FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
501 West Broadway, Suite 1250
San Diego, California 92101-3579
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

Attorneys for Plaintiff
Weston Anson, and all other similarly situated Californians

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WESTON ANSON, and all other Similarly Situated Californians, Plaintiffs, v. MARS, INC.; MARS CHOCOLATE NORTH AMERICA, LLC,; SAFEWAY, INC.; and THE VONS COMPANIES, INC., Defendants.	Case No: 14-cv-02032-WQH-JLB **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES EQUITABLE AND INJUNCTIVE RELIEF** JURY TRIAL DEMANDED

Plaintiff, Weston Anson, through his undersigned attorneys, brings this Complaint against Defendants, Mars, Inc. and Mars Chocolate North America, Inc., Safeway, Inc. and the Vons Companies, Inc. as to his own acts and all other California residents similarly situated based upon his actual knowledge, and as to all other matters upon information and belief.

DEFINITIONS

1. "Class Period" is July 22, 2010 through the date of Class Certification.

2. "Purchased Products" are the chocolate candy products listed below purchased by Plaintiff during the Class Period: (1) M&M Dark and Peanut Chocolate

Candy; (2) Dove Dark and Milk Chocolate Silky Smooth candy bars; (3) Snickers Bars; and other similarly situated Mars chocolate candy bar products (the "Purchased Products").

3. Upon information and belief, each of the Purchased Products makes one or more of the same label representations as the Purchased Products as described herein. As described in more detail below, during the relevant time period, all the Purchased Products have an unlawful and misleading calorie related nutrient content claim. The Purchased Products marked with (F) contain an unlawful and misleading flavanol nutrient content claim.

4. Plaintiff reserves the right to supplement the list of Substantially Similar Products should evidence is adduced during discovery to show that other Mars products had labels which violate the same provisions of the Sherman Law and have the same label representations as the Purchased Products.

SUMMARY OF THE CASE

5. Plaintiff's case has two distinct facets. First, the "UCL unlawful" part. Plaintiff's first cause of action is brought pursuant to the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiff alleges that Defendants package and label the Purchased Products in violation of California's Sherman Law which adopts, incorporates – and is identical – to the federal Food Drug & Cosmetic Act, 21 U.S.C. §§ 301, *et seq.* ("FDCA"). These violations (which do not require a finding that the labels are "misleading") render the Purchased Products "misbranded" which is no small thing. Under California law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Indeed, the sale of misbranded food is a criminal act in California and the FDA even threatens food companies with seizure of misbranded products. This "misbranding" – standing alone without any allegations of deception by Defendants or review of or reliance on

the labels by Plaintiff – give rise to Plaintiff's first cause of action under the UCL. To state a claim under the unlawful prong, Plaintiff need only allege that he would not have purchased the product had he known it was unlawful, illegal and misbranded, because buying such a product would result in owning and possessing a product that was illegal to own or possess.

6. Second, the "fraudulent" part. Plaintiff alleges that the illegal statements contained on the labels of the Purchased Products – aside from being unlawful under the Sherman Law – are also misleading, deceptive, unfair and fraudulent. Plaintiff describes these labels and how they are misleading. Plaintiff alleges that prior to purchase he reviewed the illegal statements on the labels on the Purchased Products, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these products. Had Plaintiff known the truth about the products he would not have purchased them.

7. Plaintiff did not know, and had no reason to know, that the Defendants' Purchased Products were misbranded under the Sherman Law and bore food labeling claims that failed to meet the requirements to make those food labeling claims. Similarly, Plaintiff did not know, and had no reason to know, that Defendants' Purchased Products were false and misleading.

BACKGROUND

8. Identical California and Federal laws require truthful, accurate information on the labels of packaged foods. This case is about companies selling misbranded food to consumers. The law, however, is clear: misbranded food cannot legally be sold, possessed, has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase price or other relief or compensation as determined by the Court. Plaintiff and members of the class that purchased these products paid an unwarranted premium for these products.

9. Identical federal and California laws regulate the content of labels on

packaged food. The requirements of the federal FDCA were adopted by the California legislature in the Sherman Law. Under FDCA section 403(a), food is "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain certain information on its label or in its labeling. 21 U.S.C. § 343(a).

10. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, then the entire food is misbranded, nor can any other statement in the labeling cure a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

11. If a manufacturer is going to make a claim on a food label or on its website, which can be an extension of the label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that the labels are truthful, accurate, and backed by scientific evidence. As described more fully below, Defendants have sold products that are misbranded, illegal to possess and are worthless because (i) the labels violate the Sherman Law and were sold by Defendants and (ii) Defendants made and continue to make false, misleading and deceptive claims on the labels of their products.

12. Mars Chocolate North America, LLC is one of the leading producers of chocolate candy and other types of confectionery. Mars, Inc. is the parent company of Mars Chocolate North America, LLC. Defendants' Purchased Products are sold to consumers through grocery and other retail stores throughout California, including Safeway and Vons stores.

13. Defendants recognize that health claims drive sales, and actively promote the health benefits of their products. Defendants have promoted the health

and nutritional profiles of their products by trying to highlight various purported attributes of their products such as to highlight health and nutritional claims of a suspect nature. Defendants have run afoul of California and Federal regulations that prohibit companies from touting supposedly positive nutritional aspects of their products while concealing or failing to disclose that those products contain disqualifying nutrients at levels the state and federal regulators have concluded raise the risk of a diet-related disease or health-related condition.

14. In recent years, responding to consumer demand for healthy foods has become a central part of Defendants' business models and marketing strategies, even though Defendants' Purchased Products are various forms of candy and confectionery that are not healthy or low-calorie as a matter of law.

