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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9  
10 SAN FRANCISCO DIVISION

11 SCOTT MILLER and STEVE LEYTON, individuals, on  
behalf of themselves, the general public and those similarly  
12 situated

13 Plaintiffs,

14  
15 v.

16 GHIRARDELLI CHOCOLATE COMPANY;

17 Defendant

CASE NO. C 12-04936 LB

THIRD AMENDED CLASS  
ACTION COMPLAINT FOR  
VIOLATION OF THE CALI-  
FORNIA CONSUMERS LE-  
GAL REMEDIES ACT; FALSE  
ADVERTISING; FRAUD, DE-  
CEIT, AND/OR MISREPRE-  
SENTATION; AND UNFAIR  
BUSINESS PRACTICES

JURY TRIAL DEMANDED

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1 Scott Miller and Steve Leyton (collectively, “Plaintiffs”), by and through their counsel,  
2 bring this Third Amended Class Action Complaint (“Class Action Complaint”) against Defendant  
3 Ghirardelli Chocolate Company, on behalf of themselves and those similarly situated, for  
4 violations of the Consumer Legal Remedies Act, false advertising, violation of the Unfair  
5 Competition Law, and fraud, deceit and/or misrepresentation. The following allegations are based  
6 upon information and belief, including the investigation of Plaintiffs’ counsel, unless stated  
7 otherwise.

### 8 **INTRODUCTION**

9 1. Defendant deceptively informed and led its customers to believe that they were  
10 purchasing, for a premium price, white baking chips containing chocolate, while failing to  
11 adequately disclose that the baking chips contain no chocolate, white chocolate, or cocoa  
12 derivatives of any kind and that they were “artificial” or “imitation.” Defendant further  
13 deceptively advertised its products as “all natural,” when they were made with chemically  
14 extracted soy lecithin, hormone treated dairy, and genetically modified ingredients, such as soy  
15 and sugar. Defendant obtained substantial profits from these unlawful and deceptive sales.

### 16 **PARTIES**

17 2. Scott Miller (“Miller”) is, and at all times alleged in this Class Action Complaint  
18 was, an individual and a resident of Auburndale, Florida.

19 3. Steve Leyton (“Leyton”) is, and at all times alleged in this Class Action Complaint  
20 was, an individual and a resident of San Diego, California. Leyton and Miller are collectively  
21 referred to as “Plaintiffs”.

22 4. Defendant Ghirardelli Chocolate Company (“Ghirardelli”) is a corporation  
23 incorporated under the laws of the State of California, having its principal place of business in  
24 San Leandro, California. Ghirardelli is a wholly owned subsidiary of Lindt & Sprüngli AG.

### 25 **JURISDICTION AND VENUE**

26 5. This action is brought by Plaintiffs pursuant, *inter alia*, to the California Business  
27 and Professions Code, section 17200, *et seq.* Plaintiffs and Defendant are “persons” within the  
28 meaning of the California Business and Professions Code, section 17201.



- 1 a. “Intensive quality assurance in the selection of cocoa beans means that Ghirardelli  
2 accepts only the highest-quality beans. We reject as many as 30% of the beans that  
3 are offered to us. Beans that are not selected are sold to other manufacturers.”
- 4 b. “In all of its chocolate products, Ghirardelli uses a proprietary blend of cocoa  
5 beans that has been refined over the company’s 160-year history to provide the  
6 company’s distinct and intense chocolate taste.”
- 7 c. “Ghirardelli roasts the cocoa beans in-house to ensure the company’s signature  
8 flavor profile is consistently maintained in all chocolate products. We also use a  
9 different roasting process whereby they remove the shell first and then roast the  
10 small nibs inside. Because the nibs are fairly uniform in size, we have more  
11 control over the temperature and time, so it can get a more specific flavor. Other  
12 companies roast their beans before removing the shell, which requires over-  
13 roasting the outside portion of the bean in order to roast the inside. This could  
14 impart a burned flavor to their chocolate.”
- 15 d. “Finally, Ghirardelli uses an intensive refining process to ensure that its chocolate  
16 truly melts in your mouth! Ghirardelli has no grainy feel because we refine most of  
17 our chocolate flakes until they are 18 microns (human hair is 100 microns in  
18 diameter). Other mass market chocolates are refined to only 50 microns.”

19 13. Ghirardelli states that its product line includes its signature SQUARES™  
20 chocolate, chocolate bars, other chocolate confections, chocolate chip cookies, “baking  
21 chocolate,” and chocolate beverages.

22 14. Ghirardelli has marketed and sold many of its products as “All Natural” or “100%  
23 All Natural,” including: “Ghirardelli® Chocolate Premium Baking Chips – Classic White,”  
24 “Ghirardelli® Chocolate White Chocolate Baking Bar,” “Ghirardelli® Chocolate Milk Chocolate  
25 Baking Bar,” “Ghirardelli® Chocolate Semi-Sweet Chocolate Baking Bar,” “Ghirardelli®  
26 Chocolate 60% Cacao Extra Bittersweet Chocolate Baking Bar,” “Ghirardelli® Chocolate 70%  
27 Cacao Extra Bittersweet Chocolate Baking Bar,” “Ghirardelli® Chocolate Milk Chocolate  
28 Baking Chips,” “Ghirardelli® Chocolate Mini Semi-Sweet Baking Chips,” “Ghirardelli®

1 Chocolate Semi-Sweet Baking Chips,” “Ghirardelli® Chocolate Double Chocolate Bittersweet  
2 Baking Chips,” “Ghirardelli® Chocolate Gourmet Milk® Sea Salt Escape ®,” “Ghirardelli®  
3 Chocolate Gourmet Milk® Coconut Rendezvous®,” “Ghirardelli® Chocolate Gourmet Milk®  
4 32% Cacao Creamy Devotion®,” “Ghirardelli Chocolate Luxe Milk® Almond,” “Ghirardelli  
5 Chocolate Luxe Milk® Hazelnut,” “Ghirardelli Chocolate Luxe Milk® Milk,” “Ghirardelli  
6 Chocolate Luxe Milk® Toffee,” “Ghirardelli Chocolate Intense Dark® Toffee Interlude,”  
7 “Ghirardelli Chocolate Intense Dark® Evening Dream,” “Ghirardelli Chocolate Intense Dark®  
8 Twilight Delight,” “Ghirardelli Chocolate Intense Dark® Midnight Reverie”, “Ghirardelli Sweet  
9 Ground Chocolate,” “Ghirardelli Unsweetened Cocoa,” “Ghirardelli Sublime White Vanilla  
10 Dream,” other products labeled as “Intense Dark,” “Luxe Milk,” “Gourmet Milk,” “Sublime  
11 White,” “Baking Bar,” “Baking Chips” and other ground cocoa products (collectively,  
12 “Unnatural Products”).

13 15. Ghirardelli further markets and sells Ghirardelli® Chocolate Premium Baking  
14 Chips – Classic White (“Fake White Chocolate Chips”) even though they contain no chocolate,  
15 white chocolate or cocoa butter.

#### 16 **Regulations Governing Labeling Of Chocolate And White Chocolate**

17 16. The United States Food and Drug Administration (“FDA”) has issued regulations  
18 requiring that a food label “accurately identify or describe, in as simple and direct terms as  
19 possible, the basic nature of the food or its characterizing properties or ingredients,” that it “not  
20 be confusingly similar to the name of any other food that is not reasonably encompassed within  
21 the same name.” 21 C.F.R. § 102.5(a). The label also must “include a statement of the presence or  
22 absence of any characterizing ingredient(s) or component(s) and/or the need for the user to add  
23 any characterizing ingredient(s) or component(s) when the presence or absence of such  
24 ingredient(s) or component(s) in the food has a material bearing on price or consumer acceptance  
25 or when the labeling or the appearance of the food may otherwise create an erroneous impression  
26 that such ingredient(s) or component(s) is present when it is not, and consumers may otherwise be  
27 misled about the presence or absence of the ingredient(s) or component(s) in the food.” *Id.* §  
28 102.5(c). Such statement must be in boldface print of sufficient size on the front display panel.

