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8  
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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 HENRY ESTRADA, Individually and on  
14 Behalf of All Others Similarly Situated,

15 Plaintiff,

16 vs.

17 NESTLE USA, INC.,

18 Defendant.

No. **CV 14-989 RGK (FFM)**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff Henry Estrada (“Plaintiff”) alleges the following based upon  
2 personal knowledge as to himself and his own acts, and upon information and  
3 belief and the investigation by Plaintiff’s counsel, which included, among other  
4 things, a review of public documents, marketing materials, and announcements  
5 made by Nestle USA, Inc. (“Nestle” or “Defendant”) as to all other matters.  
6 Plaintiff believes that substantial additional evidentiary support exists for the  
7 allegations set forth herein and will be available after a reasonable opportunity for  
8 discovery.

9 **NATURE OF THE ACTION**

10 1. This action seeks to remedy the unfair, deceptive, and unlawful  
11 business practices of Defendant with respect to the marketing, advertising,  
12 labeling, and sales of Nescafe Decaf branded decaffeinated instant coffees (the  
13 “Nescafe Decaf”), such as Nescafe Decaf Taster’s Choice Decaf House Blend and  
14 Nescafe Decaf Clasico Decaf Dark Roast.

15 2. Defendant recognizes that consumers who purchase decaffeinated  
16 products wish to avoid or limit their consumption of caffeine. Consumers typically  
17 substitute decaffeinated for caffeinated coffee in an effort to abstain from caffeine,  
18 whether on account of various medical conditions, certain prescription drug  
19 interactions, or just a desire to avoid the stimulant effect of caffeine later in the  
20 day.

21 3. During the Class Period, Defendant has manufactured, distributed,  
22 and sold Nescafe Decaf and consistently has marketed, advertised, and labeled  
23 Nescafe Decaf as decaffeinated – which the reasonable consumer understands to  
24 mean that the product has a negligible amount of caffeine. In fact, ounce for  
25 ounce, Nescafe Decaf has nearly as much caffeine as Coca-Cola Classic.

26 4. When purchasing Nescafe Decaf, Plaintiff relied on Defendant’s  
27 misrepresentations that Nescafe Decaf is decaffeinated and thus has a negligible  
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1 quantity of caffeine. Plaintiff would not have purchased Nescafe Decaf had he  
2 known the truth. Plaintiff suffered an injury by purchasing the Product. Plaintiff  
3 did not receive coffee with negligible caffeine content; rather, he received the  
4 opposite – coffee with nearly as much caffeine as soda.

5 5. Defendant’s conduct of falsely marketing, advertising, labeling, and  
6 selling Nescafe Decaf as decaffeinated coffee constitutes unfair, unlawful, and  
7 fraudulent conduct; is likely to deceive members of the public; and is unethical,  
8 oppressive, unscrupulous, and/or substantially injurious to consumers, because,  
9 among other things, it misrepresents the characteristics of goods and services. As  
10 such, Plaintiff seeks relief in this action individually and as a class action on behalf  
11 of all purchasers in the United States of Defendant’s Nescafe Decaf (the “Class”).  
12 Plaintiff also seeks relief in this action individually and as a class action on behalf  
13 of a subclass of all purchasers in California of Defendant’s Nescafe Decaf (the  
14 “California Class”).

15 **JURISDICTION AND VENUE**

16 6. Pursuant to Local Rule 8.1, this Court has original jurisdiction over  
17 the claims asserted herein individually and on behalf of the class pursuant to 28  
18 U.S.C. §1332, as amended in February 2005 by the Class Action Fairness Act.  
19 Subject matter jurisdiction is proper because: (1) the amount in controversy in this  
20 class action exceeds five million dollars, exclusive of interest and costs; and (2) a  
21 substantial number of the members of the proposed classes are citizens of a state  
22 different from that of Defendant. Personal jurisdiction is proper as Defendant is  
23 headquartered in this District and has advertised, marketed, and sold Nescafe  
24 Decaf to Plaintiff and other consumers in this District and has purposefully availed  
25 itself of the privilege of conducting business activities within this District.

26 7. Defendant (a citizen of California) has distributed, marketed,  
27 advertised, labeled, and sold Nescafe Decaf, which is the subject of the present  
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1 complaint, in this District. Thus, under 28 U.S.C. §§1391(c)(2) and (d), Defendant  
2 is deemed to reside in this District. As such, venue is proper in this judicial district  
3 under 28 U.S.C. §1391(b)(1) because Defendant is deemed to reside in this District  
4 and under 28 U.S.C. §1391(b)(2) because Defendant conducts business in this  
5 District and a substantial part of the acts or omissions giving rise to the claims set  
6 forth herein occurred in this District.

7 **PARTIES**

8 8. Plaintiff Henry Estrada is a citizen of California and an individual  
9 consumer. During the Class Period, Plaintiff purchased Nescafe Clasico Decaf on  
10 numerous occasions, including in February, April, June, August, and October 2013  
11 at Food 4 Less in Los Angeles, California, Walmart in Baldwin Park, and  
12 California and Cardenas Market in Rialto, California. Prior to purchasing the  
13 Product, Plaintiff read and relied upon false and misleading statements that were  
14 prepared by and/or approved by Defendant and its agents and disseminated through  
15 the Nescafe Decaf packaging that he was purchasing and paying for decaffeinated  
16 coffee. Plaintiff understood that he was purchasing and receiving coffee with  
17 negligible caffeine content and was deceived when he received a product that was  
18 caffeinated. In fact, Defendant's Decaf has almost the same milligram per fluid  
19 ounce of caffeine in caffeinated sodas. In other words, two six-ounce cups of  
20 Defendant's decaf is equivalent to drinking a can of caffeinated soda, such as Coca  
21 Cola Classic. But for Defendant's misrepresentations, Plaintiff would not have  
22 purchased Nescafe Clasico Decaf. Plaintiff thus was damaged by Defendant's  
23 practices.

24 9. Defendant Nestlé USA, Inc. is headquartered at 800 North Brand  
25 Blvd., Glendale, CA 91203. Defendant distributes, markets, advertises, and sells  
26 Nescafe Decaf in California and throughout the rest of the United States.

1 **ALLEGATIONS OF FACT**

2 **A. Defendant’s False and Misleading Statements**

3 10. Nescafe Decaf is manufactured, distributed, marketed, advertised, and  
4 sold by Defendant to consumers as decaffeinated coffee with negligible caffeine  
5 content.