15. Defendants have realized that, based on the public's concern about health, obesity and interest in lower calorie and natural foods, there is a financial benefit to be derived in selling products claiming to be healthy. Accordingly, the Mars Defendants have labeled (and the Distribution Defendants) have advertise many of the Mars candy and confectionery products to emphasize these qualities even though such claims are in violation of California and Federal food labeling laws.

16. Defendants have pursued a strategy based on their assessment that nutritional awareness and the desire for improved health and wellness will increasingly drive consumer choice. Pursuant to this strategy, Defendants decided that they would renovate products for nutrition and health considerations and would seek to inform consumers about available healthy and nutritious options in using their products.

17. In pursuing such a strategy, Defendants (a) decided their success and profitability was dependent on their ability to satisfy emerging consumer demand for healthy, nutritious and lower calorie foods and (b) were prepared to make health and nutrition arguments on behalf of "junk foods" like chocolate candy when in fact such

claims were not true and, in fact, were unlawful.

18. For example, according to Mars Inc., Defendants are one of the world's leading providers of food for people and pets and, as such, they have a:

> [R]esponsibility to help our consumers and the pets they love lead healthy lives. We are committed to making sure the products we offer, and the ingredients they contain, can fit into a balanced diet - whether whole grain rice from UNCLE BEN'S® or a delicious Mars chocolate bar.…Each of our business segments focuses on three areas: information, renovation and innovation.[1]

19. Defendants' key to achieving the goals of their health and nutrition strategy is to convince consumers that they can use Defendants' chocolate candy as part of a healthy and enjoyable diet. Recognizing that the success of this strategy was dependent on repositioning their chocolate candy as healthy, nutritious and lower calorie, Defendants made and are making false and deceptive claims in violation of Federal and state laws that govern the types of representations that can be made on food labels.

20. Plaintiff brings this action under California law, which is identical to Federal law, for a number of Defendants' food labeling practices which are both (i) unlawful and (ii) deceptive and misleading to consumers. These unlawful practices include:

A. Making unlawful nutrient content claims on the labels of food products that are false and fail to meet the minimum nutritional requirements legally required for the nutrient content claims being made; and

B. Making false calorie related nutrient content claims.

PARTIES

21. Plaintiff, Weston Anson, is and at all times was a resident of San Diego County, California, over the age of 65, who purchased at least $200.00 (but not more than $2,500.00) worth of Defendants' Purchased Products in California during the

[1] http://www.mars.com/global/about-mars/mars-pia/health-and-nutrition/health-and-nutrition-introduction.aspx

Class Period.

22. Defendant Mars Chocolate North America, LLC ("Mars LLC") is a Delaware LLC with its headquarters in Hackettstown, New Jersey. Mars Chocolate North America, LLC is registered to do business and does business in California. Defendant Mars, Inc. ("Mars, Inc.") is a Delaware corporation with its headquarters in McLean, Virginia. Mars, Inc. is registered to do business and does business in California. (Hereinafter, Mars LLC and Mars, Inc. are jointly referred to as the "Mars Defendants").

23. Defendants Safeway Inc., a Delaware corporation headquartered in Pleasanton, California, and The Vons Companies, Inc., a Michigan corporation also headquartered in Pleasanton, California (the "Distribution Defendants") have served (and continue to serve) as major distributors of the Mars Defendant's Purchased Products in California during the Class Period.

24. The Mars Defendants are leading producers of retail food products, including chocolate candy and other confectionery. Defendants sell their Purchased Products to consumers through the Distribution Defendants and other grocery and retail stores throughout California.

25. Thought their website, print advertising and other marketing materials, the Distribution Defendants repeat the Mars Defendants' unlawful nutrient content claims. For example, on both Vons' and Safeway's website, both of which allow customers to browse products and shop on online, the Distribution Defendants include the amount of calories in each purchased product as a percentage of the recommended daily value, despite it being unlawful to do so, as alleged below. By doing so, the Distribution Defendants adopted and disseminated to the general public the same misleading, unlawful and false statements made by the Mars Defendants, as alleged herein, regarding the Purchased Products.

26. The Mars Defendants and Distribution Defendants have approved, ratified, controlled, directed, had knowledge of, and/or otherwise been legally

responsible for all aspects of the wrongful acts about which Plaintiff complains. A unity of interest exists between the Mars Defendants and Distribution Defendants such that justice dictates that any liability created by the acts and/or omissions of one be imposed upon the others who should be held legally and financially responsible for all aspects of the wrongful acts and practices about which Plaintiff complains.

27. In accordance with California law, both the Mars Defendants and the Distribution Defendants are liable to Plaintiff and the Class as a direct participant, aider and abettor, co-conspirator, enabler or their otherwise jointly responsible for the improper, unlawful, deceptive, misleading, unfair, and fraudulent acts and practices that the Mars Defendants continues to conduct in this State to the detriment of residents, consumers, competitors and members of the general public of California.

28. Moreover, California law applies to all claims set forth in this Class Action Complaint because Plaintiff lives in California and purchased the Purchased Products in California. Accordingly, California has significant contacts and/or a significant aggregation of contacts with the claims asserted by Plaintiff and all Class members.

JURISDICTION, VENUE AND EQUITABLE TOLLING

29. On August 29, 2014, Defendant removed this case from the Superior Court of San Diego, to the United States District Court for the Southern District of California. Plaintiff asserts that this Court does not have jurisdiction to hear this matter, and accordingly filed his Motion to Remand on September 26, 2014. Dkt. # 8. By submitting this Amended Complaint, Plaintiff does not waive any of his arguments asserted in his Motion to Remand, but instead only files in lieu of a response to Defendants' Motions to Dismiss which was filed in this Court. *See* Dkt. # 4.

30. Plaintiff asserts that the Superior Court of San Diego has original jurisdiction over this action pursuant to Article 6, § 10 of the California Constitution,

California Business & Professions Code § 17203, California Civil Code §1751, *et seq.*, and California Code of Civil Procedure §§ 382 and 410.10 and for the reasons set out in Plaintiff's Motion to Remand.