1 *Id.*

2 17. The FDA regulations further provide that “If the label, labeling, or advertising of a  
3 food makes any direct or indirect representations with respect to the primary recognizable  
4 flavor(s), by word, vignette, e.g., depiction of a fruit, or other means” then “such flavor shall be  
5 considered the characterizing flavor” and one of the following tests must be met: (1) the food  
6 must contain the “characterizing food ingredient, e.g., strawberries in ‘strawberry shortcake’” in  
7 an amount sufficient to “independently characterize the food,” (2) if the ingredient is present but  
8 insufficient to independently characterize the food,” the word “natural flavor” must be present,  
9 (3) if the flavor is simulated by being derived from another product, then the product must be  
10 labelled “either with the flavor of the product from which the flavor is [actually] derived or as  
11 ‘artificially flavored,’” and (4) if any artificial flavor is present “which simulates, resembles or  
12 reinforces the characterizing flavor,” the food must be labelled “artificially flavored.” 21 C.F.R.  
13 § 101.22(i)(1)-(2). The regulation goes on to provide that such statements must appear on the  
14 display panel, immediately and conspicuously following the name of the characterizing flavor,  
15 without intervening text or graphics. *Id.* § 101.22(i)(3). The regulation further provides that  
16 “Where the characterizing flavor and a trademark or brand are presented together, other written,  
17 printed, or graphic matter that is a part of or is associated with the trademark or brand may  
18 intervene if the required words [e.g., “naturally flavored” or “artificially flavored”] are in such  
19 relationship with the trademark or brand as to be clearly related to the characterizing flavor.” *Id.*  
20 §101.22(i)(3)(1).

21 18. FDA regulations also require that “a food shall be deemed to be misbranded if it is  
22 an imitation of another food unless its label bears, in type of uniform size and prominence, the  
23 word ‘imitation’ and, immediately thereafter, the name of the food imitated.” 21 C.F.R.  
24 § 101.3(e). There is an exception to this rule if the substituting food that resembles another food  
25 (i) “is not nutritionally inferior to the food for which it substitutes and which it resembles,”  
26 (ii) complies with the provisions of [21 C.F.R.] § 102.5 of this chapter” [see above] and “is not  
27 false or misleading.” *Id.* § 101.3(e)(2).

28 19. The FDA has also adopted standards of identify for “chocolate” and “white

1 chocolate.” The regulations provide that “Chocolate” must contain “chocolate liquor” made by  
2 “finely grinding cacao nibs” such that the chocolate liquor is “not less than 50 percent nor more  
3 than 60 percent by weight of cacao fat.” 21 C.F.R. § 163.111 *et seq.* The regulations further  
4 provide that “White chocolate is the solid or semiplastic food prepared by mixing and grinding  
5 cocoa butter with one or more of the optional dairy ingredients listed in [21 C.F.R. §  
6 163.124(b)(2)] and one or more optional nutritive carbohydrate sweeteners. **It contains a**  
7 **minimum of 20 percent cocoa butter**, a minimum of 14 percent of total milk solids, a minimum  
8 of 3.5 percent milkfat, and a maximum of 55 percent nutritive carbohydrate sweeteners.” *Id.*  
9 §163.124 (emphasis added); 67 Fed. Reg. 62171, 62173 (Oct. 4, 2002) (establishing standard of  
10 identity for white chocolate; explaining that “Because products bearing the name “chocolate”  
11 would be expected to contain some cacao-derived ingredients, we believe that it is necessary to  
12 ensure that ‘white chocolate’ contains cacao-derived ingredients.”)

13 20. Interpreting the above regulations at the time it issued the white chocolate standard  
14 of identity, the FDA considered the argument that “white chocolate-type products made with  
15 ingredients not derived from cacao could be identified as ‘white chocolate-flavored’ or  
16 ‘artificially flavored’ to sufficiently distinguish them from white chocolate products derived from  
17 cacao. The comment further stated that consumers could look at the ingredient list to discover the  
18 substitution of less expensive ingredients not derived from cacao; thus, current regulations are  
19 sufficient to prevent economic deception.” It ruled as follows:

20 FDA does not agree that identifying white chocolate products made from  
21 cheaper noncacao ingredients as “artificially flavored” or “white chocolate-flavored”  
22 would be sufficiently descriptive with regard to the composition of white chocolate.  
23 These terms refer to the characterizing flavor of a food, not its composition. The  
24 terms suggest products that are flavored to taste like white chocolate, but they do not  
25 provide guidance as to white chocolate’s composition. Thus, use of such terms does  
26 not negate the need for a standard of identity, but rather further supports its need  
27 because, without a definition and standard for “white chocolate,” there is no way to  
28 define “white chocolate-flavored.” Moreover, FDA regulations governing use of the

1 term “flavored” Sec. 101.22(i)(1)(i) (21 CFR 101.22(i)(1)(i)) provide that a product  
2 that is expected to contain an ingredient, e.g., “white chocolate,” must bear the term  
3 “flavored” in the name of the food if the food contains natural flavor derived from  
4 that ingredient and either an amount of the ingredient insufficient to independently  
5 characterize the food or none of the ingredient. Therefore, unless a food contains the  
6 flavoring constituents derived from white chocolate, it cannot be named “white  
7 chocolate-flavored.”

8 Once a standard for white chocolate has been “white chocolate-flavored”  
9 could be used to describe a food that is commonly expected to contain the  
10 characterizing food ingredient, white chocolate, and which contains natural flavor  
11 derived from such an ingredient (i.e., cocoa butter or cacao fat) (Sec. 101.22(i)(1)(i)).  
12 The term “artificially-flavored white chocolate” could be used in cases where the  
13 food contains an artificial flavor that simulates, resembles, or reinforces the  
14 characterizing flavor (Sec. 101.22(i)(2)).

15 The only constituent in white chocolate that is derived from the cacao bean is  
16 cacao fat (i.e., cocoa butter); therefore, the agency assumes that if a cheaper  
17 ingredient that was not derived from cacao were used to replace the cacao-derived  
18 ingredient, the substitute ingredient would be some type of fat or oil used to replace  
19 the cacao fat. In this case, the agency would treat such products as substitute or  
20 imitation white chocolate products (21 CFR 101.3(e)) and would not regulate them by  
21 requiring that they be labeled “white chocolate-flavored.”

22 *See* 67 Fed. Reg. 62171, 62174 (*citing* 21 C.F.R. § 101.22(i)(1)(i)).

23 21. Each of the regulations discussed above has been independently adopted as part of  
24 the Sherman Food, Drug and Cosmetic Law, California Health and Safety Code (“Cal. Health &  
25 Saf. Code”) § 109875, et seq. *See* Cal. Health & Saf. Code §§ 110100(a), 110380, 110505  
26 (adopting FDA standards).

27 **Ghirardelli’s Sale of the Fake White Chocolate Chips Violates These Regulations**

28 22. The packaging for the Fake White Chocolate chips is inconsistent with the FDA



1 regulations, and those embodied in the state law for a uniform reason: the packaging prominently  
2 uses the term “chocolate” on the primary label panel when the products, in fact, contain no  
3 chocolate or white chocolate, cocoa butter, cacao fat, or any cacao derivatives.

4 23. The word “Chocolate” is used on the front panel immediately following the brand  
5 name “Ghirardelli®” in a manner that suggests that it is the “characterizing flavor,” 21 C.F.R. §  
6 101.22(i), of the product. The label shows “Ghirardelli®” is the brand name (as it is followed by  
7 the registered trademark symbol) and “Chocolate” as the flavor (as it is in a smaller font and not  
8 followed by any trademark symbol. The label does not state the brand name as “Ghirardelli  
9 Chocolate Company.” Moreover, even if it had done so, or even if “Ghirardelli® Chocolate”  
10 were deemed to be a “trademark or brand,” the regulations would require the statements about  
11 “artificial” or “imitation” immediately following that trademark or brand. *Id.* §§ 101.22(i)(3),  
12 101.3.<sup>1</sup>

13 24. Defendant intentionally prices its Fake White Chocolate Chips as the same price as  
14 its real chocolate chips (*i.e.*, their milk chocolate, semi-sweet chocolate, and bittersweet chocolate  
15 chips). These actions further deceive customers into believing that the Fake White Chocolate  
16 Chips contain chocolate. As a result, customers pay a premium for the Fake White Chocolate  
17 Chips that cost Defendant far less to manufacture than real chocolate products.

