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



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:

1 **SUMMARY OF THE ACTION**

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

4 2. Nestle is a multi-billion-dollar company<sup>1</sup> and a highly visible competitor in the global  
5 chocolate market. In 2018, Nestle generated approximately \$92 billion dollars worldwide and  
6 approximately \$27 billion dollars in the United States.

7 3. Nestle’s profits are attributable, in part, to deceptive labeling and advertising of the  
8 Product as containing white chocolate.<sup>2</sup> In reality, the Product does not contain *any* white chocolate.  
9 It is fake white chocolate.



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

23

24 <sup>1</sup> 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](https://www.nestle.com/asset-library/documents/library/documents/financial_statements/2018-financial-statements-en.pdf) (last  
25 visited August 22, 2019).

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

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

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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 line<sup>4</sup> are depicted below.



<sup>4</sup> 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 Chocolate<sub>3</sub>Minis, Semi-Sweet Chocolate, and Triple Chip.

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

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

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

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

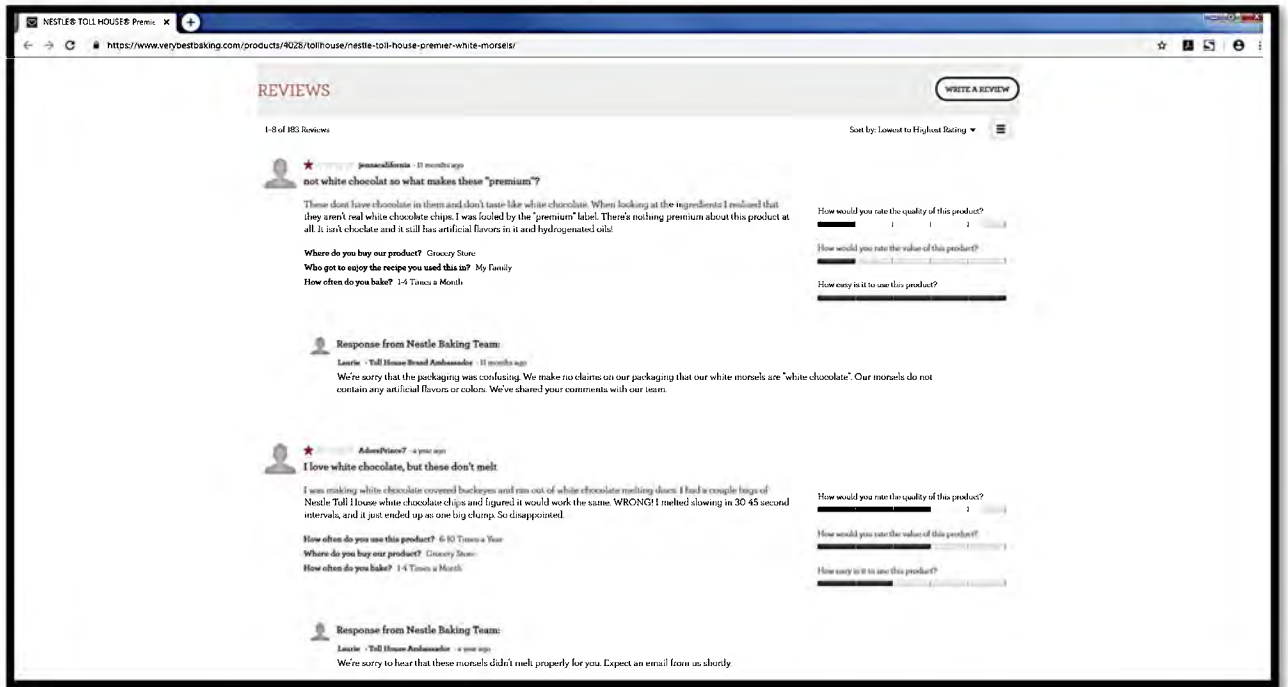
17           10.      Yet another consumer complained on Nestle’s website, “Note: this is not white  
18 chocolate. I wish the label included the word ‘imitation’ or ‘chocolate flavored’ like the fake semi-  
19 sweet morsels do. Then I wouldn’t have expected it to melt like white chocolate. I threw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