31. The Superior Court of San Diego also has jurisdiction over all Defendants because they are registered to conduct, and do conduct, substantial business within California and San Diego including the marketing and sale of their Purchased Products to Plaintiff and members of the California Class.

32. Venue is proper in the Superior Court of San Diego pursuant to California Code of Civil Procedure § 395 because Plaintiff reviewed and justifiably relied upon Defendants' product labeling and advertisements displayed within this County and, in reliance thereon, bought the Purchased Products in this County.

33. The Superior Court of San Diego has personal jurisdiction over Defendants because a substantial portion of the wrongdoing alleged in this Class Action Complaint occurred in San Diego County, California, Defendants are authorized to do business in California, have sufficient minimum contacts with California (and in San Diego County), and otherwise intentionally avail themselves of the markets in California through the promotion, marketing and sale of merchandise, sufficient to render the exercise of jurisdiction by the Superior Court of San Diego permissible under traditional notions of fair play and substantial justice.

FACTUAL ALLEGATIONS

A. Identical California and Federal Laws Regulate Food Labeling

34. Food manufacturers are required to comply with Federal and California state laws and regulations that govern the labeling of food products. First and foremost among these is the FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

35. Pursuant to the Sherman Law, California has expressly adopted the federal labeling requirements as its own and indicated that "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal

act, in effect on January 1, 1993, or adopted on or after that date shall be the food regulations of this state." California Health & Safety Code § 110100.

36. In addition to its blanket adoption of federal labeling requirements, California has also enacted a number of laws and regulations that adopt and incorporate specific enumerated federal food laws and regulations. For example, food products are misbranded under California Health & Safety Code § 110660 if their labeling is false and misleading in one or more particulars; are misbranded under California Health & Safety Code § 110665 if their labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if their labeling fails to conform with the requirements for nutrient content and claims set forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California Health & Safety Code § 110705 if words, statements and other information required by the Sherman Law to appear on their labeling are either missing or not sufficiently conspicuous; and are misbranded under California Health & Safety Code § 110735 if they are represented as having special dietary uses but fail to bear labeling that adequately informs consumers of their value for that use.

B. FDA Enforcement History

37. In recent years, the FDA has become increasingly concerned that food manufacturers have been disregarding food labeling regulations. To address this concern, the FDA elected to take steps to inform the food industry of its concerns and to place the industry on notice that food labeling compliance was an area of enforcement priority.

38. In October 2009, the FDA issued a *Guidance for Industry: Letter Regarding Point of Purchase Food Labeling*, ("FOP Guidance") to address its concerns about front of package labels. The 2009 FOP Guidance advised the food industry:

FDA's research has found that with FOP labeling, people are less likely

> to check the Nutrition Facts label on the information panel of foods (usually, the back or side of the package). It is thus essential that both the criteria and symbols used in front-of-package and shelf-labeling systems be nutritionally sound, well-designed to help consumers make informed and healthy food choices, and not be false or misleading. The agency is currently analyzing FOP labels that appear to be misleading. The agency is also looking for symbols that either expressly or by implication are nutrient content claims. We are assessing the criteria established by food manufacturers for such symbols and comparing them to our regulatory criteria. It is important to note that nutrition-related FOP and shelf labeling, while currently voluntary, is subject to the provisions of the Federal Food, Drug, and Cosmetic Act that prohibit false or misleading claims and restrict nutrient content claims to those defined in FDA regulations. Therefore, FOP and shelf labeling that is used in a manner that is false or misleading misbrands the products it accompanies. Similarly, a food that bears FOP or shelf labeling with a nutrient content claim that does not comply with the regulatory criteria for the claim as defined in Title 21 Code of Federal Regulations (C.F.R.) 101.13 and Subpart D of Part 101 is misbranded. We will consider enforcement actions against clear violations of these established labeling requirements...
>
> … Accurate food labeling information can assist consumers in making healthy nutritional choices. FDA intends to monitor and evaluate the various FOP labeling systems and their effect on consumers' food choices and perceptions. FDA recommends that manufacturers and distributors of food products that include FOP labeling ensure that the label statements are consistent with FDA laws and regulations. FDA will proceed with enforcement action against products that bear FOP labeling that are explicit or implied nutrient content claims and that are not consistent with current nutrient content claim requirements. FDA will also proceed with enforcement action where such FOP labeling or labeling systems are used in a manner that is false or misleading.

39. The 2009 FOP Guidance recommended that "manufacturers and distributors of food products that include FOP labeling ensure that the label statements are consistent with FDA law and regulations" and specifically advised the food industry that it would "proceed with enforcement action where such FOP labeling or labeling systems are used in a manner that is false or misleading."

40. Despite the issuance of the 2009 FOP Guidance, the Mars Defendants did not remove the unlawful and misleading food labeling claims from their Purchased Products, nor did the Distribution Defendants (or Does Nos. 1-50) exercise their independent duty to refrain from the marketing, distribution and sale of Purchase Products as required under California law.