18 25. Defendant did not disclose that the Fake White Chocolate Chips were not  
19 chocolate, white chocolate, nor were they flavored with chocolate or white chocolate. To do so,  
20 they would at a minimum have been required to state in the appropriate font size and type, on the  
21 front or primary label panel, “Imitation” (or, if one of the other ingredients was designed to  
22 simulate the chocolate flavor, to state that ingredient as the flavor or to state “artificial” or  
23 “artificially flavored.”) Accordingly, the packaging violated the state and federal regulations set  
24 forth above.

25 **The Fake White Chocolate Chips Marketing Was Deceptive For Additional Reasons**

26 26. The packaging of the Fake White Chocolate Chips is deceptive for additional  
27

28 <sup>1</sup> The use of the word “Flavor” on the Fake Ground White Chocolate does not cure the violation,  
as the FDA has explained in the quotation above. *See* 67 Fed. Reg. 62171, 62174.

1 reasons. It refers to the product as “Classic White” to deceptively mislead consumers into  
2 believing that it is classic white chocolate. It states that the product is “Premium” leading  
3 consumers to incorrectly believe that, unlike its competitors, the product is a premium white  
4 chocolate chip product. It then goes on to deceptively state: “The luxuriously deep flavor and  
5 smooth texture of Ghirardelli Premium Baking Chocolate delivers the ultimate chocolate  
6 indulgence.” But because there is no chocolate or white chocolate in Defendant’s chips, the  
7 product cannot deliver a “deep chocolate flavor or texture” or the “ultimate chocolate  
8 indulgence.” The label further says that the product contains the “Finest grind for smoothest  
9 texture and easiest melting” but in fact, unlike real white chocolate, the product is not “ground”  
10 from cocoa beans.

11 27. The use of the language about “luxuriously deep ...ultimate chocolate indulgence”  
12 and “finest grind for smoothest texture and easiest melting” is particularly misleading because the  
13 *identical* language appears on the packaging of another product made by Defendant: the  
14 Ghirardelli® Chocolate White Chocolate Premium Baking Bar. But the latter product *does* in fact  
15 contain white chocolate (a.k.a. at least 20% cocoa butter.) Indeed, the first listed ingredient is  
16 “White chocolate.” Thus, consumers who see both products (which are likely to appear near each  
17 other on the retail shelves or Defendant’s Website, and which are sold at the same price) will  
18 assume that both contain the same ingredients except that one is a bar one and other is the chips,  
19 but the products are otherwise the same.

20 28. The use of the term “Classic White” in the Fake White Chocolate Chips increases  
21 the deception because it suggests that the product is unchanged from the original (e.g., Coke  
22 Classic). In this case, the “original” white chocolate product is the “Ghirardelli® Chocolate  
23 Premium Baking Bar – White Chocolate” which does contain white chocolate. Furthermore,  
24 Defendant uses the same term—“Classic White”—in the name of its “Ghirardelli® Chocolate  
25 Classic White Flavored Sauce” which does contain cocoa butter. And Defendant also sells other  
26 candy bars apparently containing real white chocolate: the “Ghirardelli® Chocolate Sublime  
27 White Cookies Jubilee Bar” and “Ghirardelli® Chocolate Sublime White Vanilla Dream Bar.”  
28 Nothing would lead a reasonable consumer to think that a “Sublime White” product is real white

1 chocolate, while some (but not all) “Classic White” products are not real white chocolate.

2 29. As defined by Webster’s Dictionary, “chocolate” is “a food prepared from ground  
3 roasted cacao beans” and “white chocolate” is “a confection of cocoa butter, sugar, milk solids,  
4 lecithin, and flavorings.”

5 30. Beyond Defendant’s affirmative misrepresentations, it also fails to adequately  
6 disclose that its Fake White Chocolate Chips are not white chocolate and/or that they do not  
7 contain any white chocolate or cocoa butter.

8 **Ghirardelli’s Website And Other Marketing For the Fake White Chocolate Chips**  
9 **Compounded—And Proves—The Deception**

10 31. Beyond Defendant’s false and deceptive packaging, it falsely and deceptively  
11 markets and advertises the Fake White Chocolate Chips on its Website, and in other widely  
12 available advertising and marketing materials.

13 32. As explained above, Defendant’s Website touts the history and preeminence of  
14 Ghirardelli Chocolate products with no indication that any of them are not in fact chocolate.

15 33. Until after the filing of this lawsuit, the Website listed the product name of the  
16 Fake White Chocolate Chips as “Classic White Chocolate Baking Chips” (whereas the package  
17 states “Premium Baking Chips – Classic White”). These misrepresentations not only further the  
18 deception for customers and retailers who review the Website, but they show that even the  
19 Defendant’s employees who have created the Website were misled into believing that the Fake  
20 White Chocolate Chips are real white chocolate.

21 34. Defendant sells a cookbook with recipes for its products, including the Fake White  
22 Chocolate Chips, which further shows that even its own agents and employees have been  
23 deceived into believing that the Fake White Chips are real white chocolate. For example, the  
24 cookbook contains a recipe for “Tiramisu-Me” in which the ingredient list includes a “White  
25 Chocolate Mixture” containing mascarpone cheese and “1/4 cup Ghirardelli Classic White  
26 Chocolate Chips.” The recipe then goes on to instruct the reader to “mix the mascarpone cheese  
27 and white chocolate chips.” The Ghirardelli Chocolate Company, The Ghirardelli Chocolate  
28 Cookbook: Recipes and History from America’s Premier Chocolate Maker (Ten Speed Press:

1 2007).

2 35. Defendant also trains its store personnel at its branded retail locations (including  
3 the flagship store at Ghirardelli Square and the store at Union Square, both in San Francisco), to  
4 inform customers that *all* the Ghirardelli products are real chocolate products. Customers who  
5 ask, for example, for “white chocolate chips” are directed to the Fake White Chocolate Chips  
6 without being told that the product contains no chocolate. In one instance, an investigator asked a  
7 Ghirardelli store retail employee if there were any non-chocolate Ghirardelli products that he  
8 could purchase for a friend with a chocolate allergy; the employee stated (as trained to do), that  
9 there were none.

10 36. Until after the filing of this lawsuit, Defendant permitted customers to search its  
11 Website by choosing to “Shop By Product,” and then to choose the “White Chocolate” category.  
12 This process causes the Website to present the Fake White Chocolate Chips alongside the real  
13 White Chocolate Baking Bar and the Classic White Chocolate Flavored Sauce, which, as  
14 discussed above, do contain white chocolate and/or cocoa butter, which compounds the  
15 deception.

16 37. Defendant also advertises, for example, on the Internet by purchasing key words  
17 such as “white chocolate,” and asking consumers if they “Want White Chocolate?” If consumers  
18 follow the link on Defendant’s advertisements, they are taken to Defendant’s Website and offered  
19 the Fake White Chocolate Chips.

20 38. Finally, Defendant permits its marketing partners, including grocery stores, to  
21 advertise, market, advertise and sell its Fake White Chocolate Chips. Defendant provides its  
22 marketing partners information that specifically refers to these Fake White Chocolate Chips as  
23 real white chocolate. For example, in sales sheets, sales presentations, and other marketing  
24 materials, Ghirardelli categorizes the Fake White Chocolate Chips as “Baking Chocolate.” And  
25 some of the marketing materials provided by Defendant to retailers for the Fake White Chocolate  
26 Chips tells retailers that the product name is “Classic White Chocolate Chips.” Retailers in turn  
27 use this name when displaying the product on store shelves.

28 **Ghirardelli’s Marketing and Sale of its Fake White Chocolate Chips Is Misleading When**

1 **Compared to Competitors'**

2 39. Defendant's competitors more adequately disclose the truth about their products  
3 that are imitation or artificially flavored white chocolate.