6 11. Throughout the Class Period, Defendant engaged in, and Plaintiff and  
7 members of the Classes were exposed to, a long-term marketing and advertising  
8 campaign in which Defendant utilized various forms of media, including, but not  
9 limited to, print advertising on the Nescafe Decaf label and the Nescafe Decaf  
10 website. Defendant consistently has made certain representations in the labeling,  
11 advertising, and marketing that their product was decaffeinated, which is false and  
12 misleading. To accomplish this, Defendant uses an integrated, nationwide  
13 messaging campaign to consistently convey the deceptive and misleading message  
14 that Nescafe Decaf is coffee that contains negligible caffeine. This message, *at a*  
15 *minimum*, is conveyed at the point of purchase on the Nescafe Decaf packaging  
16 and labeling. Thus, all consumers are exposed to the same message whether  
17 viewed on the website, or on the label:

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1           12. These statements mislead the consumer into believing that the Product  
2 is a decaffeinated product containing negligible caffeine, when, in fact, the Product  
3 contains as nearly as much caffeine as soda does.

4           13. Plaintiff and the Classes reasonably understood the Product's  
5 packaging to mean that the Product has a negligible amount of caffeine and relied  
6 on such representations in making their purchases of the Product.

7           **B. Nescafe Decaf Contains More Than a Trace Amount of Caffeine**

8           14. Although Defendant leads consumers to believe that Nescafe Decaf is  
9 decaffeinated, and thus has a negligible amount of caffeine, Nescafe Decaf actually  
10 has nearly as much caffeine as caffeinated soda. Laboratory testing using High  
11 Performance Liquid Chromatography (HPLC) after alkaline extraction shows that  
12 Defendant's Nescafe Taster's Choice Decaf House Blend contains 1340 µg  
13 caffeine per gram of coffee and Nescafe Clasico Decaf Dark Roast contains 1060  
14 µg caffeine per gram of coffee. Converting these results to mg caffeine per fluid  
15 ounce of coffee Nescafe Taster's Choice Decaf House Blend contains 2.23 mg  
16 caffeine per fluid ounce of coffee and Nescafe Clasico Decaf Dark Roast contains  
17 1.77 mg caffeine per fluid ounce of coffee. By comparison, one 12 ounce can of  
18 Coca-Cola Classic ("Coke") contains 35 mg of caffeine – that is 2.92 mg caffeine  
19 per fluid ounce. In sum, two six-ounce cups of Nescafe Decaf has nearly the same  
20 amount of caffeine as one can of Coke.

21           15. That Nescafe Decaf has more than a trace amount of caffeine is  
22 material to consumers, including Plaintiff and members of the Classes, who are  
23 seeking to purchase and consume caffeine free products.

24           16. No reasonable consumer would know or have reason to know that  
25 Nescafe Decaf contains nearly as much caffeine as caffeinated soda. The quantity  
26 of caffeine in Nescafe Decaf is within the exclusive knowledge of Defendant and is  
27 not known to ordinary consumers, including Plaintiff and members of the Classes.

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1 Defendant actively conceals this material fact from consumers, including Plaintiff  
2 and members of the Classes.

3 **C. Consumers Who Purchase Decaffeinated Beverages Seek to Avoid**  
4 **Caffeine Consumption**

5 17. Defendant realizes that consumers are increasingly aware of the  
6 relationship between health and diet and, thus, understand the importance and  
7 value of descriptors and labels that convey information to consumers. Defendant  
8 recognizes that consumers who purchase decaffeinated products wish to avoid or  
9 limit their consumption of caffeine. Consumers typically substitute decaffeinated  
10 for caffeinated coffee in an effort to abstain from caffeine, whether on account of  
11 various medical conditions, certain prescription drug interactions, or just a desire to  
12 avoid the stimulant effect of caffeine later in the day.

13 18. A reasonable consumer understands a decaffeinated product to be one  
14 that contains only trace quantities of caffeine.

15 19. Indeed, Defendant acknowledges this fact and affirmatively states on  
16 its Facebook page: “*NESCAFÉ® CLÁSICO™ Decaf - all the flavor of*  
17 *NESCAFÉ® CLÁSICO™ without caffeine.*”  
18 [https://www.facebook.com/nescafeusa/app\\_358435260968998](https://www.facebook.com/nescafeusa/app_358435260968998) (last accessed  
19 February 3, 2014)(emphasis added).

20 20. Consumers lack the meaningful ability to test or independently  
21 ascertain the truthfulness of food labeling claims such as “decaffeinated,”  
22 especially at the point of sale. Consumers would not know the true nature of the  
23 caffeine content merely by reading the ingredient label; its discovery requires  
24 investigation beyond the grocery store and knowledge of food chemistry beyond  
25 that of the average consumer. Thus, reasonable consumers must, and do, rely on  
26 food companies such as Defendant’s to honestly report the nature of a food’s  
27 ingredients, and food companies such as Defendant’s intend and know that  
28 consumers rely upon food labeling statements in making their purchasing



1 decisions. Such reliance by consumers is also eminently reasonable, since food  
2 companies are prohibited from making false or misleading statements on their  
3 products under federal law.

4 21. Defendant unscrupulously capitalizes on consumers' desire for  
5 decaffeinated products by deceptively labeling, advertising, and marketing Nescafe  
6 Decaf.

7 **DAMAGES TO PLAINTIFF AND THE CLASSES**

8 22. Plaintiff purchased the Product based on Defendant's labeling,  
9 advertising, and marketing that the Product is decaffeinated.

10 23. Defendant created, manufactured, distributed, and sold products that  
11 are misbranded. Misbranded products cannot be legally manufactured, distributed,  
12 sold, or held, and have no economic value and are legally worthless as a matter of  
13 law. Had Defendant truthfully disclosed that Nescafe Decaf was actually  
14 caffeinated, Plaintiff would have not purchased the Product and would have  
15 purchased a product that, in fact, does not contain caffeine.

16 **TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT**  
17 **CONCEALMENT, EQUITABLE TOLLING, AND CONTINUING**  
18 **VIOLATIONS**

19 24. Plaintiff did not discover, and could not have discovered, through the  
20 exercise of reasonable diligence the existence of the claims sued upon herein until  
21 immediately prior to commencing this civil action.

22 25. Any applicable statutes of limitation have been tolled by Defendant's  
23 affirmative acts of fraudulent concealment and continuing misrepresentations, as  
24 the facts alleged above reveal.