41. On March 3, 2010, the FDA issued an "*Open Letter to Industry from*

[FDA Commissioner] Dr. Hamburg" ("Open Letter"). The Open Letter reiterated the FDA's concern regarding false and misleading labeling by food manufacturers. In pertinent part the letter stated:

> In the early 1990s, the Food and Drug Administration (FDA) and the food industry worked together to create a uniform national system of nutrition labeling, which includes the now-iconic Nutrition Facts panel on most food packages. Our citizens appreciate that effort, and many use this nutrition information to make food choices. Today, ready access to reliable information about the calorie and nutrient content of food is even more important, given the prevalence of obesity and diet-related diseases in the United States. This need is highlighted by the announcement recently by the First Lady of a coordinated national campaign to reduce the incidence of obesity among our citizens, particularly our children.
>
> With that in mind, I have made improving the scientific accuracy and usefulness of food labeling one of my priorities as Commissioner of Food and Drugs. The latest focus in this area, of course, is on information provided on the principal display panel of food packages and commonly referred to as "front-of-pack" labeling. The use of front-of-pack nutrition symbols and other claims has grown tremendously in recent years, and it is clear to me as a working mother that such information can be helpful to busy shoppers who are often pressed for time in making their food selections . . . .
>
> As we move forward in those areas, I must note, however, that there is one area in which more progress is needed. As you will recall, we recently expressed concern, in a "Dear Industry" letter, about the number and variety of label claims that may not help consumers distinguish healthy food choices from less healthy ones and, indeed, may be false or misleading.
>
> At that time, we urged food manufacturers to examine their product labels in the context of the provisions of the Federal Food, Drug, and Cosmetic Act that prohibit false or misleading claims and restrict nutrient content claims to those defined in FDA regulations. As a result, some manufacturers have revised their labels to bring them into line with the goals of the Nutrition Labeling and Education Act of 1990. Unfortunately, however, we continue to see products marketed with labeling that violates established labeling standards.
>
> To address these concerns, FDA is notifying a number of manufacturers that their labels are in violation of the law and subject to legal proceedings to remove misbranded products from the marketplace. While the warning letters that convey our regulatory intentions do not attempt to cover all products with violative labels, they do cover a range of concerns about how false or misleading labels can undermine the intention of Congress to provide consumers with labeling information that enables consumers to make informed and healthy food choices . . For example:
>
> - Nutrient content claims that FDA has authorized for use on foods for

> adults are not permitted on foods for children under two. Such claims are highly inappropriate when they appear on food for infants and toddlers because it is well known that the nutritional needs of the very young are different than those of adults.
>
> - Claims that a product is free of trans fats, which imply that the product is a better choice than products without the claim, can be misleading when a product is high in saturated fat, and especially so when the claim is not accompanied by the required statement referring consumers to the more complete information on the Nutrition Facts panel.
> - Products that claim to treat or mitigate disease are considered to be drugs and must meet the regulatory requirements for drugs, including the requirement to prove that the product is safe and effective for its intended use.
> - Misleading "healthy" claims continue to appear on foods that do not meet the long- and well-established definition for use of that term.
> - Juice products that mislead consumers into believing they consist entirely of a single juice are still on the market. Despite numerous admonitions from FDA over the years, we continue to see juice blends being inaccurately labeled as single-juice products.
>
> These examples and others that are cited in our warning letters are not indicative of the labeling practices of the food industry as a whole. In my conversations with industry leaders, I sense a strong desire within the industry for a level playing field and a commitment to producing safe, healthy products. That reinforces my belief that FDA should provide as clear and consistent guidance as possible about food labeling claims and nutrition information in general, and specifically about how the growing use of front-of-pack calorie and nutrient information can best help consumers construct healthy diets.
>
> I will close with the hope that these warning letters will give food manufacturers further clarification about what is expected of them as they review their current labeling. I am confident that our past cooperative efforts on nutrition information and claims in food labeling will continue as we jointly develop a practical, science-based front-of-pack regime that we can all use to help consumers choose healthier foods and healthier diets.

42. Notwithstanding the Open Letter, Mars Defendants (with the complicity of the Distribution Defendants) have continued to utilize unlawful food labeling and advertisement claims despite the express guidance of the FDA in the Open Letter.

43. In addition to its guidance to industry, the FDA has sent warning letters to the industry, including many of Defendants' peer food manufacturers, for the same types of unlawful nutrient content claims described above.

44. In these letters dealing with unlawful nutrient content claims, the FDA indicated that, as a result of the same type of claims utilized by the Mars Defendants, products were in "violation of the Federal Food, Drug, and Cosmetic Act … and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 C.F.R. § 101)" and "misbranded within the meaning of section 403(r)(1)(A) because the product label bears a nutrient content claim but does not meet the requirements to make the claim." Such violations of federal law simultaneously constitute a violation of California's FAL/UCL [Cal. Bus. & Prof. Code §§17200 and 17500, *et seq.*]. Further, the FDA's warning letters were not isolated as the FDA has issued numerous warning letters to other companies for the same type of food labeling claims at issue in this case; the same being released as public records discoverable and downloadable from the Internet.

45. The FDA stated that the agency not only expected companies that received warning letters to correct their labeling practices but also anticipated that other firms would examine their food labels to ensure that they are in full compliance with food labeling requirements and make changes where necessary. The Mars Defendants did not change the labels on their Purchased Products despite that they (and the Distribution Defendants) knew or should have known of these warning letters to other companies for the same type of violations that the Mars Defendants committed with their labels on the Purchased Products subject to this litigation.

46. All Defendants have turned a blind eye to the FDA's Guidance for Industry, A Food Labeling Guide, which details the FDA's guidance on how to make food labeling claims. Defendants continue to utilize unlawful claims on the labels and advertisements for its Purchased Products. Indeed, despite all of the available warnings and detailed instructions, the Mars Defendants' Purchased Products continue to be distributed and sold in California by Defendants in violation of FDA guidance as well as Federal and California law.

47. Despite the FDA's numerous warnings to industry, Defendants have

continued to sell products bearing unlawful food labeling claims without meeting the requirements to make them.

48. Plaintiff did not know, and had no reason to know, that Defendants' Purchased Products were misbranded and bore unlawful food labeling claims that failed to meet the requirements to make such claims. Similarly, Plaintiff did not, and had no reason to know, that Defendants' Purchased Products were misbranded because the package labeling on the products purchased by Plaintiff were misleading and false.