4 40. The Hershey Company, for example, sells a competitive product to Defendant's  
5 Fake White Chocolate Chips, which it calls "Premier White Chips." But unlike the Defendant's  
6 Fake White Chocolate Chips, Hershey specifically states, immediately under the name of the  
7 product, "Artificially Flavored Creamy Vanilla." Moreover, nowhere does the Hershey's  
8 package state "chocolate." Indeed, the Hershey product offers a recipe for "White Chip  
9 Chocolate Cookies" (rather than "White Chocolate Chip Cookies"), which specifically requires  
10 that the user add cocoa powder. As a result, the retail price for Hershey's Premier White Chips is  
11 less than Defendant's Fake White Chocolate Chips.

12 41. Similarly, the Nestle S.A. company sells, for less money than Defendant's Fake  
13 White Chocolate Chips, "Toll House Premier White Morsels." Like Hershey, but unlike  
14 Defendant, the Nestle package (1) discloses that its "Premier White Morsels" are "creamy  
15 vanilla-flavored baking pieces" and (2) nowhere states that the "Premier White Morsels" are  
16 "chocolate" or "white chocolate."

17 **Ghirardelli's Marketing and Sale of the Unnatural Products**

18 42. During the proposed class period, Ghirardelli has labelled the Unnatural Products  
19 with the words "All Natural" on the front of the package. Often, Ghirardelli also includes the  
20 words "All Natural," "100% All Natural," or "All Natural Ingredients" on the backs of the  
21 packages for the Unnatural Products.

22 43. Ghirardelli also promoted the "All Natural" features of the Unnatural Products in  
23 its marketing materials. For example, in or around February 2012, the home page for  
24 Ghirardelli's Website stated: "Bake Something Sweet for Valentine's Day 100% All Natural."  
25 In or around February 2011, the home page for the Website contained an image that showed a bag  
26 of baking chips, an Intense Dark® bar, and a LUXE MILK® bar, surrounded by cocoa beans,  
27 milk, and nuts. Inscribed across the top of the photo was the phrase "All Natural." Likewise, in  
28 approximately November 2010, Ghirardelli advertised donations to a breast cancer awareness

1 group by stating on the homepage for its Website, “Support the Cause with 100% All Natural,  
2 rich and creamy LUXE MILK chocolate.”

3 44. But the ingredients in the Unnatural Products are not natural. Ghirardelli does not  
4 distinguish in its sugar supply from sugar beets or sugar cane, so it likely uses genetically  
5 modified sugar in all of the Unnatural Products because almost all sugar beets in the United States  
6 have been genetically engineered for pesticide resistance. These sugar beets contain a synthetic  
7 gene that protects the beets from the effects of the pesticide, which farmers apply to protect the  
8 beet crop from weeds. Sugar from genetically modified sugar beets are one of the most common  
9 genetically modified foods in the United States. Ninety-five percent of the sugar from sugar beets  
10 sold in the United States comes from genetically modified beets. (Source:  
11 [http://www.huffingtonpost.com/builtlean/diet-and-nutrition\\_b\\_4323937.html](http://www.huffingtonpost.com/builtlean/diet-and-nutrition_b_4323937.html), last accessed  
12 January 16, 2014).

13 45. Moreover, in all the Unnatural Products, Ghirardelli uses soy lecithin to aid in  
14 emulsifying the ingredients, ensuring the cocoa and oils and fats bind to each other and do not  
15 separate. The process to create the soy lecithin used in Ghirardelli’s Unnatural Products is  
16 decidedly not natural. Soy beans are chopped or crushed and then, following conventional  
17 extraction methods, a man-made solvent is applied to the oil to extract a gummy protein from the  
18 oil. The gum is then dried out, and often bleached, to form soy lecithin. Although it is possible  
19 to obtain soy lecithin by a mechanical pressing method rather than using chemical solvents, most  
20 soy lecithin is extracted using the man-made solvent. (Source:  
21 [http://www.cornucopia.org/2010/11/dirty-little-secret-in-the-natural-foods-industry-toxic-  
22 chemical-use/](http://www.cornucopia.org/2010/11/dirty-little-secret-in-the-natural-foods-industry-toxic-chemical-use/), last accessed January 16, 2014.) Some companies have publicly stated that they  
23 do not use conventionally manufactured soy lecithin (id.), but Defendant has never done so,  
24 suggesting that the soy lecithin in its products is extracted with a man-made solvent. Further the  
25 soy beans used to create the soy lecithin are or may be genetically modified. Ninety-one percent  
26 of the soy grown in this country is genetically modified. (Source:  
27 [http://www.huffingtonpost.com/jeffrey-smith/genetically-modified-soy\\_b\\_544575.html](http://www.huffingtonpost.com/jeffrey-smith/genetically-modified-soy_b_544575.html), last  
28 accessed January 16, 2014.)

1 46. Finally, in the Unnatural Products, there is a substantial probability that Ghirardelli  
2 uses milk and dairy products from cows treated with recombinant bovine growth hormone  
3 (“rBGH”), a hormone given to dairy cows to increase milk production. It is estimated that  
4 approximately 40 percent of milk on the market comes from rBGH-treated cows. (Source:  
5 <http://grist.org/article/food-2010-10-06-court-rules-on-rbgh-free-milk/>, last accessed February 3,  
6 2014.)

7 47. Despite the inclusion of the non-natural ingredients, Ghirardelli markets its  
8 Unnatural Products as “All Natural.” Beyond Defendant’s affirmative misrepresentations, it also  
9 fails to adequately disclose that its Unnatural Products contain the non-natural ingredients  
10 described above.

11 48. By misrepresenting that its products are “All Natural,” Ghirardelli seeks to make  
12 its products from those of competitors that do not have such a misrepresentation seem inferior to  
13 Ghirardelli products, even though the products have some or all of the same unnatural  
14 ingredients.

#### 15 **MILLER’S EXPERIENCE**

16 49. On June 24, 2012, Miller desired to purchase white chocolate chips.

17 50. Prior to purchasing the Ghirardelli® Chocolate Premium Baking Chips — Classic  
18 White, Miller reviewed the packaging to satisfy himself that he was purchasing white chocolate.  
19 Miller specifically reviewed Defendant’s statements on the package that the product is  
20 “Chocolate,” “Premium Baking Chocolate,” “Classic White,” “Premium Baking Chips,” the  
21 “Finest grind,” “melt-in-your mouth,” and had “The luxuriously deep flavor and smooth texture  
22 of Ghirardelli Premium Baking Chocolate delivers the ultimate chocolate indulgence.” Miller  
23 further relied on Defendant’s failure to adequately disclose that the product was artificial or  
24 imitation, was not chocolate, was not “white chocolate” and that it contained no cocoa butter. He  
25 then purchased Defendant’s Ghirardelli® Chocolate Premium Baking Chips — Classic White  
26 from a Publix supermarket in Auburndale, Florida for \$3.29.

27 51. The next day, Miller tasted Defendant’s Ghirardelli® Chocolate Premium Baking  
28 Chips — Classic White and noticed that they did not at all taste like white chocolate. He then

1 looked closely at the ingredients list on the back of the packaging and noticed that the product did  
2 not contain any white chocolate, chocolate, cocoa or cocoa butter.

3 52. Had Defendant not misrepresented (by omission and commission) the true nature  
4 of its Fake White Chocolate Chips, Miller would not have purchased Defendant's product or, at a  
5 very minimum, he would have paid less for the product.

### 6 LEYTON'S EXPERIENCE

7 53. Throughout the class period, Leyton has purchased a number of Ghirardelli  
8 products, including the Fake White Chocolate Chips, as well as other Ghirardelli products  
9 including the Ghirardelli White Chocolate Baking Bar, Ghirardelli Cocoa Powder, Ghirardelli  
10 Semi-Sweet Chocolate Chips, and Ghirardelli 60% Cacao Bittersweet Chocolate Baking Chips.

11 54. In or around May 2013, Leyton desired to purchase white chocolate chips that  
12 were prepared with all natural ingredients.