25 26. Because of the self-concealing nature of Defendant's actions and  
26 affirmative acts of concealment, Plaintiff and the Classes assert the tolling of any  
27 applicable statutes of limitations affecting the claims raised herein.

1 27. Defendant continues to engage in the deceptive practice, and  
2 consequently, unwary consumers are injured on a daily basis by Defendant's  
3 unlawful conduct. Therefore, Plaintiff and the Classes submit that each instance  
4 that Defendant engaged in the conduct complained of herein and each instance that  
5 a member of any Class purchased Nescafe Decaf constitutes part of a continuing  
6 violation and operates to toll the statutes of limitation in this action.

7 28. Defendant is estopped from relying on any statute of limitations  
8 defense because of its unfair or deceptive conduct.

9 29. Defendant's conduct was and is, by its nature, self-concealing. Still,  
10 Defendant, through a series of affirmative acts or omissions, suppressed the  
11 dissemination of truthful information regarding their illegal conduct, and actively  
12 has foreclosed Plaintiff and the Classes from learning of their illegal, unfair, and/or  
13 deceptive acts. These affirmative acts included concealing the amount of caffeine  
14 in Nescafe Decaf.

15 30. By reason of the foregoing, the claims of Plaintiff and the Classes are  
16 timely under any applicable statute of limitations, pursuant to the discovery rule,  
17 the equitable tolling doctrine, and fraudulent concealment.

18 **CLASS ACTION ALLEGATIONS**

19 31. Plaintiff brings this action individually and as a class action pursuant  
20 to Federal Rule of Civil Procedure 23 on behalf of himself and the Class defined as  
21 follows:

22 All persons in the United States who purchased Nescafe Decaf from  
23 January 2010 until the date notice is disseminated for personal or  
24 household use, and not for resale or distribution purposes.  
25 Specifically excluded from this Class are Defendant; the officers,  
26 directors, or employees of Defendant; any entity in which a Defendant  
27 has a controlling interest; and any affiliate, legal representative, heir,  
28 or assign of Defendant. Also excluded are those who assert claims for  
personal injury as well as any federal, state, or local governmental  
entities, any judicial officer presiding over this action and the

1 members of his/her immediate family and judicial staff, and any juror  
2 assigned to this action.

3 32. Plaintiff also brings this action individually and as a class action  
4 pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons located  
5 within the state of California and on behalf of all persons located within the states  
6 with similar consumer protection laws, breach of express warranty laws and breach  
7 of implied warranty laws.

8 33. The Classes are sufficiently numerous, as each includes thousands of  
9 persons who have purchased the Product. Thus, joinder of such persons in a single  
10 action or bringing all members of the Classes before the Court is impracticable for  
11 purposes of Rule 23(a)(1). The question is one of a general or common interest of  
12 many persons and it is impractical to bring them all before the Court. The  
13 disposition of the claims of the members of the Classes in this class action will  
14 substantially benefit both the parties and the Court.

15 34. There are questions of law and fact common to each Class for  
16 purposes of Rule 23(a)(2), including whether Defendant's labels and packaging  
17 include uniform misrepresentations that misled Plaintiff and the other members of  
18 the Classes to believe the Product contains a negligible quantity of caffeine. The  
19 members of each Class were and are similarly affected by having purchased  
20 Nescafe Decaf for its intended and foreseeable purpose as promoted, marketed,  
21 advertised, packaged, and labeled by Defendant as set forth in detail herein, and  
22 the relief sought herein is for the benefit of Plaintiff and other members of the  
23 Classes. Thus, there is a well-defined community of interest in the questions of  
24 law and fact involved in this action and affecting the parties.

25 35. Plaintiff asserts claims that are typical of the claims of each respective  
26 Class for purposes of Rule 23(a)(3). Plaintiff and all members of each respective  
27 Class have been subjected to the same wrongful conduct because they have  
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1 purchased the Product, which is not decaffeinated as represented. Plaintiff  
2 purchased the Product, on the belief it was decaffeinated, containing a negligible  
3 quantity of caffeine. Plaintiff and the members of each Class thus have purchased a  
4 product they did not want.

5 36. Plaintiff will fairly and adequately represent and protect the interests  
6 of the other members of each respective Class for purposes of Rule 23(a)(4).  
7 Plaintiff has no interests antagonistic to those of other members of each respective  
8 Class. Plaintiff is committed to the vigorous prosecution of this action and has  
9 retained counsel experienced in litigation of this nature to represent his interests.  
10 Plaintiff anticipates no difficulty in the management of this litigation as a class  
11 action.

12 37. Class certification is appropriate under Rule 23(b)(2) because  
13 Defendant has acted on grounds that apply generally to each Class, so that final  
14 injunctive relief or corresponding declaratory relief is appropriate respecting each  
15 Class as a whole. Defendant utilizes an integrated, nationwide messaging  
16 campaign that includes uniform misrepresentations that misled Plaintiff and the  
17 other members of each Class.

18 38. Class certification is appropriate under Rule 23(b)(3) because  
19 common questions of law and fact substantially predominate over any questions  
20 that may affect only individual members of each Class. Among these common  
21 questions of law and fact are:

22 a. whether Defendant misrepresented or omitted material facts in  
23 connection with the promotion, marketing, advertising, packaging, labeling,  
24 and sale of Nescafe Decaf;

25 b. whether Defendant's labeling of Nescafe Decaf is likely to  
26 deceive the members of each Class;

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1 c. whether Defendant's conduct is unethical, oppressive,  
2 unscrupulous, and/or substantially injurious to consumers;

3 d. whether Defendant represented that Nescafe Decaf has  
4 characteristics, benefits, uses, or qualities that it does not have;

5 e. whether Defendant's acts and practices in connection with the  
6 promotion, marketing, advertising, packaging, labeling, distribution, and sale  
7 of Nescafe Decaf violated the laws alleged herein;

8 f. whether Plaintiff and members of the Classes are entitled to  
9 injunctive and other equitable relief; and

10 g. whether Defendant was unjustly enriched by its conduct.

11 39. Defendant engaged in a common course of conduct giving rise to the  
12 legal rights sought to be enforced by the members of each respective Class.  
13 Similar or identical statutory and common law violations and deceptive business  
14 practices are involved. Individual questions, if any, pale by comparison to the  
15 numerous common questions that predominate.