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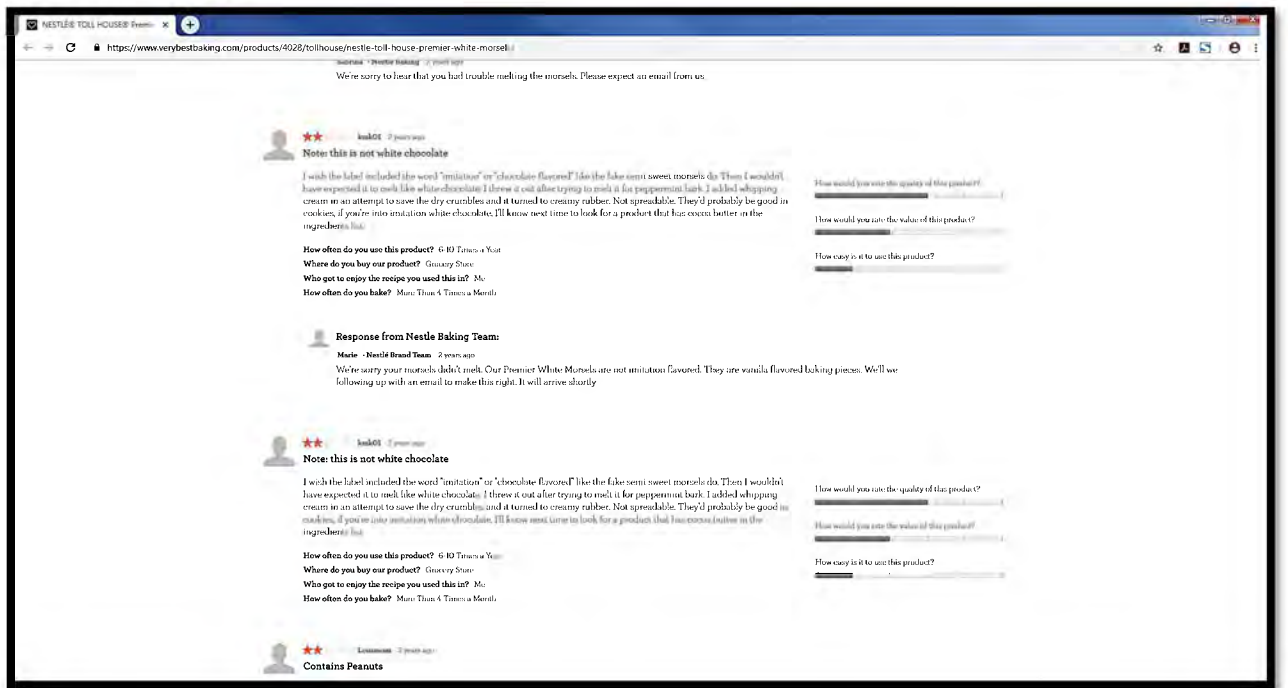
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**Figures 1-2** (below): Screenshots taken from Nestle’s official website revealing that consumers are misled by Nestle’s labeling and advertising of the Product to believe the Product contains white chocolate, not fake white chocolate.