13 55. Leyton visited Keil's Fresh Food Store, an upscale grocery store in San Diego, and  
14 perused the baking chips and chocolate products. He located the "Ghirardelli® Chocolate  
15 Premium Baking Chips — Classic White" and read the front of the packaging, including those  
16 words and the words "All Natural." Leyton had visited Ghirardelli Square, and was familiar with  
17 the brand, which he understood to be a premium chocolate company. Leyton did not see anything  
18 stating that the product was not chocolate, not white chocolate, not natural, that it contained no  
19 cocoa butter, or that it contained chemically derived, genetically modified, and/or hormone  
20 treated. In reliance on those omissions and the words "all natural" and "chocolate," on the  
21 package, Leyton believed the product would contain natural ingredients and would be white  
22 chocolate and decided to buy the product. He purchased Defendant's Ghirardelli® Chocolate  
23 Premium Baking Chips — Classic White for approximately \$4.29.

24 56. On or about May 19, 2013, Leyton attempted to melt some of the Fake White  
25 Chocolate Chips. Because they did not melt properly and gave off a bad odor, Leyton again  
26 attempted to melt the chips. After that failed and the bad odor persisted, he reviewed the package  
27 and discovered that it was not a "premium," "natural," or "chocolate" product at all. He learned  
28 that the product did not contain any white chocolate, chocolate, cocoa or cocoa butter. And he



1 learned that the product contained palm oil, palm kernel oil, and soy lecithin, ingredients not  
2 associated with premium chocolate and not natural.

3 57. On or about May 20, 2013, Leyton complained to Defendant. He informed  
4 Ghirardelli that he had been misled by the company's branding, and did not believe Defendant  
5 should market the chips as white chocolate or as natural. In response, Defendant mailed Leyton a  
6 coupon, which Leyton threw away.

7 58. During the proposed class period, Leyton purchased additional Ghirardelli  
8 products. He purchased Defendant's "Ghirardelli® Chocolate Premium Baking Chips Semi-  
9 Sweet Chocolate" at Whole Foods numerous times, most recently in approximately April 2013, a  
10 month before he purchased the Fake White Chocolate Chips. He also purchased bags of  
11 "Ghirardelli® Chocolate Premium Baking Chips 60% Cacao Bittersweet Chocolate" several  
12 times from Whole Foods. Each time, he paid approximately \$4 a bag. He also purchased the  
13 "Ghirardelli® Chocolate Premium Baking Bar White Chocolate" on at least one occasion at  
14 Whole Foods. All of these products were advertised and marketed by Ghirardelli as "All  
15 Natural." Leyton reviewed the front of the packages for all these products and reviewing the  
16 words "All Natural" before purchasing the products. In reviewing the packages, Leyton did not  
17 see anything stating that the products were not natural, or that they contained chemically derived,  
18 genetically modified, and/or hormone treated ingredients. In reliance on those omissions and the  
19 words "all natural" on the package, Leyton believed the products would contain only natural  
20 ingredients and decided to buy the products.

21 59. He subsequently discovered, however, that these products are not, in fact, all  
22 natural, but rather were made with chemically extracted soy lecithin, hormone treated dairy, and  
23 genetically modified ingredients, such as soy and sugar.

24 60. Had Defendant not misrepresented (by omission and commission) the true nature  
25 of its Fake White Chocolate Chips, White Chocolate Baking Bar, Semi-Sweet Chocolate Chips,  
26 and 60% Cacao Bittersweet Chocolate Baking Chips, Leyton would not have purchased  
27 Defendant's products or, at a very minimum, he would have paid less for the product. Indeed,  
28 Leyton has not purchased any of Defendant's products since May 2013.

**CLASS ALLEGATIONS**

1  
2           61.       Plaintiffs bring this action against Defendant on behalf of themselves and all  
3 others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil  
4 Procedure. Plaintiffs seek to represent a class defined as follows: “all persons who, between  
5 August 17, 2008, and the date of Preliminary Approval, purchased, in the United States, any  
6 Ghirardelli brand product bearing the name ‘Baking Chips,’ ‘Baking Bar,’ ‘Gourmet Milk,’  
7 ‘Intense Dark,’ or ‘Luxe Milk.’”<sup>2</sup> For purposes of this Class Action Complaint, the unmodified  
8 word “Class” and the phrase “Class Members” shall refer collectively to all members of the  
9 Class, including the named Plaintiffs.

10           62.       This action has been brought and may properly be maintained as a class action  
11 against Defendant pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure  
12 because there is a well-defined community of interest in the litigation and the proposed class is  
13 easily ascertainable.

14           63.       Numerosity: Plaintiffs does not know the exact size the Class, but it is estimated  
15 that it is composed of more than 100 persons. The persons in the Class are so numerous that the  
16 joinder of all such persons is impracticable and the disposition of their claims in a class action  
17 rather than in individual actions will benefit the parties and the courts.

18           64.       Common Questions Predominate: This action involves common questions of law  
19 and fact to the potential class because each class member’s claim derives from the deceptive,  
20

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21 <sup>2</sup> These products are: “Ghirardelli® Chocolate Premium Baking Chips – Classic White,”  
22 “Ghirardelli® Chocolate White Chocolate Baking Bar,” “Ghirardelli® Chocolate Milk Chocolate  
23 Baking Bar,” “Ghirardelli® Chocolate Semi-Sweet Chocolate Baking Bar,” “Ghirardelli®  
24 Chocolate 60% Cacao Extra Bittersweet Chocolate Baking Bar,” “Ghirardelli® Chocolate 70%  
25 Cacao Extra Bittersweet Chocolate Baking Bar,” “Ghirardelli® Chocolate Milk Chocolate Bak-  
26 ing Chips,” “Ghirardelli® Chocolate Mini Semi-Sweet Baking Chips,” “Ghirardelli® Chocolate  
27 Semi-Sweet Baking Chips,” “Ghirardelli® Chocolate Double Chocolate Bittersweet Baking  
28 Chips,” “Ghirardelli® Chocolate Gourmet Milk® Sea Salt Escape ®,” “Ghirardelli® Chocolate  
Gourmet Milk® Coconut Rendezvous®,” “Ghirardelli® Chocolate Gourmet Milk® 32% Cacao  
Creamy Devotion®,” “Ghirardelli Chocolate Luxe Milk® Almond,” “Ghirardelli Chocolate  
Luxe Milk® Hazelnut,” “Ghirardelli Chocolate Luxe Milk® Milk,” “Ghirardelli Chocolate  
Luxe Milk® Toffee,” “Ghirardelli Chocolate Intense Dark® Toffee Interlude,” “Ghirardelli  
Chocolate Intense Dark® Evening Dream,” “Ghirardelli Chocolate Intense Dark® Twilight De-  
light,” and “Ghirardelli Chocolate Intense Dark® Midnight Reverie.”

1 unlawful and/or unfair statements and omissions that led Defendant's customers to believe that  
2 the Unnatural Products were made with only natural ingredients, and to believe that the Fake  
3 White Chocolate Chips were (or at a minimum contained) chocolate, white chocolate, cocoa  
4 and/or cocoa butter. The common questions of law and fact predominate over individual  
5 questions, as proof of a common or single set of facts will establish the right of each member of  
6 the Class to recover. The questions of law and fact common to the Class are:

7 a) whether certain ingredients, including genetically modified and chemically  
8 derived soy lecithin, genetically modified sugar, and hormone treated dairy, are "All Natural" or  
9 "100% All Natural";

10 b) whether Defendant unfairly, unlawfully and/or deceptively failed to inform  
11 Class members that its Unnatural Products were manufactured with unnatural ingredients;

12 c) whether the use of the word "Chocolate" on the primary display panel of the  
13 Fake White Chocolate Chips, in the absence of the word "Imitation" or "Artificially Flavored,"  
14 violated Federal and/or California state law;

15 d) whether Defendant unfairly, unlawfully and/or deceptively failed to inform  
16 Class members that its Fake White Chocolate Chips were not (and did not contain) chocolate,  
17 white chocolate, cocoa or cocoa butter;

18 e) whether Defendant misled Class members by, inter alia, representing that  
19 their Fake White Chocolate Chips were or had "chocolate," "baking chocolate," "premium"  
20 chocolate, "ground" chocolate, "classic white" chocolate, delivered the "ultimate chocolate  
21 indulgence," "melt-in-your mouth," "finest grind," "the luxuriously deep flavor and smooth  
22 texture of Ghirardelli Premium Baking Chocolate," and/or "the ultimate chocolate indulgence";

23 f) whether Defendant's advertising and marketing regarding their Fake White  
24 Chocolate Chips sold to Class members was likely to deceive Class members or was unfair;

25 h) whether Defendant engaged in the alleged conduct knowingly, recklessly, or  
26 negligently;

27 i) The amount of profits and revenues earned by Defendant as a result of the  
28 conduct;

1           j)       whether class members are entitled to restitution, injunctive and other  
2 equitable relief and, if so, what is the nature (and amount) of such relief; and

3           k)       whether class members are entitled to payment of actual, incidental,  
4 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the  
5 nature of such relief.