16 40. The injuries sustained by Plaintiff and the members of each Class  
17 flow, in each instance, form a common nucleus of operative facts – Defendant's  
18 misconduct.

19 41. Plaintiff and the members of each Class have been damaged by  
20 Defendant's misconduct. The members of each Class have paid for a product that  
21 they would not have purchased in the absence of Defendant's deceptive scheme.

22 42. Proceeding as a class action provides substantial benefits to both the  
23 parties and the Court because this is the most efficient method for the fair and  
24 efficient adjudication of the controversy. Members of each Class have suffered,  
25 and will suffer, irreparable harm and damages as a result of Defendant's wrongful  
26 conduct. Because of the nature of the individual claims of the members of each  
27 Class, few, if any, could or would otherwise afford to seek legal redress against  
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1 Defendant for the wrongs complained of herein, and a representative class action is  
2 therefore the appropriate, superior method of proceeding and essential to the  
3 interests of justice insofar as the resolution of claims of the members of each Class  
4 is concerned. Absent a representative class action, members of each Class would  
5 continue to suffer losses for which they would have no remedy, and Defendant  
6 would unjustly retain the proceeds of their ill-gotten gains. Even if separate  
7 actions could be brought by individual members of each Class, the resulting  
8 multiplicity of lawsuits would cause undue hardship, burden, and expense for the  
9 Court and the litigants, as well as create a risk of inconsistent rulings, which might  
10 be dispositive of the interests of the other members of each Class who are not  
11 parties to the adjudications and/or may substantially impede their ability to protect  
12 their interests.

13 **CAUSES OF ACTION**

14 **FIRST CLAIM FOR RELIEF**

15 **(Unjust Enrichment on Behalf of the Classes, or in the Alternative, on Behalf  
16 of the California Class)**

17 43. Plaintiff realleges each and every allegation contained above as if  
18 fully set forth herein and, to the extent necessary, pleads this cause of action in the  
19 alternative.

20 44. Plaintiff brings this claim individually, as well as on behalf of  
21 members of the nationwide Class, under California law. Although there are  
22 numerous permutations of the elements of the unjust enrichment cause of action in  
23 the various states, there are few real differences. In all states, the focus of an  
24 unjust enrichment claim is whether the defendant was unjustly enriched. At the  
25 core of each state's law are two fundamental elements – the defendant received a  
26 benefit from the plaintiff and it would be inequitable for the defendant to retain  
27 that benefit without compensating the plaintiff. The focus of the inquiry is the  
28 same in each state. Since there is no material conflict relating to the elements of

1 unjust enrichment between the different jurisdictions from which class members  
2 will be drawn, California law applies to the claims of the Class.

3 45. In the alternative, Plaintiff brings this claim individually as well as on  
4 behalf of the California Class.

5 46. At all times relevant hereto, Defendant deceptively labeled, marketed,  
6 advertised, and sold Nescafe Decaf to Plaintiff and the Class.

7 47. Plaintiff and members of the Class conferred upon Defendant non-  
8 gratuitous payments for Nescafe Decaf that they would not have but for  
9 Defendant's deceptive labeling, advertising, and marketing. Defendant accepted or  
10 retained the non-gratuitous benefits conferred by Plaintiff and members of the  
11 Class, with full knowledge and awareness that, as a result of Defendant's  
12 deception, Plaintiff and members of the Class were not receiving a product of the  
13 quality, nature, fitness, or value that had been represented by Defendant and  
14 reasonable consumers would have expected.

15 48. Defendant has been unjustly enriched in retaining the revenues  
16 derived from purchases of Nescafe Decaf by Plaintiff and members of the Class,  
17 which retention under these circumstances is unjust and inequitable because  
18 Defendant misrepresented that Nescafe Decaf is decaffeinated, containing a  
19 negligible quantity of caffeine, when in fact it contains more caffeine than the  
20 reasonable consumer would expect, which caused injuries to Plaintiff and members  
21 of the Class because they paid for a product they did not want due to the  
22 mislabeling of Nescafe Decaf.

23 49. Retaining the non-gratuitous benefits conferred upon Defendant by  
24 Plaintiff and members of the Class under these circumstances made Defendant's  
25 retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendant  
26 must pay restitution to Plaintiff and members of the Class for unjust enrichment, as  
27 ordered by the Court.

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**SECOND CLAIM FOR RELIEF**

**(Plaintiff, on Behalf of Himself, the California Class, and Classes in the States with Similar Laws, Alleges Breach of Express Warranty)**

50. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

51. Plaintiff brings this Count individually under the laws of the state where he purchased Nescafe Decaf and on behalf of: (a) all other persons who purchased Nescafe Decaf in the same State; and (b) all other persons who purchased Nescafe Decaf in States having similar laws regarding express warranty.

52. Defendant's representations, as described herein, are affirmations by Defendant that Nescafe Decaf is decaffeinated, which the reasonable consumer understands to mean that it contains a negligible quantity of caffeine. Defendant's representations regarding Nescafe Decaf are made to Plaintiff and the other members of the Classes at the point of purchase and are part of the description of the goods. Those promises constituted express warranties and became part of the basis of the bargain, between Defendant on the one hand, and Plaintiff and the Classes on the other.

53. In addition, or in the alternative, Defendant made each of the above-described representations to induce Plaintiff and the Classes to rely on such representations, and they each did so rely on Defendant's representations as a material factor in their decisions to purchase Nescafe Decaf. Plaintiff and other members of the Classes would not have purchased Nescafe Decaf but for these representations and warranties.

54. Nescafe Decaf did not, in fact, meet the representations Defendant made about Nescafe Decaf, as described herein.



1           55. At all times relevant to this action, Defendant falsely represented that  
2 Nescafe Decaf is decaffeinated, when in fact it contains more caffeine than the  
3 reasonable consumer would expect.

