seals of approval says that certifications
23 or seals that do not clearly convey the basis for the certification should not be used because it could
24 be interpreted as making a general environmental claim. 16 C.F.R. § 260.6(d). The guides
25 recommend that if the positive attributes are too numerous to disclose, the seal of approval may direct
26 consumers to a website that specifies the claims as long as the content on that website is truthful and
27 accurate. 16 C.F.R. § 260.6(e). This subsection specifies that a certification that conveys that it has
28 been certified by an independent organization, it must disclose material connections between the
organization and the manufacturer. 16 C.F.R. § 260.6(b).

⁷⁹ 16 C.F.R. § 260.6(b). The FTC Guide on Endorsements is published at 16 C.F.R. § 255.

⁸⁰ *See* 16 C.F.R. § 255.3 (“[t]his evaluation must . . . [be] as extensive as someone with the same
degree of expertise would normally need to conduct in order to support the conclusions presented in
the endorsement.”).

1 a. remove and/or refrain from making statements representing that products
2 derived from the Nestlé Cocoa Plan and/or have UTZ certification
3 support sustainable practices or provide other general environmental and
4 social benefits; and/or

5 b. remove and/or refrain from making representations that the
6 environmental and socially beneficial seals or certifications indicate that
7 a product has been independently verified as having been produced using
8 environmentally sound and socially responsible practices.

9 124. **Fraudulent Conduct.** Nestlé’s acts and practices described above also
10 violate the UCL’s proscription against engaging in *fraudulent* conduct.

11 125. As more fully described above, Nestlé’s misleading representations
12 regarding the environmental and socially beneficial seals or certifications is likely to
13 deceive reasonable consumers. Indeed, Plaintiff and the other Class members were
14 unquestionably deceived regarding the Nestlé Cocoa Plan and/or UTZ certification
15 program and the environmental and social benefits of purchasing products bearing the
16 environmental and socially beneficial seals or certifications, as Nestlé’s promotion and
17 use of the Nestlé Cocoa Plan and/or UTZ certification program and environmental and
18 socially beneficial seals or certifications misrepresented and/or omitted the true facts
19 concerning the material connections between the Nestlé Cocoa Plan and/or UTZ
20 certification program and the entities it allows to be certified pursuant to the Nestlé
21 Cocoa Plan and/or UTZ standards. Nestlé’s promotion and use of the Nestle Cocoa
22 Plan and/or UTZ certification program and environmental and socially beneficial seals
23 or certifications misrepresented and/or omitted the true facts concerning the
24 environmental and social benefits of products labeled with the environmental and
25 socially beneficial seals or certifications. Said acts are fraudulent business practices.

26 126. **Unfair Conduct.** Nestlé’s acts and practices described above also violate
27 the UCL’s proscription against engaging in *unfair* conduct.

28

1 127. Plaintiff and the other Class members suffered a substantial injury by
2 virtue of buying products that they would not have purchased absent Nestlé’s unlawful,
3 fraudulent, and unfair marketing, advertising, packaging, and labeling or by virtue of
4 paying an excessive premium price for the unlawfully, fraudulently, and unfairly
5 marketed, advertised, packaged, and labeled products.

6 128. There is no benefit to consumers or competition from deceptively
7 marketing and labeling products that purport to provide consumers with an
8 environmentally and socially responsible alternative to other products, as determined
9 according to independent standards.

10 129. Plaintiff and the other Class members had no way of reasonably knowing
11 that the products they purchased were not as marketed, advertised, packaged, or
12 labeled. Thus, they could not have reasonably avoided the injury each of them
13 suffered.

14 130. The gravity of the consequences of Nestlé’s conduct as described above
15 outweighs any justification, motive, or reason therefore, particularly considering the
16 available legal alternatives which exist in the marketplace, and such conduct is
17 immoral, unethical, unscrupulous, offends established public policy, or is substantially
18 injurious to Plaintiff and the other Class members.

19 131. Nestlé’s violations of the UCL continue to this day.

20 132. Pursuant to California Business and Professional Code § 17203, Plaintiff
21 and the Class seek an order of this Court that includes, but is not limited to, an order
22 requiring Nestlé to:

- 23 a. remove and/or refrain from making statements representing that products
24 derived from the Nestlé Cocoa Plan and/or UTZ certified farms support
25 sustainable farming or provide other general environmental and social
26 benefits; and/or
- 27 b. remove and/or refrain from making representations that the
28 environmental and socially beneficial seals or certifications indicate that

- 1 a product has been independently verified as having been produced using
2 environmentally sound and socially responsible practices;
- 3 c. provide restitution to Plaintiff and the other Class members;
- 4 d. disgorge all revenues obtained as a result of violations of the UCL; and
- 5 e. pay Plaintiff's and the Class's attorney fees and costs.

6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment on behalf of herself and the Class
9 as follows:

- 10 A. an order certifying the proposed Class; appointing Plaintiff as
11 representative of the Class; and appointing Plaintiff's undersigned
12 counsel as Class counsel;
- 13 B. a declaration that Nestlé is financially responsible for notifying Class
14 members of the pendency of this suit;
- 15 C. an award of restitution pursuant to California Business and Professions
16 Code §§ 17203 and 17535 for Class members;
- 17 D. an award of disgorgement pursuant to California Business and
18 Professions Code §§ 17203 and 17535 for Class members;
- 19 E. an order enjoining Nestlé's unlawful and deceptive acts and practices,
20 pursuant to California Business and Professions Code §§ 17203 and
21 17535, to remove and/or refrain from making statements representing that
22 products derived from Nestlé and Cocoa Plan/UTZ certified farms
23 support sustainable farming or provide other general environmental and
24 social benefits and/or to remove and/or refrain from making
25 representations that the environmental and socially beneficial seals or
26 certifications indicate that a product has been independently verified as
27 having been produced using environmentally sound and socially
28 responsible practices;

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- F. injunctive relief for Class members pursuant to California Civil Code § 1780;
- G. statutory damages in the maximum amount provided by law;
- H. punitive damages in accordance with proof and in an amount consistent with applicable precedent;
- I. an order awarding Plaintiff and the other Class members the reasonable costs and expenses of suit, including their attorneys’ fees; and
- J. any further relief that the Court may deem appropriate.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury for all claims so triable.

Dated: April 19, 2019

Respectfully submitted,

COAST LAW GROUP LLP

By: /s/ Helen I. Zeldes

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Renee Walker, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Helen I. Zeldes, Esq., Amy C. Johnsgard, Esq., Ben Travis, Esq. Coast Law Group, LLP, 1140 S. Coast Hwy 101, Encinitas, CA 92024 Tel: (760) 942-8505

DEFENDANTS

Nestlé USA, Inc., a Delaware Corporation; and DOES 1 to 100

County of Residence of First Listed Defendant Arlington County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'19CV0723 L KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332. Brief description of cause: Claims under the CLRA and UCL for misleading product labeling.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/19/2019 SIGNATURE OF ATTORNEY OF RECORD Helen I. Zeldes, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Nestlé's 'Sustainable' Chocolate Labeling Is a Sham Due to Child Labor, Lack of Environmental Standards](#)