6           65.       Typicality: Plaintiff Miller's claims are typical of the Class because, on June 24,  
7 2012, he purchased one of the Fake White Chocolate Products, namely Defendant's Ghirardelli®  
8 Chocolate Premium Baking Chips – Classic White, in reliance on Defendant's misrepresentations  
9 and omissions that it was white chocolate. Plaintiff Leyton's claims are typical of the Class  
10 because, in May of 2013, he purchased Defendant's Ghirardelli® Chocolate Premium Baking  
11 Chips – Classic White, in reliance on Defendant's misrepresentations and omissions that it was  
12 white chocolate and "all natural." He additionally purchased, during the class period, other  
13 Ghirardelli products, including the White Chocolate Baking Bar, Ghirardelli Semi-Sweet  
14 Chocolate Chips, and Ghirardelli 60% Cacao Bittersweet Chocolate Baking Chips, in reliance on  
15 Defendant's misrepresentations and omissions that they were "all natural." Thus, Plaintiffs and  
16 class members sustained the same injuries and damages arising out of Defendant's conduct in  
17 violation of the law. The injuries and damages of each class member were caused directly by  
18 Defendant's wrongful conduct in violation of law as alleged.

19           66.       Adequacy: Plaintiffs will fairly and adequately protect the interests of all class  
20 members because it is in their best interests to prosecute the claims alleged herein to obtain full  
21 compensation due to them for the unfair and illegal conduct of which they complain. Plaintiffs  
22 also have no interests that are in conflict with or antagonistic to the interests of class members.  
23 Plaintiffs have retained highly competent and experienced class action attorneys to represent their  
24 interests and that of the class. By prevailing on their own claims, Plaintiffs will establish  
25 Defendant's liability to all class members. Plaintiffs and their counsel have the necessary  
26 financial resources to adequately and vigorously litigate this class action, and Plaintiffs and  
27 counsel are aware of their fiduciary responsibilities to the class members and are determined to  
28 diligently discharge those duties by vigorously seeking the maximum possible recovery for class

1 members.

2           67.     Superiority: There is no plain, speedy, or adequate remedy other than by  
3 maintenance of this class action. The prosecution of individual remedies by members of the class  
4 will tend to establish inconsistent standards of conduct for Defendant and result in the impairment  
5 of class members' rights and the disposition of their interests through actions to which they were  
6 not parties. Class action treatment will permit a large number of similarly situated persons to  
7 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
8 unnecessary duplication of effort and expense that numerous individual actions would engender.  
9 Furthermore, as the damages suffered by each individual member of the class may be relatively  
10 small, the expenses and burden of individual litigation would make it difficult or impossible for  
11 individual members of the class to redress the wrongs done to them, while an important public  
12 interest will be served by addressing the matter as a class action.

13           68.     Nexus to California. The State of California has a special interest in regulating the  
14 affairs of corporations that do business here. Defendant has its principal place of business in  
15 California, and the acts complained of herein emanated from decisions made by Defendant in  
16 California. Accordingly, there is a substantial nexus between Defendant's unlawful behavior and  
17 California such that the California courts should take cognizance of this action on behalf of a  
18 class of individuals who reside anywhere in the United States.

19           69.     Plaintiffs are unaware of any difficulties that are likely to be encountered in the  
20 management of this action that would preclude its maintenance as a class action.

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**CAUSES OF ACTION**

1  
2 Plaintiffs do not plead, and hereby disclaims, causes of action under the Food Drug and  
3 Cosmetic Act (“FDCA”) and regulations promulgated thereunder by the FDA. Plaintiffs rely on  
4 the FDCA and FDA regulations only to the extent such laws and regulations have been separately  
5 enacted as state law or regulation or provide a predicate basis of liability under the state and  
6 common laws cited in the following causes of action.

7 **PLAINTIFFS’ FIRST CAUSE OF ACTION**  
8 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)**  
9 **On Behalf of Leyton and Miller and the Class**

10 70. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint  
11 as if set forth herein.

12 71. This cause of action is brought pursuant to the California Consumers Legal  
13 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

14 72. Defendant’s actions, representations and conduct have violated, and continue to  
15 violate the CLRA, because they extend to transactions that are intended to result, or which have  
16 resulted, in the sale or lease of goods or services to consumers.

17 73. Plaintiffs and other class members are “consumers” as that term is defined by the  
18 CLRA in California Civil Code § 1761(d).

19 74. The Unnatural Products and the Fake White Chocolate Chips that Plaintiffs (and  
20 others similarly situated class members) purchased from Defendant were “goods” within the  
21 meaning of California Civil Code § 1761(a).

22 75. By engaging in the actions, representations and conduct set forth in this Class  
23 Action Complaint, Defendant has violated, and continues to violate, § 1770(a)(2), § 1770(a)(5),  
24 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code  
25 §1770(a)(2), Defendant’s acts and practices constitute improper representations regarding the  
26 source, sponsorship, approval, or certification of the goods they sold. In violation of California  
27 Civil Code §1770(a)(5), Defendant’s acts and practices constitute improper representations that  
28 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
quantities, which they do not have. In violation of California Civil Code §1770(a)(7),

1 Defendant's acts and practices constitute improper representations that the goods they sell are of a  
2 particular standard, quality, or grade, when they are of another. In violation of California Civil  
3 Code §1770(a)(8), Defendant has disparaged the goods, services, or business of another by false  
4 or misleading representation of fact. In violation of California Civil Code §1770(a)(9), Defendant  
5 has advertised goods or services with intent not to sell them as advertised.

6 76. Specifically, Defendant's acts and practices led customers to falsely believe that its  
7 Unnatural Products were made with only natural ingredients and that its Fake White Chocolate  
8 Chips were (or contained) chocolate, white chocolate and/or its principal ingredient, cocoa butter.  
9 Finally, regarding California Civil Code §1770(a)(8), Ghirardelli falsely or deceptively markets  
10 and advertises that, unlike other chocolate manufacturers, it sells "all natural" products and does  
11 the following:

- 12 • "makes chocolate starting from the cocoa bean through to finished products";
- 13 • maintains intensive quality assurance in the selection of cocoa beans and accepts  
14 only the highest-quality beans;
- 15 • rejects as many as 40% of the beans that are offered to it, and the chocolate beans  
16 that are not selected by Ghirardelli are sold to other manufacturers;
- 17 • uses a proprietary blend of cocoa beans that has been refined over the company's  
18 150-year history to provide the company's distinct and intense chocolate taste;
- 19 • roasts the cocoa beans in-house to ensure the company's signature flavor profile is  
20 consistently maintained in all chocolate products; and
- 21 • uses a different roasting process whereby it remove the shell first and then roast  
22 the small nibs inside and has more control over the temperature and time, so it can  
23 get a more specific flavor, whereas other companies roast their beans before re-  
24 moving the shell, which requires over-roasting the outside portion of the bean in  
25 order to roast the inside, which could impart a burned flavor to their chocolate.

26 77. Plaintiffs request that this Court enjoin Defendant from continuing to employ the  
27 unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
28 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the  
future, Plaintiffs and the other members of the Class will continue to suffer harm.