4           56. At all times relevant to this action, Defendant made false  
5 representations in breach of the express warranties and in violation of state express  
6 warranty laws, including:

- 7           a. Alaska St. §45.02.313;
- 8           b. Ariz. Rev. Stat. Ann. §47-2313;
- 9           c. Ark. Code Ann. §4-2-313;
- 10          d. Cal. Com. Code §2313;
- 11          e. Colo. Rev. Stat. §4-2-313;
- 12          f. Conn. Gen. Stat. Ann. §42a-2-313;
- 13          g. D.C. Code §28:2-313;
- 14          h. Fla. Stat. §672.313;
- 15          i. Haw. Rev. Stat. §490:2-313;
- 16          j. 810 Ill. Comp. Stat. 5/2-313;
- 17          k. Ind. Code §26-1-2-313;
- 18          l. Kan. Stat. Ann. §84-2-313;
- 19          m. La. Civ. Code. Ann. art. 2520;
- 20          n. Maine Rev. Stat. Ann. 11 §2-313;
- 21          o. Mass. Gen. Laws Ann. 106 §2-313;
- 22          p. Minn. Stat. Ann. §336.2-313;
- 23          q. Miss. Code Ann. §75-2-313;
- 24          r. Mo. Rev. Stat. §400.2-313;
- 25          s. Mont. Code Ann. §30-2-313;
- 26          t. Neb. Rev. Stat. §2-313;
- 27          u. Nev. Rev. Stat. §104.2313;

- 1 v. N.H. Rev. Stat. Ann. §382-A:2-313;
- 2 w. N.J. Stat. Ann. §12A:2-313;
- 3 x. N.M. Stat. Ann. §55-2-313;
- 4 y. N.Y. U.C.C. Law §2-313;
- 5 z. N.C. Gen. Stat. Ann. §25-2-313;
- 6 aa. Okla. Stat. Ann. tit. 12A, §2-313;
- 7 bb. Or. Rev. Stat. §72.3130;
- 8 cc. Pa. Stat. Ann. tit. 13, §2313;
- 9 dd. R.I. Gen. Laws §6A-2-313;
- 10 ee. S.C. Code Ann. §36-2-313;
- 11 ff. S.D. Codified Laws. §57A-2-313;
- 12 gg. Tenn. Code Ann. §47-2-313;
- 13 hh. Tex. Bus. & Com. Code Ann. §2.313;
- 14 ii. Utah Code Ann. §70A-2-313;
- 15 jj. Vt. Stat. Ann. tit. 9A§2-313;
- 16 kk. Wash. Rev. Code §62A.2-313;
- 17 ll. W. Va. Code §46-2-313;
- 18 mm. Wyo. Stat. Ann. §34.1-2-313;

19 57. The above statutes do not require privity of contract in order to  
20 recover for breach of express warranty.

21 58. As a proximate result of this breach of warranty by Defendant,  
22 Plaintiff and other members of the Classes have been damaged in an amount to be  
23 determined at trial because Nescafe Decaf did not have the composition, attributes,  
24 characteristics, nutritional value, health qualities, or value promised.

25 59. Wherefore, Plaintiff and the Classes demand judgment against  
26 Defendant for compensatory damages, plus interest, costs, and such additional  
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1 relief as the Court may deem appropriate or to which Plaintiff and the Classes may  
2 be entitled.

3 **THIRD CLAIM FOR RELIEF**

4 **(Plaintiff, on Behalf of Himself, the California Class, and Classes in the States**  
5 **with Similar Laws, Alleges Breach of Implied Warranty)**

6 60. Plaintiff realleges each and every allegation contained above as if  
7 fully set forth herein and, to the extent necessary, pleads this cause of action in the  
8 alternative.

9 61. Plaintiff brings this Count individually under the laws of the state  
10 where he purchased Nescafe Decaf and on behalf of: (a) all other persons who  
11 purchased Nescafe Decaf in the same State; and (b) all other persons who  
12 purchased Nescafe Decaf in States having similar laws regarding implied  
13 warranties.

14 62. The Uniform Commercial Code §2-314 provides that unless excluded  
15 or modified, a warranty that the goods shall be merchantable is implied in a  
16 contract for their sale if the seller is a merchant with respect to goods of that kind.  
17 This implied warranty of merchantability acts as a guarantee by the seller that his  
18 goods are fit for the ordinary purposes for which they are to be used.

19 63. Defendant developed, manufactured, advertised, marketed, sold,  
20 and/or distributed the Product and represented that the Product was fit for a  
21 particular use, specifically that the Product could be used as a decaffeinated  
22 beverage containing a negligible quantity of caffeine. Contrary to such  
23 representations, Defendant failed to disclose that the Product is not decaffeinated  
24 containing a negligible quantity of caffeine, as promised.

25 64. At all times, the following states listed below, including the District of  
26 Columbia, have codified and adopted the provisions of the Uniform Commercial  
27 Code governing the implied warranty of merchantability:

- 1 a. Ala. Code §7-2-314;
- 2 b. Alaska Stat. §45.02.314;
- 3 c. Ariz. Rev. Stat. Ann. §47-2314;
- 4 d. Ark. Code Ann. §4-2-314;
- 5 e. Cal. Com. Code §2314;
- 6 f. Colo. Rev. Stat. §4-2-314;
- 7 g. Conn. Gen. Stat. Ann. §42a-2-314;
- 8 h. Del. Code Ann. tit. 6 §2-314;
- 9 i. D.C. Code §28:2-314;
- 10 j. Fla. Stat. §672.314;
- 11 k. Ga. Code Ann. §11-2-314;
- 12 l. Haw. Rev. Stat. §490:2-314;
- 13 m. Idaho Code §28-2-314;
- 14 n. 810 Ill. Comp. Stat. Ann. 5/2-314;
- 15 o. Ind. Code Ann. §26-1-2-314;
- 16 p. Iowa Code Ann. §554.2314;
- 17 q. Kan. Stat. Ann. §84-2-314;
- 18 r. Ky. Rev. Stat. Ann. §355.2-314;
- 19 s. La. Civ. Code Ann. art. §2520;
- 20 t. Me. Rev. Stat. Ann. 11 §2-314;
- 21 u. Md. Code Ann. Com. Law §2-314;
- 22 v. Mass. Gen. Laws Ch. 106 §2-314;
- 23 w. Mich. Comp. Laws Ann. §440.2314;
- 24 x. Minn. Stat. Ann. §336.2-314;
- 25 y. Miss. Code Ann. §75-2-314;
- 26 z. Mo. Rev. Stat. §400.2-314;
- 27 aa. Mont. Code Ann. §30-2-314;