OVERVIEW OF APPLICABLE SHERMAN LAW VIOLATIONS

A. California and Federal Law Regulate Unlawful Nutrient Content Claims

49. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a nutrient in a food is a "nutrient content claim" that must be made in accordance with the regulations that authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly adopted the requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

50. Nutrient content claims are claims about specific nutrients contained in a product. They are typically made on the front of packaging in a font large enough to be read by the average consumer. Because consumers including the Plaintiff rely upon these claims when making purchasing decisions, the regulations govern what claims can be made in order to prevent misleading claims.

51. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied nutrient content claims on labels of food products that are intended for sale for human consumption. 21 C.F.R. § 101.13.

52. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims, which California has expressly adopted in California Health & Safety Code § 110100. Among other requirements, 21 C.F.R. § 101.13 requires that manufacturers include certain disclosures when a nutrient claim is made and, at the same time, the product contains certain levels of unhealthy ingredients, such as fat

and sodium. It also sets forth the manner in which that disclosure must be made, as follows:

> (4)(i) The disclosure statement "See nutrition information for ___ content" shall be in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, and in a size no less than that required by §101.105(i) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclosure statement shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch, unless the package complies with §101.2(c)(2), in which case the disclosure statement may be in type of not less than one thirty-second of an inch.
>
> (ii) The disclosure statement shall be immediately adjacent to the nutrient content claim and may have no intervening material other than, if applicable, other information in the statement of identity or any other information that is required to be presented with the claim under this section (e.g., see paragraph (j)(2) of this section) or under a regulation in subpart D of this part (e.g., see §§101.54 and 101.62). If the nutrient content claim appears on more than one panel of the label, the disclosure statement shall be adjacent to the claim on each panel except for the panel that bears the nutrition information where it may be omitted.

53. An "expressed nutrient content claim" is defined as any direct statement about the level (or range) of a nutrient in the food (*e.g.*, "low sodium" or "contains 100 calories"). *See* 21 C.F.R. § 101.13(b)(1).

54. An "implied nutrient content claim" is defined as any claim that: (i) describes the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (*e.g.*, "high in oat bran"); or (ii) suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (*e.g.*, "healthy, contains 3 grams (gm.) of fat"). 21 C.F.R. § 101.13(b)(2)(i-ii).

55. The California and Federal nutrient content claims regulations authorize the use of a limited number of defined nutrient content claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on food labels, these regulations authorize the use of only certain synonyms for these defined

terms. If a nutrient content claim or its synonym is not included in the food labeling regulations it cannot be used on a label. Only those claims, or their synonyms, that are specifically defined in the regulations may be used. All other claims are prohibited. 21 C.F.R. § 101.13(b).

56. Only approved nutrient content claims will be permitted on the food label, and all other nutrient content claims will misbrand a food. It is thus clear which types of claims are prohibited and which are permitted. Manufacturers are on notice that the use of an unapproved nutrient content claim is prohibited conduct. 58 FR 2302. In addition, 21 U.S.C. § 343(r)(2) prohibits using unauthorized undefined terms and declares foods that do so to be misbranded.

57. Similarly, the regulations specify absolute and comparative levels at which foods qualify to make these claims for particular nutrients (*e.g.*, low fat . . . more vitamin C) and list synonyms that may be used in lieu of the defined terms. Certain implied nutrient content claims (*e.g.*, healthy) also are defined. The daily values ("DVs") for nutrients that the FDA has established for nutrition labeling purposes have application for nutrient content claims, as well. Claims are defined under current regulations for use with nutrients having established DVs; moreover, relative claims are defined in terms of a difference in the percent DV of a nutrient provided by one food as compared to another. *See e.g.*, 21 C.F.R. §§ 101.13 and 101.54.

B. The Defendants Make Unlawful and Misleading Flavanol Nutrient Content Claims

58. The Purchased Products have unlawful flavanol nutrient content claims on the packages.

59. In order to appeal to consumer preferences, Defendants have repeatedly made false and unlawful nutrient content claims for flavanols that fail to utilize one of the limited defined terms. These nutrient content claims are unlawful because they fail to comply with the nutrient content claim provisions in violation of 21 C.F.R. §§

101.13 and 101.54, which have been incorporated in California's Sherman Law. To the extent that the terms used by the Defendants to describe nutrients like flavanols are deemed to be a synonym for a defined term like "contain" the claim would still be unlawful because, as these flavanols do not have established daily values, they cannot serve as the basis for a term that has a minimum daily value threshold as the defined terms at issue here do.

60. Defendants' claims concerning unnamed flavanol nutrients are false are unlawful because they fail to comply with the nutrient content claim provisions in violation of 21 C.F.R. §§ 101.13 and 101.54, which have been incorporated in California's Sherman Law. They are false because Defendants' use of a defined term is in effect a claim that met the minimum nutritional requirements for the use of a product that it did not possess.

61. Claims that products like Defendants Dove Bar - Dark Chocolate are "*a natural source of cocoa flavanols*" are unlawful. They are also false because the terms have defined minimum nutritional thresholds so that, for example, a claim that a product "contains" a nutrient is a claim that the product has at least 10% of the daily value of that nutrient.

62. By using defined terms improperly, Defendants were, in effect, falsely asserting that the products met the minimum nutritional thresholds for the claims in question which its products failed to qualify for. By using undefined terms such as "source" and "found" Defendants were, in effect, falsely asserting that its products met at least the lowest minimum threshold for any nutrient content claim which would have been 10% of the daily value of the nutrient at issue. Such a threshold represents the lowest level that a nutrient can be present in a food before it becomes deceptive and misleading to highlight its presence in a nutrient content claim.