78. More than thirty days prior to the filing of this Class Action Complaint, Plaintiff

1 Miller gave notice and demand that Defendant correct, repair, replace or otherwise rectify the  
2 unlawful, unfair, false and/or deceptive practices relating to the Fake White Chocolate Chips  
3 complained of herein. On October 9, 2013, Leyton himself also gave notice and demand that  
4 Defendant correct, repair, replace, or otherwise rectify the unlawful, unfair, false and/or deceptive  
5 practices relating to the (i) Fake White Chocolate Chips and (ii) the Unnatural Products  
6 complained of herein. Despite receiving the aforementioned notices and demands, Defendant  
7 failed to do so in that, among other things, it failed to identify similarly situated customers, notify  
8 them of their right to correction, repair, replacement or other remedy; and provide that remedy.  
9 Accordingly, Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of  
10 themselves and those similarly situated class members, compensatory damages, punitive damages  
11 and restitution of any ill-gotten gains due to Defendant's acts and practices.

12 79. Plaintiffs also requests that this Court award them their costs and reasonable  
13 attorneys' fees pursuant to California Civil Code § 1780(d).

14 **PLAINTIFFS' SECOND CAUSE OF ACTION**  
15 **(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))**  
16 **On Behalf of Leyton and Miller and the Class**

17 80. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action  
18 Complaint as if set forth herein.

19 81. Beginning at an exact date unknown to Plaintiffs, but within three (3) years  
20 preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive  
21 and/or misleading statements in connection with the advertising and marketing of its Unnatural  
22 Products and Fake White Chocolate Chips.

23 82. Defendant made representations and statements (by omission and commission)  
24 that led reasonable customers to believe that they were purchasing natural products and real white  
25 chocolate chips. Defendant deceptively failed to inform Leyton, and those similarly situated, that  
26 its Unnatural Products contained genetically modified ingredients (including soy and sugar), soy  
27 lecithin extracted using chemicals and hormone treated dairy. Defendant further deceptively  
28 failed to inform Plaintiffs, and those similarly situated, that its Fake White Chocolate Chips did  
not contain any chocolate, white chocolate, cocoa or cocoa butter.



1           83.     Plaintiffs and those similarly situated relied to their detriment on Defendant's  
2 false, misleading and deceptive advertising and marketing practices, including each of the  
3 misrepresentations and omissions set forth in paragraphs 22, 26-30, 33-38, 42-43, and 48 above.  
4 Had Plaintiffs and those similarly situated been adequately informed and not intentionally  
5 deceived by Defendant, they would have acted differently by, without limitation, refraining from  
6 purchasing Defendant's Unnatural Products and Fake White Chocolate Chips or paying less for  
7 them.

8           84.     Defendant's acts and omissions are likely to deceive the general public.

9           85.     Defendant engaged in these false, misleading and deceptive advertising and  
10 marketing practices to increase its profits. Accordingly, Defendant has engaged in false  
11 advertising, as defined and prohibited by section 17500, et seq. of the California Business and  
12 Professions Code.

13           86.     The aforementioned practices, which Defendant used, and continue to use, to its  
14 significant financial gain, also constitutes unlawful competition and provides an unlawful  
15 advantage over Defendant's competitors as well as injury to the general public.

16           87.     Plaintiffs seek, on behalf of those similarly situated, full restitution of monies, as  
17 necessary and according to proof, to restore any and all monies acquired by Defendant from  
18 Plaintiffs, the general public, or those similarly situated by means of the false, misleading and  
19 deceptive advertising and marketing practices complained of herein, plus interest thereon.

20           88.     Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit  
21 Defendant from continuing to engage in the false, misleading and deceptive advertising and  
22 marketing practices complained of herein. The acts complained of herein occurred, at least in  
23 part, within three (3) years preceding the filing of the Class Action Complaint.

24           89.     Plaintiffs and those similarly situated are further entitled to and do seek both a  
25 declaration that the above-described practices constitute false, misleading and deceptive  
26 advertising, and injunctive relief restraining Defendant from engaging in any such advertising and  
27 marketing practices in the future. Such misconduct by Defendant, unless and until enjoined and  
28 restrained by order of this Court, will continue to cause injury in fact to the general public and the

1 loss of money and property in that the Defendant will continue to violate the laws of California,  
2 unless specifically ordered to comply with the same. This expectation of future violations will  
3 require current and future customers to repeatedly and continuously seek legal redress in order to  
4 recover monies paid to Defendant to which Defendant is not entitled. Plaintiff, those similarly  
5 situated and/or other consumers nationwide have no other adequate remedy at law to ensure  
6 future compliance with the California Business and Professions Code alleged to have been  
7 violated herein.

8 90. As a direct and proximate result of such actions, Plaintiffs and the other members  
9 of the Class have suffered, and continue to suffer, injury in fact and have lost money and/or  
10 property as a result of such false, deceptive and misleading advertising in an amount which will  
11 be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

12 **PLAINTIFFS' THIRD CAUSE OF ACTION**  
13 **(Fraud, Deceit and/or Misrepresentation)**  
14 **On Behalf of Leyton and Miller and the Class**

15 91. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action  
16 Complaint as if set forth herein.

17 92. In or around May 2013, Defendant fraudulently and deceptively informed Leyton  
18 that Defendant's Fake White Chocolate Chips contained only all natural ingredients. On  
19 numerous occasions during the Class Period, Defendant also fraudulently and deceptively  
20 informed Leyton that Defendant's White Chocolate Baking Bar, Ghirardelli Semi-Sweet  
21 Chocolate Chips, and Ghirardelli 60% Cacao Bittersweet Chocolate Baking Chips contained only  
22 all natural ingredients. It failed to inform him of the presence of unnatural ingredients, such as  
23 genetically modified organisms, chemically derived soy lecithin, and rBGH-laced milk.

24 93. Defendant made identical misrepresentations and omissions regarding Defendant's  
25 Unnatural Products to members of the Class.

26 94. In or around May 2013, Defendant fraudulently and deceptively led Leyton to  
27 believe that Defendant's Fake White Chocolate Chips were real white chocolate chips. On or  
28 about June 24, 2012, Defendant fraudulently and deceptively led Miller to believe that

1 Defendant's Fake White Chocolate Chips were real white chocolate chips. Defendant also failed  
2 to inform Leyton and Miller that Defendant's Fake White Chocolate Chips are not and do not  
3 contain chocolate or white chocolate and are not derived from white chocolate / cocoa butter.

4 95. Defendant made identical misrepresentations and omissions regarding Defendant's  
5 Fake White Chocolate Chips to all members of the Class.

6 96. Defendant's omissions were material at the time they were made. They concerned  
7 material facts that were essential to the analysis undertaken by Plaintiffs as to whether to purchase  
8 Defendant's Unnatural Products and Fake White Chocolate Chips.

9 97. In not so informing Plaintiffs and the members of the Class, Defendant breached  
10 its duty to them. Defendant also gained financially from, and as a result of, its breaches.

11 98. Plaintiffs and those similarly situated relied to their detriment on Defendant's  
12 fraudulent omissions. Had Plaintiffs and those similarly situated been adequately informed and  
13 not intentionally deceived by Defendant, they would have acted differently by, without limitation,  
14 not purchasing (or paying less for) Defendant's Unnatural Products and Fake White Chocolate  
15 Chips.

16 99. Defendant had a duty to inform Class members at the time of their purchase of that  
17 the Unnatural Products they were purchasing included ingredients that were not "all natural,"  
18 including chemically extracted soy lecithin, genetically modified sugar and soy, and hormone  
19 treated dairy. Defendant had a further duty to inform Class members at the time of their purchase  
20 of that the Fake White Chocolate Chips that the product they were purchasing was not chocolate  
21 or white chocolate and did not contain any cocoa butter. Defendant omitted to provide this  
22 information to Class members. Class and members relied to their detriment on Defendant's  
23 omissions. These omissions were material to the decisions of Class members to purchase the  
24 Unnatural Products and the Fake White Chocolate Chips, respectively. In making these  
25 omissions, Defendant breached its duties to Class members. Defendant also gained financially  
26 from, and as a result of, its breaches.