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- 1 bb. Nev. Rev. Stat. §104.2314;
- 2 cc. N.H. Rev. Stat. Ann. §382-A:2-314;
- 3 dd. N.J. Stat. Ann. §12A:2-314;
- 4 ee. N.M. Stat. Ann. §55-2-314;
- 5 ff. N.Y. U.C.C. Law §2-314;
- 6 gg. N.C. Gen. Stat. Ann. §25-2-314;
- 7 hh. N.D. Cent. Code §41-02-314;
- 8 ii. Ohio Rev. Code Ann. §1302.27;
- 9 jj. Okla. Stat. Ann. tit. 12A §2-314;
- 10 kk. Or. Rev. Stat. §72.3140;
- 11 ll. Pa. Stat. Ann. tit. 13 §2314;
- 12 mm. R.I. Gen. Laws §6A-2-314;
- 13 nn. S.C. Code Ann. §36-2-314;
- 14 oo. S.D. Codified Laws §57A-2-314;
- 15 pp. Tenn. Code Ann. §47-2-314;
- 16 qq. Tex. Bus. & Com. Code Ann. §2-314;
- 17 rr. Utah Code Ann. §70A-2-314;
- 18 ss. Va. Code Ann. §8.2-314;
- 19 tt. Vt. Stat. Ann. tit. 9A §2-314;
- 20 uu. W. Va. Code §46-2-314;
- 21 vv. Wash. Rev. Code §62A 2-314;
- 22 ww. Wis. Stat. Ann. §402.314; and
- 23 xx. Wyo. Stat. Ann. §34.1-2-314.

24 65. As developer, manufacturer, producer, advertiser, marketer, seller  
25 and/or distributor of coffee products, Defendant is a “merchant” within the  
26 meaning of the various states’ commercial codes governing the implied warranty  
27 of merchantability.

1           66. Further, Defendant is a merchant with respect to the Product.  
2 Defendant developed, manufactured, produced, advertised, marketed, sold, and/or  
3 distributed the Product and represented to Plaintiff and the Classes that they  
4 developed the Product as decaffeinated containing a negligible quantity of caffeine,  
5 as described herein. Further, Defendant, by selling the Product to Plaintiff and the  
6 Classes has held itself out as a retailer of the Product that could be used as a  
7 decaffeinated product containing a negligible quantity of caffeine, in fact, has  
8 derived a substantial amount of revenues from the sale of the Product.

9           67. The Product can be classified as “goods,” as defined in the various  
10 states’ commercial codes governing the implied warranty of merchantability.

11           68. As a merchant of the Product, Defendant knew that purchasers relied  
12 upon it to develop, manufacture, produce, sell, and distribute a product that could  
13 be used as a decaffeinated product containing a negligible quantity of caffeine, as  
14 promised.

15           69. Defendant developed, manufactured, produced, sold, and distributed  
16 the Product to consumers such as Plaintiff and the Classes. They knew that the  
17 Product would be used as a decaffeinated product containing a negligible quantity  
18 of caffeine, as promised.

19           70. Defendant specifically represented in the labeling of the Product that  
20 it is decaffeinated, as described herein.

21           71. At the time that Defendant developed, manufactured, sold, and/or  
22 distributed the Product, Defendant knew the purpose for which the Product was  
23 intended and impliedly warranted that the Product was of merchantable quality and  
24 was fit for its ordinary purpose – a decaffeinated product containing a negligible  
25 quantity of caffeine.

26           72. Defendant breached their implied warranties in connection with the  
27 sale of the Product to Plaintiff and members of the Classes. The Product was not  
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1 fit for its ordinary purposes and intended use as a decaffeinated product containing  
2 a negligible quantity of caffeine, because the Product contains nearly as much  
3 caffeine as soda does.

4 73. Defendant had actual knowledge that the Product was not a  
5 decaffeinated product containing a negligible quantity of caffeine as promised and  
6 thus was not fit for its ordinary purpose and Plaintiff therefore was not required to  
7 notify Defendant of the breach. If notice is required, Plaintiff and the Classes  
8 adequately have provided Defendant of such notice through the filing of this  
9 lawsuit.

10 74. As a direct and proximate result of Defendant's breach of implied  
11 warranties, Plaintiff and other members of the Classes have been injured. Plaintiff  
12 and the other members of the Classes would not have purchased the Product but  
13 for Defendant's representations and warranties. Defendant misrepresented the  
14 character of the Product, which caused injuries to Plaintiff and the other members  
15 of the Classes because they purchased products that were not of a character and  
16 fitness as promised and therefore had no value to Plaintiff and the other members  
17 of the Classes.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Plaintiff, on Behalf of Himself and the California Class, Alleges Violations of**  
20 **California Business & Professions Code §17200 et seq. Based on Fraudulent**  
21 **Acts and Practices)**

22 75. Plaintiff realleges each and every allegation contained above as if  
23 fully set forth herein and, to the extent necessary, pleads this cause of action in the  
24 alternative.

25 76. Plaintiff brings this claim individually and on behalf of members of  
26 the California Class under California law.

1           77. Under Business & Professions Code §17200, any business act or  
2 practice that is likely to deceive members of the public constitutes a fraudulent  
3 business act or practice.

4           78. Defendant has engaged, and continues to engage, in conduct that is  
5 likely to deceive members of the public. This conduct includes, but is not limited  
6 to, misrepresenting that the Product is a decaffeinated product containing a  
7 negligible quantity of caffeine.

8           79. After reviewing the packaging for the Product, Plaintiff purchased the  
9 Product in reliance on Defendant's representations that the Product is a  
10 decaffeinated product containing a negligible quantity of caffeine. Plaintiff would  
11 not have purchased the Product at all, but for Defendant's false promotion of the  
12 Product as a decaffeinated product containing a negligible quantity of caffeine.  
13 Plaintiff and the California Class have all paid money for Nescafe Decaf.  
14 However, Plaintiff and the California Class did not obtain the full value of the  
15 advertised product due to Defendant's misrepresentations regarding Nescafe  
16 Decaf. Accordingly, Plaintiff and the California Class have suffered injury in fact  
17 and lost money or property as a direct result of Defendant's misrepresentations and  
18 material omissions.

19           80. By committing the acts alleged above, Defendant has engaged in  
20 fraudulent business acts and practices, which constitute unfair competition within  
21 the meaning of Business & Professions Code §17200.

22           81. In accordance with California Business & Professions Code §17203,  
23 Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct  
24 business through their fraudulent conduct; and (2) requiring Defendant to conduct  
25 a corrective advertising campaign.

26           82. As a result of Defendant's conduct, Plaintiff seek injunctive and  
27 restitutionary relief under California Business & Professions Code §17203.