63. FDA enforcement actions targeting identical or similar claims to those made by Defendants have made clear the unlawfulness of such claims. For example, on March 24, 2011, the FDA sent Jonathan Sprouts, Inc. a warning letter where it

specifically targeted a "source" type claim like the one used on the Defendants' chocolate products. In that letter the FDA stated:

> Your Organic Clover Sprouts product label bears the claim "Phytoestrogen Source [.]" Your webpage entitled "Sprouts, The Miracle Food! - Rich in Vitamins, Minerals and Phytochemicals" bears the claim "Alfalfa sprouts are one of our finest food sources of . . . saponin." These claims are nutrient content claims subject to section 403(r)(1)(A) of the Act because they characterize the level of nutrients of a type required to be in nutrition labeling (phytoestrogen and saponin) in your products by use of the term "source." Under section 403(r)(2)(A) of the Act, nutrient content claims may be made only if the characterization of the level made in the claim uses terms which are defined by regulation. However, FDA has not defined the characterization "source" by regulation. Therefore, this characterization may not be used in nutrient content claims.

64. It is thus clear that a "source" claim like the one utilized on the label Defendants' Dove Bar - Dark Chocolate is unlawful because the "FDA has not defined the characterization 'source' by regulation" and thus such a "characterization may not be used in nutrient content claims." Such a claim characterizes the fact that cocoa or chocolate contain unnamed flavanols at some undefined level. This type of claims is false because it falsely implies that the levels of nutrients in the food are capable of satisfying the minimum nutritional threshold established by regulation.

65. Similarly, a claim that a nutrient is "found" in cocoa or chocolate is improper because it is either an undefined characterization that a nutrient is found in a food at some undefined level or because it is a synonym for a defined term like "contains" as there is no difference in meaning between the statement "chocolate contains flavanols" and the statement "flavanols are found in chocolate." Both characterize the fact the chocolate contains flavanols at some undefined level. The types of misrepresentations made above would be considered by a reasonable consumer like the Plaintiff when deciding to purchase the products.

66. Claims that certain of Defendants' chocolate products are a source of "*cocoa flavanols*" or that the Mars Defendants' cocoa processing "*helps retain much of the naturally occurring cocoa flavanols*" (as stated on the labels of Dove Bar –

Dark Chocolate and other chocolate bars) are unlawful and false because flavanols do not have a recommended daily intake ("RDI") and, ***therefore, the Mars Defendants' chocolate products do not meet the minimum nutrient level threshold to make such a claim which is 10 percent or more of the RDI or the DV per reference amount customarily consumed***.

67. Claims that certain of Defendants' chocolate products contain or are made with an ingredient that is known to contain a particular nutrient, or is prepared in a way that affects the content of a particular nutrient in the food, can only be made if it is a "good source" of the nutrient that is associated with the ingredient or type of preparation. Thus, Defendants' statements on chocolate products that the products are a "source" of "flavanols" trigger a "good source" (10 percent or more of the RDI or the DV per reference amount customarily consumed) which Defendants ***cannot*** demonstrate for flavanols. Similarly, Defendants' label claim that its cocoa products are a "[n]atural source of cocoa flavanols" trigger a "good source" requirement (10 percent or more of the RDI or the DV per reference amount customarily consumed) for "flavanols" which cannot be established since there is no RDA or DV for flavanols.

68. The nutrient content claims regulations discussed above are intended to ensure that consumers are not misled as to the actual or relative levels of nutrients in food products.

69. Plaintiff relied on Defendants' nutrient content claims when making his purchase decisions and was misled because he erroneously believed the implicit misrepresentation that the Dove Bar - Dark Chocolate he was purchasing met the minimum nutritional threshold to make such claims. Plaintiff would not have purchased this product had he known that this product did not in fact satisfy such minimum nutritional requirements with regard to flavanols and consequently that the product was not as healthy as Defendants advertised.

70. For these reasons, Defendants' nutrient content claims at issue in this

Class Action Complaint are false and misleading and in violation of 21 C.F.R. § 101.13 and California law, and the products at issue are misbranded as a matter of law. Defendants have violated these referenced regulations. Therefore, Defendants' Dove Bar - Dark Chocolate and the products listed herein that are substantially similar were misbranded as a matter of Federal and California law.

71. Plaintiff was thus misled by the Defendants' unlawful labeling practices and actions into purchasing products he would not have otherwise purchased had he known the truth about those products.

72. Defendants' claims in this respect are false and misleading and the products are in this respect misbranded under identical Federal and California laws, misbranded products cannot be legally sold in this State. Plaintiff and members of the Class who purchased these products paid an unwarranted premium for these products.

C. Defendants Make Unlawful and Misleading Calorie Related Nutrient Content Claims

73. All of the Purchased Products have an unlawful calorie related nutrient content claim on the Purchased Products' labels which was reviewed and relied upon by Plaintiff.

74. To appeal to consumer preferences, the Mars Defendants have repeatedly made unlawful calorie nutrient content claims on the packages of the Purchased Products as described above. These claims are unlawful because they are false and misleading and fail to conform to the mandated requirements for nutrient content claims.

75. In addition, the Defendants make these claims on products (and/or product advertisement) containing disqualifying nutrient levels that preclude the making of even truthful and accurate nutrient claims without the required disclaimer or warning.

76. In particular, Defendants have placed an unlawful calorie related

nutrition content claim on the front of the packages of these products and/or in store advertisements relating to the same. This calorie nutrient content claim purports to utilize the form of one of the four "Basic Icons" from the Nutrition Keys (Facts Up Front) voluntary labeling program developed by the Grocery Manufacturers Association ("GMA") and Food Marketing Institute ("FMI"). However, as detailed below, the icon used by Defendants does not comply with (1) California and federal labeling requirements; (2) guidance from the FDA about the proper use of the four "Basic Icons" from the Nutrition Keys (Facts Up Front) voluntary labeling program; or (3) the provisions of the Nutrition Keys (Facts Up Front) voluntary labeling program.