**Figure 1.**



**Figure 2.**



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

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

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

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

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

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

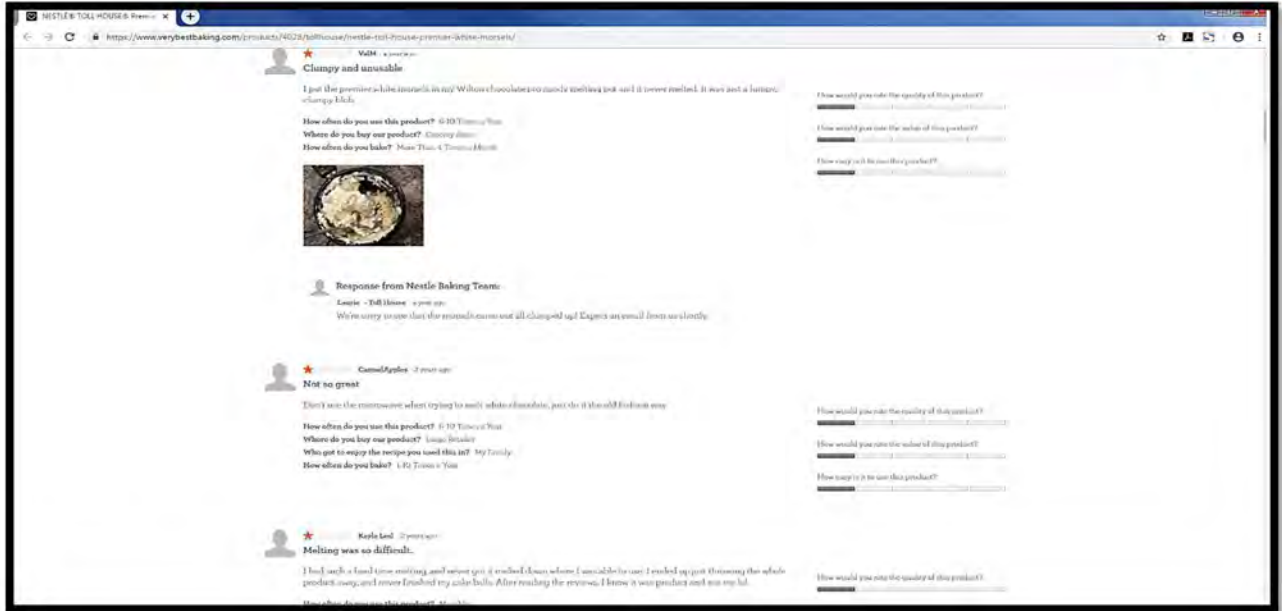
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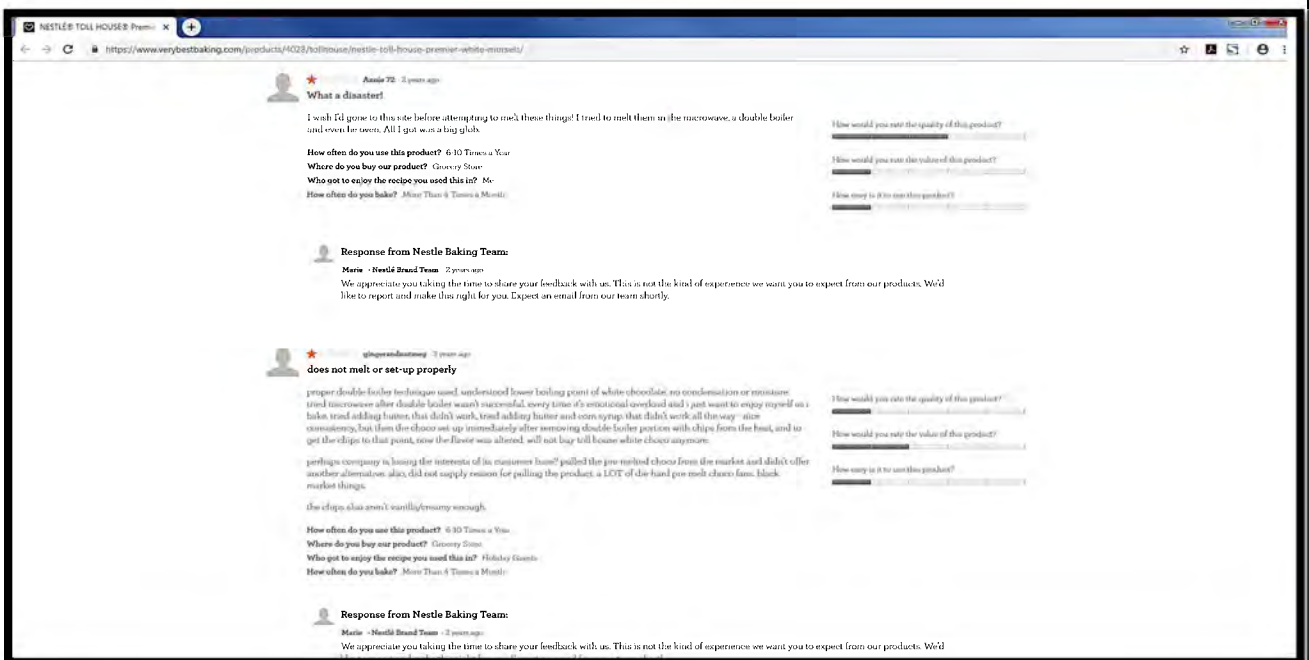
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**Figures 3-5** (below): Screenshots taken from Nestle’s official website revealing that consumers are misled by Nestle’s labeling and advertising of the Product as containing white chocolate and are therefore surprised when the Product does not melt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