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**FIFTH CLAIM FOR RELIEF**

**(Plaintiff, on Behalf of Himself and the California Class, Alleges Violations of California Business & Professions Code §17200, et seq., Based on Commission of Unlawful Acts)**

83. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

84. Plaintiff brings this claim individually and on behalf of members of the California Class under California law.

85. The violation of any law constitutes an unlawful business practice under Business & Professions Code §17200.

86. Defendant has violated §17200’s prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and violating California Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, California Business & Professions Code §17200 *et seq.*, California Health & Safety Code §110660, 21 U.S.C. §321, and by violating the common law.

87. By violating these laws, Defendant has engaged in unlawful business acts and practices which constitute unfair competition within the meaning of Business & Professions Code §17200.

88. Plaintiff purchased the Product in reliance on Defendant’s representations that the Product is a decaffeinated product containing a negligible quantity of caffeine. Plaintiff would not have purchased the Product at all, purchased a less expensive product, or would not have paid such a high price for the Product, but for Defendant’s false promotion that the Product is a decaffeinated product containing a negligible quantity of caffeine. Plaintiff and the California

1 Class have all paid money for Nescafe Decaf. However, Plaintiff and the  
2 California Class did not obtain the full value (or any value) of the advertised  
3 product due to Defendant's misrepresentations regarding that Nescafe Decaf is  
4 decaffeinated. Accordingly, Plaintiff and the California Class have suffered injury  
5 in fact and lost money or property as a direct result of Defendant's  
6 misrepresentations and material omissions.

7 89. In accordance with California Business & Professions Code §17203,  
8 Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct  
9 business through its fraudulent conduct; and (2) requiring Defendant to conduct a  
10 corrective advertising campaign.

11 90. As a result of Defendant's conduct, Plaintiff seeks injunctive and  
12 restitutionary relief under California Business & Professions Code §17203.

13 **SIXTH CLAIM FOR RELIEF**

14 **(Plaintiff, on Behalf of Himself and the California Class, Alleges Violations of**  
15 **California Business & Professions Code §17200, et seq., Based on Unfair Acts**  
16 **and Practices)**

17 91. Plaintiff realleges each and every allegation contained above as if  
18 fully set forth herein and, to the extent necessary, pleads this cause of action in the  
19 alternative.

20 92. Under Business & Professions Code §17200, any business act or  
21 practice that is unethical, oppressive, unscrupulous, and/or substantially injurious  
22 to consumers, or that violates a legislatively declared policy, constitutes an unfair  
23 business act or practice.

24 93. Defendant has engaged, and continues to engage, in conduct which is  
25 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to  
26 consumers. This conduct includes representing that the Product is a decaffeinated  
27 product containing a negligible quantity of caffeine when, in fact, it is not.

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1           94. Defendant has engaged, and continues to engage, in conduct that  
2 violates the legislatively declared policies of: (1) California Civil Code §§1572,  
3 1573, 1709, 1710, 1711 against committing fraud and deceit; (2) California Civil  
4 Code §1770 against committing acts and practices intended to deceive consumers  
5 regarding the representation of goods in certain particulars; and (3) California  
6 Health & Safety Code §110660 and 21 U.S.C. §321 against misbranding food.  
7 Defendant gains an unfair advantage over their competitors, whose labeling,  
8 advertising, and marketing for other similar products must comply with these laws.

9           95. Defendant's conduct, including misrepresenting the benefits of the  
10 Product, is substantially injurious to consumers. Such conduct has caused, and  
11 continues to cause, substantial injury to consumers because consumers would not  
12 have purchased the Product at all, or would not have paid such a high price for the  
13 Product, but for Defendant's false promotion of the Product as a decaffeinated  
14 product containing a negligible quantity of caffeine. Consumers have thus  
15 overpaid for the Product. Such injury is not outweighed by any countervailing  
16 benefits to consumers or competition. Indeed, no benefit to consumers or  
17 competition results from Defendant's conduct. Since consumers reasonably rely  
18 on Defendant's representations of the Product and injury results from ordinary use  
19 of the Product, consumers could not have reasonably avoided such injury. *Davis v.*  
20 *Ford Motor Credit Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v.*  
21 *San Fernando Valley Bar Ass'n*, 182 Cal. App. 4th 247, 257 (2010) (outlining the  
22 third test based on the definition of "unfair" in Section 5 of the FTC Act).

23           96. By committing the acts alleged above, Defendant has engaged in  
24 unfair business acts and practices which constitute unfair competition within the  
25 meaning of Business & Professions Code §17200.

26           97. Plaintiff purchased the Product in reliance on Defendant's  
27 representations that the Product is a decaffeinated product containing a negligible  
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1 quantity of caffeine. Plaintiff would not have purchased the Product at all,  
2 purchased a less expensive product, or would not have paid such a high price for  
3 the Product but for Defendant's false promotion that the Product is a decaffeinated  
4 product containing a negligible quantity of caffeine. Plaintiff and the California  
5 Class have all paid money for Nescafe Decaf. However, Plaintiff and the  
6 California Class did not obtain the full value of the advertised product due to  
7 Defendant's misrepresentations regarding the nature of said products.  
8 Accordingly, Plaintiff and the California Class have suffered injury in fact and lost  
9 money or property as a direct result of Defendant's misrepresentations and material  
10 omissions.

11 98. In accordance with California Business & Professions Code §17203,  
12 Plaintiff seeks an order enjoining Defendant from continuing to conduct business  
13 through its fraudulent conduct and further seeks an order requiring Defendant to  
14 conduct a corrective advertising campaign.

15 99. As a result of Defendant's conduct, Plaintiff seeks injunctive and  
16 restitutionary relief under California Business & Professions Code §17203.

17 **SEVENTH CLAIM FOR RELIEF**

18 **(Plaintiff, on Behalf of Himself and the California Class, Alleges Violations of**  
19 **the CLRA – Injunctive Relief)**

20 100. Plaintiff realleges each and every allegation contained above as if  
21 fully set forth herein and, to the extent necessary, pleads this cause of action in the  
22 alternative.

23 101. Plaintiff brings this claim individually and on behalf of members of  
24 the California Class under California law.

25 102. Plaintiff purchased Nescafe Decaf for his own personal use.