77. The Nutrition Keys (Facts Up Front) voluntary labeling program developed by the GMA and FMI utilizes four "Basic Icons" that are designed to be presented together (along with several possible optional icons) to give consumers a clear picture of the nutritional value of a serving of the particular foods in question. The Nutrition Keys (Facts Up Front) voluntary labeling program is designed so that shoppers can quickly compare the relative nutritional value of food items that are all using the same yardsticks to determine nutritional value.

78. Any utility of the four "Basic Icons" from the Nutrition Keys (Facts Up Front) voluntary labeling program evaporates when a food manufacturer fails to follow the same rules as everyone else in the program and games the system making its products appear healthier and preferable to competing products when in fact they are not. The four "Basic Icons" from the Nutrition Keys (Facts Up Front) voluntary labeling program are designed so that consumers can make quick purchasing decision without studying packaging and thus it is particularly inappropriate and misleading for a manufacturer to use tricks to take advantage of consumers who seek to avail themselves of the information that the Nutrition Keys (Facts Up Front) voluntary labeling program is supposed to supply.

79. Defendants failed to adhere to the guidelines of the Nutrition Keys

(Facts Up Front) voluntary labeling program by utilizing smaller reference sizes for their icons than the serving size mandated by the FDA that the guidelines required. This understated the calories (and any other referenced nutrients) in Defendants' products listed herein. In addition, while the Nutrition Keys (Facts Up Front) voluntary labeling program made clear that there was no DV for calories or sugars and thus none should be used in the Basic Icons, Defendants utilized an unauthorized DV for calories that would overstate caloric requirements for much of the population including women and children and other consumers with lower caloric requirements.[2] This is made clear by the nutritional calculator included supplied by the Nutrition Keys (Facts Up Front) voluntary labeling program. It is also confirmed by FDA materials that calculate caloric requirements.

80. At the request of the GMA and the FMI, the FDA provided guidance about the Nutrition Keys (Facts Up Front) voluntary labeling program and the icons that it utilized. In its guidance the FDA rejected the view that the icons were not nutrient content claims and expressly stated that the:

> FDA views the Nutrition Keys Basic Icons (calories, saturated fat, sodium and total sugar content) and Optional Icons as nutrient content claims subject to all the requirements of the FDCA and the Agency's regulations.

Id. As such, when a manufacturer utilizes such icons on the product labels of products containing a disqualifying nutrient level, it must comply with the requirements of 21 C.F.R. § 101.13(h) and include a disclosure statement designed to inform consumers that the product contains a nutrient at level the FDA believes poses a risk of a diet related disease or health condition. Such disclosure is designed to prohibit manufacturers from falsely implying their products are healthier than they actually are by only highlighting positive attributes while concealing negative aspects.

[2] See http://www.gmaonline.org/news-events/newsroom/food-and-beverage-industry-launches-nutrition-keys-front-of-pack-nutrition-/

81. The FDA made clear that:

> [S]tandardized, non-selective presentation of the four Basic Icons on a company's product line would alleviate some of FDAs concern regarding the potential for product labeling to mislead consumers by presenting only "good news" about nutrient content on the front of the package, which is the concern that the regulations governing nutrient content claims were intended to address. We also recognize that the standardized, non-selective presentation of the four Basic Icons on a company's entire product line, if widely adopted by the food industry in a uniform manner, may contribute to FDA's public health goals by fostering awareness of the nutrient content of foods in the marketplace and assisting consumers in making quick, informed, and healthy food choices.

Id., 21 C.F.R. § 101.13(h).

Notwithstanding this position, all Defendants resorted to selective non-standard presentation of "good news" about nutrient content on the front of the package and/or its accompanying advertisement, which is the concern that the regulations governing nutrient content claims were intended to address. Moreover, none of the Defendants utilized the four Basic Icons but rather a bastardized version of the calorie icon (that used smaller reference sizes than the required serving size and an unauthorized DV for calories) that hindered awareness of the nutrient content of foods in the marketplace and interfered with consumers being able to make quick, informed, and healthy food choices. In so doing, Defendants failed to follow the FDA's guidance that while it would not enforce the regulations quoted above and require the disclosure of disqualifying nutrient if ALL FOUR of the nutrients covered by the Basic Icons were presented together on the front of the package (and/or advertisement), it would continue to require such disclosures if less than all four were repeated on the front. In doing so, the FDA stated:

> As of the date of this letter, FDA intends to exercise enforcement discretion as outlined in the numbered points above with respect to firms that participate in and comply with the terms of the Nutrition Keys program, including use of the four Basic Icons on virtually all eligible products. We believe that this will facilitate participation in a positive effort to provide consumers more ready access to information about the nutrient content of packaged foods, without compromising consumer protection. A key consideration in our decision is that the disclosure statement referring consumers to the Nutrition Facts panel of the food

> label will continue to be required on products that bear Optional Icons and that exceed the disclosure trigger levels of total fat, saturated fat, cholesterol, or sodium established in 21 C.F.R. 101.13(h). In addition, all other nutrient content claims used on the food label or in other labeling will be expected to comply with the relevant regulations on the use of such claims.

Id. The FDA made clear however that when a manufacturer like Defendants acts improperly the "FDA does not intend to exercise enforcement discretion with respect to companies that misuse the Nutrition Keys labeling system in a manner that misleads consumers or otherwise violates the FDCA." *Id*.

82. As stated above, the nutrient content claims are unlawful because among other reasons, they have failed to include disclosure statements for nutrient content claims required by law that are designed to inform consumers of the inherently unhealthy nature of those products in violation of 21 C.F.R. § 101.13(h), which has been incorporated in California's Sherman Law.

83. 21 C.F.R. § 101.13 (h)(l) provides that:

> If a food … contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less … per 50 g … then that food must bear a statement disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content."