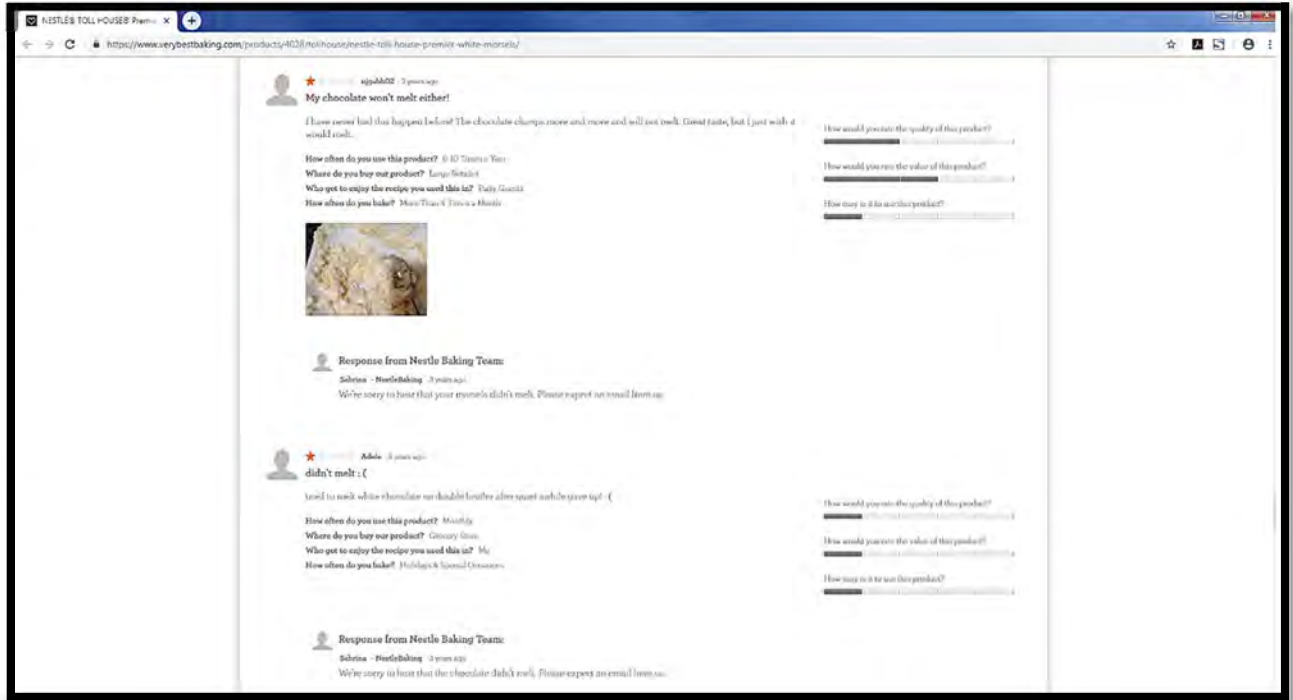
**Figure 3.**



**Figure 4.**



1 **Figure 5.**



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

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

24 19. The false and misleading labeling and advertising of the Product violates the  
25 California Consumers Legal Remedies Act, particularly California Civil Code Sections 1770(a)(5),  
26 1770(a)(7), and 1770(a)(9). As such, Defendant has committed *per se* violations of Business and  
27 Professions Code Section 17200, *et seq.*, and Business and Professions Code Section 17500.  
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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  
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1 and capacities when the same have been ascertained. Plaintiffs are informed and believe and based  
2 thereon allege that DOES 1 through 10 were authorized to do and did business in Santa Cruz  
3 County. Plaintiffs are further informed and believe and based thereon alleges that DOES 1 through  
4 10 were and/or are, in some manner or way, responsible for and liable to Plaintiffs for the unfair  
5 business practices set forth herein.

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

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

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

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

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

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

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

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

18 Title 21 Code of Federal Regulations Section 163.124.

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

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

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

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28 <sup>5</sup> *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:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

26          55. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.  
27          Because of the small size of the individual Class members' claims, few, if any, Class members  
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1 could afford to seek legal redress for the wrongs complained of herein. Absent a representative  
2 action, the Class members will continue to suffer losses and Defendant will be allowed to continue  
3 these violations of law and to retain the proceeds of its ill-gotten gains.

4 **FIRST CAUSE OF ACTION:**

5 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

6 **BUSINESS & PROFESSIONS CODE § 17200, et seq.**

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

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

10 57. This cause of action is brought pursuant to Business and Professions Code Section  
11 17200, *et seq.*, on behalf of Plaintiffs and a Class consisting of all persons residing in the United  
12 States and/or State of California who purchased the Product for personal use and not for resale  
13 during the time period of four years prior to the filing of the complaint through the present.

14 58. Defendant in its advertising and packaging of the Product make false and misleading  
15 statements regarding the quality and characteristics of the Product, particularly that it contains white  