26 103. The acts and practices of Defendant as described above were intended  
27 to deceive Plaintiff and members of the Class as described herein, and have  
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1 resulted, and will result in damages to Plaintiff and member of the California  
2 Class. These actions violated and continue to violate the California Consumers  
3 Legal Remedies Act (“CLRA”) in at least the following respects:

4 a. In violation of §1770(a)(5) of the CLRA, Defendant’s acts and  
5 practices constitute representations that the Product has characteristics, uses,  
6 and/or benefits, which it does not;

7 b. in violation of §1770(a)(7) of the CLRA, Defendant’s acts and  
8 practices constitute representations that the Product is of a particular quality,  
9 which it is not; and

10 c. in violation of §1770(a)(9) of the CLRA, Defendant’s acts and  
11 practices constitute the advertisement of the goods in question without the  
12 intent to sell them as advertised.

13 104. By committing the acts alleged above, Defendant has violated the  
14 CLRA.

15 105. Plaintiff and California Class members suffered injuries caused by  
16 Defendant’s misrepresentations because: (a) they were induced to purchase a  
17 product they would not have otherwise purchased if they had known that Nescafe  
18 Decaf was not a decaffeinated product containing a negligible quantity of caffeine;  
19 and/or (b) they paid a price premium due to the false and misleading labeling,  
20 advertising and marketing of Nescafe Decaf.

21 106. In compliance with the provisions of California Civil Code §1782,  
22 Plaintiff sent written notice to Defendant on February 4, 2014 informing Defendant  
23 of his intention to seek damages under California Civil Code §1750, *et seq.*, unless  
24 Defendant offers appropriate consideration or other remedy to all affected  
25 consumers. Plaintiff intends to amend this Complaint to seek damages pursuant to  
26 California Civil Code §1781(a) should Defendant fail to adequately and fully  
27 compensate Plaintiff and the California Class.

1 107. Plaintiff and the California Class members are entitled to, pursuant to  
2 California Civil Code §1780, an order enjoining the above-described wrongful acts  
3 and practices of Defendant, the payment of costs and attorneys' fees and any other  
4 relief deemed appropriate and proper by the Court under California Civil Code  
5 §1780.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment and relief against Defendant as  
8 follows:

9 A. That the Court certify the nationwide Class and the California Class  
10 under Rule 23 of the Federal Rules of Civil Procedure and appoint Plaintiff as  
11 Class Representative and his attorneys as Class Counsel to represent the members  
12 of the Classes;

13 B. That the Court declare that Defendant's conduct violates the statutes  
14 referenced herein;

15 C. That the Court preliminarily and permanently enjoin Defendant from  
16 conducting business through the unlawful, unfair, or fraudulent business acts or  
17 practices, untrue, and misleading labeling and marketing and other violations of  
18 law described in this Complaint;

19 D. That the Court order Defendant to conduct a corrective advertising  
20 and information campaign advising consumers that the Product does not have the  
21 characteristics, uses, benefits, and quality Defendant has claimed;

22 E. That the Court order Defendant to implement whatever measures are  
23 necessary to remedy the unlawful, unfair, or fraudulent business acts or practices,  
24 untrue and misleading advertising, and other violations of law described in this  
25 Complaint;

26 F. That the Court order Defendant to notify each and every individual  
27 and/or business who purchased the Product of the pendency of the claims in this  
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1 action in order to give such individuals and businesses an opportunity to obtain  
2 restitution from Defendant;

3 G. That the Court order Defendant to pay restitution to restore to all  
4 affected persons all funds acquired by means of any act or practice declared by this  
5 Court to be an unlawful, unfair, or a fraudulent business act or practice, untrue or  
6 misleading labeling, advertising, and marketing, plus pre- and post-judgment  
7 interest thereon;

8 H. That the Court order Defendant to disgorge all monies wrongfully  
9 obtained and all revenues and profits derived by Defendant as a result of their acts  
10 or practices as alleged in this Complaint;

11 I. That the Court award damages to Plaintiff and the Classes;

12 J. The common fund doctrine, and/or any other appropriate legal theory;  
13 and

14 K. That the Court grant such other and further relief as may be just and  
15 proper.

16 **JURY DEMAND**

17 Plaintiff demands a trial by jury on all causes of action so triable.

18  
19 DATED: February 7, 2014

SCOTT+SCOTT,  
ATTORNEYS AT LAW, LLP



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*Attorneys for Plaintiff*



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Central District of California

HENRY ESTRADA, Individually and on Behalf of All
Others Similarly Situated

Plaintiff(s)

v.

NESTLE USA, INC.

Defendant(s)

CV14-989

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) NESTLE USA, INC.
800 North Brand Blvd.
Glendale, CA 91203

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Hal Cunningham
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
4771 Cromwell Avenue
Los Angeles, CA 90027

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

Date:

2-7-14

CLERK OF COURT



Signature of Clerk or Deputy Clerk

1149

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge R. Gary Klausner and the assigned Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV14-989-RGK(FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

February 7, 2014

Date

By C. Sawyer

Deputy Clerk

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NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012

Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701

Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input type="checkbox"/> )  HENRY ESTRADA, Individually and on Behalf of All Others Similarly Situated	<b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> )  NESTLE USA, INC.
(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Hal Cunningham SCOTT+SCOTT, ATTORNEYS AT LAW, LLP 4771 Cromwell Avenue Los Angeles, CA 90027 Phone: 213-985-1274	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)  <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td></td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. 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. Multi-District Litigation

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.Cv.P. 23:**  Yes  No      **MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 28 U.S.C. § 1332(d) Class Action Fairness Act violations

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<b>Habeas Corpus:</b>	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<b>TORTS</b>	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 530 General	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<b>Other:</b>	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>FEDERAL TAX SUITS</b>
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<b>REAL PROPERTY</b>	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<b>LABOR</b>	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admn. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

CV 14-989

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>Question A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

<b>Question B: Is the United States, or one of its agencies or employees, a party to this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern	
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

<b>Question C: Location of plaintiffs, defendants, and claims?</b> (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>C.1. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D  Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below.  If none applies, answer question C2 to the right. →	<b>C.2. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C  Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below.  If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

<b>Question D: Initial Division?</b>	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**IX(a). IDENTICAL CASES:** Has this action been previously filed **in this court** and dismissed, remanded or closed?  NO  YES

If yes, list case number(s): \_\_\_\_\_

**IX(b). RELATED CASES:** Have any cases been previously filed **in this court** that are related to the present case?  NO  YES

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
  - B. Call for determination of the same or substantially related or similar questions of law and fact; or
  - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
  - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY  
(OR SELF-REPRESENTED LITIGANT):**



DATE: 2/7/2014

**Notice to Counsel/Parties:** The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))