27 100. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant  
28 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.

1 Specifically, Defendant fraudulently and deceptively induced Plaintiffs and those similarly  
2 situated to, without limitation, to purchase the Unnatural Products and Fake White Chocolate  
3 Chips.

4 101. Plaintiffs and those similarly situated justifiably and reasonably relied on  
5 Defendant's omissions, and, accordingly, were damaged by Defendant.

6 102. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs and  
7 those similarly situated have suffered damages, including, without limitation, the amount they  
8 paid for the Unnatural Products and Fake White Chocolate Chips.

9 103. Defendant's conduct as described herein was willful and malicious and was  
10 designed to maximize Defendant's profits even though Defendant knew that it would cause loss  
11 and harm to Plaintiffs and those similarly situated.

12 **PLAINTIFFS' FOURTH CAUSE OF ACTION**  
13 **(Unfair, Unlawful and Deceptive Trade Practices,**  
14 **Business and Professions Code § 17200, et seq.)**  
15 **On Behalf of Leyton and Miller and the Class**

16 104. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action  
17 Complaint as if set forth herein.

18 105. Within four (4) years preceding the filing of this Class Action Complaint, and at  
19 all times mentioned herein, Defendant has engaged, and continue to engage, in unfair, unlawful  
20 and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful  
21 business practices outlined in this Second Amended Class Action Complaint.

22 106. In particular, Defendant has engaged, and continues to engage, in unlawful trade  
23 practices with respect to the Class by including the word "Chocolate" on the primary display  
24 panel of the Fake White Chocolate Chips without stating that the product are "Imitation,"  
25 "Artificial" and/or "Artificially Flavored," in violation of Cal. Health & Safety Code § 110100(a),  
26 110380, and 110505, which incorporate 21 C.F.R. §§ 101.3, 101.22 and 102.5.

27 107. In addition, Defendant has engaged and continues to continues to engage in unfair,  
28 unlawful and deceptive trade practices with respect to the Class by, without limitation, the  
following:

1 a. deceptively representing to Leyton, and the Class,  
2 that the Unnatural Products were and/or contained only “all natural” ingredients;

3 b. failing to inform Leyton, and the Class, that the  
4 Unnatural Products included chemically extracted soy lecithin, genetically  
5 modified ingredients, and hormone treated dairy;

6 108. In addition, Defendant has engaged and continues to continues to engage in unfair,  
7 unlawful and deceptive trade practices with respect to the Class by, without limitation, the  
8 following:

9 a. deceptively representing to Plaintiffs, and the Class,  
10 that the Fake White Chocolate Chips were and/or contained chocolate and/or white  
11 chocolate;

12 b. failing to inform Plaintiffs, and the Class, that the  
13 Fake White Chocolate Chips were not and did not contain chocolate, white  
14 chocolate and/or cocoa butter;

15 109. In addition, Defendant has engaged and continues to continues to engage in unfair,  
16 unlawful and deceptive trade practices with respect to the Class by, without limitation:

17 a. engaging in fraud, deceit, and misrepresentation as  
18 described herein;

19 b. violating the CLRA as described herein;

20 c. violating the FAL as described herein; and

21 d. violating the Sherman Food, Drug and Cosmetic  
22 Act, Cal. Health & Saf. Code, including without limitation sections 110300,  
23 110340, 110380, 110385, 110390, 110395, 110398, 110400, 110505, 110660,  
24 110680, 110760, 110765, and/or 110770.

25 110. Plaintiffs and those similarly situated relied to their detriment on Defendant’s  
26 unfair, deceptive and/or unlawful business practices. Had Plaintiffs and those similarly situated  
27 been adequately informed and not deceived by Defendant, they would have acted differently by  
28 not purchasing (or paying less for) Defendant’s Unnatural Products and Fake White Chocolate

1 Chips.

2 111. Defendant's acts and omissions are likely to deceive the general public.

3 112. Defendant engaged in these practices to increase its profits. Accordingly,  
4 Defendant has violated section 17200, et seq. of the California Business and Professions Code.

5 113. The aforementioned practices, which Defendant has used to its significant  
6 financial gain, also constitute unlawful competition and provide an unlawful advantage over  
7 Defendant's competitors as well as injury to the general public.

8 114. Plaintiffs seek, on behalf of those similarly situated, full restitution of monies, as  
9 necessary and according to proof, to restore any and all monies acquired by Defendant from  
10 Plaintiffs, the general public, or those similarly situated by means of the unfair and/or deceptive  
11 trade practices complained of herein, plus interest thereon.

12 115. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit  
13 Defendant from continuing to engage in the practices complained of herein.

14 116. The acts complained of herein occurred, at least in part, within four (4) years  
15 preceding the filing of this Class Action Complaint.

16 117. Plaintiffs and those similarly situated are further entitled to and do seek both a  
17 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent, and  
18 injunctive relief restraining Defendant from engaging in any of such deceptive, unfair and/or  
19 unlawful trade practices in the future. Such misconduct by Defendant, unless and until enjoined  
20 and restrained by order of this Court, will continue to cause injury in fact to the general public  
21 and the loss of money and property in that Defendant will continue to violate the laws of  
22 California, unless specifically ordered to comply with the same. This expectation of future  
23 violations will require current and future customers to repeatedly and continuously seek legal  
24 redress in order to recover monies paid to Defendant to which Defendant are not entitled.  
25 Plaintiffs, those similarly situated and/or other consumers nationwide have no other adequate  
26 remedy at law to ensure future compliance with the California Business and Professions Code  
27 alleged to have been violated herein.

28 118. As a direct and proximate result of such actions, Plaintiffs and the other members

1 of the Class have suffered and continue to suffer injury in fact and have lost money and/or  
2 property as a result of such deceptive, unfair and/or unlawful trade practices and unfair  
3 competition in an amount which will be proven at trial, but which is in excess of the jurisdictional  
4 minimum of this Court. Among other things, Plaintiffs and the class lost the amount they paid  
5 for the Unnatural Products and the Fake White Chocolate Chips.

6 119. As a direct and proximate result of such actions, Defendant has enjoyed, and  
7 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which  
8 is in excess of the jurisdictional minimum of this Court.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment as follows:

11 A. On Cause of Action Number 1 against Defendant and in favor of Plaintiffs  
12 and the other members of each Class:

- 13 1. for restitution and injunctive relief pursuant to California Civil  
14 Code section 1780;
- 15 2. actual damages, the amount of which is to be determined at trial;
- 16 3. punitive damages, the amount of which is to be determined at trial;
- 17 and
- 18 4. statutory damages as provided by Civil Code section 1780(b), the  
19 amount of which is to be determined at trial.

20 B. On Causes of Action Number 2 against Defendant and in favor of Plaintiffs  
21 and the other members of each Class:

- 22 1. for restitution pursuant to, without limitation, the California Busi-  
23 ness & Professions Code §§ 17500, et seq.; and
- 24 2. for injunctive relief pursuant to, without limitation, the California  
25 Business & Professions Code §§ 17500, et seq.;

26 C. On Cause of Action Number 3 against Defendant and in favor of Plaintiffs  
27 and the other members of each Class:

- 28 1. an award of compensatory damages, the amount of which is to be

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determined at trial; and

- 2. an award of punitive damages, the amount of which is to be determined at trial.

D. On Causes of Action Number 4 against Defendant and in favor of Plaintiffs and the other members of each Class:

- 1. for restitution pursuant to, without limitation, California Business & Professions Code §§ 17200, et seq.; and
- 2. for injunctive relief pursuant to, without limitation, California Business & Professions Code §§ 17200, et seq.;

E. On all causes of action against Defendant and in favor of Plaintiffs, class members and the general public:

- 1. for reasonable attorneys’ fees according to proof pursuant to applicable law (*see, e.g.*, Cal. Civ. Code ¶ 1780(e); Cal. Code Civ. Proc. § 1021.5);
- 2. for costs of suit incurred; and
- 3. for such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: October 7, 2014

**GUTRIDE SAFIER LLP**

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