16 chocolate, not fake white chocolate. Such claims appear on the label and packaging of the Product  
17 which are sold at retail stores nationwide, point-of-purchase displays, as well as Nestle's official  
18 website, and other retailers' advertisements which have adopted Nestle's advertisements.

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

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

24 61. Defendant knew that the white chocolate representations it made and continues to  
25 make about the Product are false and misleading and deceives reasonable consumers. *See Figures*  
26 *1 through 5, supra.*

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

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

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

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

15          66. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiffs and  
16 the members of the Class seek an order of this Court enjoining Defendant from continuing to  
17 engage, use, or employ its practice of labeling and advertising the Product as white chocolate.  
18 Plaintiffs also seek restitution.

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

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

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

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

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

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

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

8 **THIRD CAUSE OF ACTION:**

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

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

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

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

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

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

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

24 85. The white chocolate misrepresentations described herein were intended to increase  
25 sales to the consuming public, and violated and continue to violate Section 1770(a)(5) of the CLRA  
26 by representing that the Product has characteristics and benefits which it does not have.  
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1 86. Defendant fraudulently deceived Plaintiffs and the Class by representing that the  
2 Product has certain characteristics, benefits, and qualities which it does not have. In doing so,  
3 Defendant intentionally misrepresented and concealed material facts from Plaintiffs and the Class,  
4 specifically by advertising that the Product contains white chocolate when in fact it contains a cheap  
5 blend of sugars and hydrogenated oils. Said misrepresentations and concealment were done with  
6 the intention of deceiving Plaintiffs and the Class, and depriving them of their legal rights and  
7 money.

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

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

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

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

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

21 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.**



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