84. It should be noted that the disclosure required by 21 C.F.R. § 101.13 (h) that is at issue in this case is completely separate and different from the disclaimer discussed in 21 C.F.R. § 101.13 (i). The disclosure required by 21 C.F.R. § 101.13 (h) is designed to ensure consumers are given completely nutritional information and that manufacturers do not tout positive nutritional aspects while concealing negative aspects like disqualifying nutrient levels. In contrast, the disclaimer described in 21 C.F.R. § 101.13(i) is designed to ensure that there is adequate disclosure when claims implicitly characterize the level of the nutrient in the food but are not consistent with such a definition. 21 C.F.R. § 101.13(h) mandates the disclosure of

other disqualifying nutrients while 21 C.F.R. § 101.13(i) mandates that particular nutrient claims that implicitly characterize levels of nutrients either be consistent with regulatory definitions for those nutrients or disclose that fact. There are entirely separate provisions with entirely different requirements.

85. Defendants repeatedly violated 21 C.F.R. § 101.13(h). Defendants' Purchased Products' packaging prominently makes claims about the products percentage of the Daily Value for calories despite disqualifying levels of total fat and saturated that exceed the disclosure threshold stated in 21 C.F.R. § 101.13(h).[3] For example, the principal display panel of Defendants' M&M Chocolate Candy packages unlawfully makes such a nutrient content claim despite containing more than 4 grams of saturated fat per serving size. This level of saturated fat bars is the making of a nutrient content claim without a disclosure statement.

86. Pursuant to 21 C.F.R. § 101.13(h), Defendants are prohibited from making the unqualified nutrient claims of on these food products as if the products contain disqualifying levels of fat, saturated fat, cholesterol, or sodium, unless the product(s) also displayed a disclosure statement that informs consumers of the product's fat, saturated fat and sodium levels.

87. The FDA made clear in its regulations that (a) repeating on the front of a package the levels of any of the four (4) nutrients required in the nutritional information box on the back of the package is a nutrient content claim; and (b) such nutrient content claims must comply with all requirements of such claims, including disclaimers for high levels of saturated fat, fat or sodium or other disqualifying

[3] For a food, except a meal product as defined in §101.13(l) or a main dish product as defined in §101.13(m), these levels are more than 13.0 gm. of fat, 4.0 gm. of saturated fat, 60 mg. of cholesterol, or 480 mg. of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 gm. or less or 2 tablespoons or less, per 50 gm. If a food is a meal product as defined in §101.13(l), these levels are more than 26 gm. of fat, 8.0 gm. of saturated fat, 120 mg. of cholesterol, or 960 mg. of sodium per labeled serving. If a food is a main dish product as defined in §101.13(m), these levels are more than 19.5 gm. of fat, 6.0 gm. of saturated fat, 90 mg. of cholesterol, or 720 mg. of sodium per labeled serving.

nutrients.

88. These regulations are intended to ensure that consumers are not misled to believe that a product that claims, for instance, to have certain nutritional benefits, but actually has other unhealthy fat, saturated fat, cholesterol or sodium levels, is a healthy choice.

89. Nevertheless, Defendants' labels and ancillary store advertisements relating to the Purchased Products make calorie related nutrient content claims without such a disclosure even though these products contain fat, saturated fat, cholesterol, or sodium in excess of the levels that the FDA has concluded increases the risk of a diet-related disease or health related condition.

90. For example, the Dove Bar - Dark Chocolate Dove bar had disqualifying amounts of fat and saturated fat as did the M&M Chocolate Candy, yet both bore the calorie related nutrient content claim without the mandated disclosure. Moreover, Defendants compound this problem by often making their front of the packaging and/or on in-store advertisements nutrient claims not based on the actual serving size but rather on a per piece or bar or pack basis that represents only a fraction of the levels present in the actual serving size. This is misleading to consumers like Plaintiff. This was true on all Purchased Products.

91. Based on the fat and saturated fat content of the Purchased Products, pursuant to Federal and California law, Defendants must include a warning statement adjacent to any calorie or other nutrient claim that informs consumers of the high levels of fat, saturated fat, cholesterol or sodium.

92. No such disclosure statement currently exists on Mars Defendants' Purchased Products. Therefore, they are misbranded as a matter of Federal and California law and cannot be sold because they violate this State's product labeling laws.

93. In the FDA Guidance to Industry the FDA states (emphasis added):

Are nutrition designations permitted on food package labels?

> **Answer: FDA considers information that is required or permitted in the Nutrition Facts label that is on the front label or elsewhere on the package outside the Nutrition Facts label to be a Nutrient Content Claim** (NCC). In such cases, the package label must comply with the regulations for nutrient content claims. See the NCC section and Appendices A and B of this document for more information. 21 C.F.R. 101.13(c).[4]

94. In addition to its guidance to industry, the FDA has sent warning letters to the industry, including many of Mars Defendants' peer food manufacturers, for the same types of unlawful nutrient content claims described above. In these letters the FDA indicated that as a result of the same types of claims utilized by Defendants, products were in "violation of the Federal Food, Drug, and Cosmetic Act … and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 C.F.R. 101)" and "misbranded within the meaning of section 403 because the product label bears a nutrient content claim but does not meet the requirements to make the claim."

95. The warning letters were not isolated, as the FDA has issued a number of other warning letters to other companies for the same type of unlawful nutrient content claims at issue in this case.

96. Despite the FDA's numerous warnings to industry, Defendants have continued to sell its Purchased Products bearing unlawful calorie related nutrient content claims without meeting the requirements to make them. These claims also failed to adhere to the guidelines established by the FDA, the GMA and the FMI for Nutrition Keys (Facts Up Front) voluntary labeling program.

97. Plaintiff saw and relied on Defendants' false calorie related daily value nutrient content claims and based his purchasing decisions in part on such claims. Had Plaintiff been aware that Defendants' calorie related daily value nutrient content claims were false he would not have purchased Defendants' products.

[4] Guidance to Industry, A food labeling Guide, Nutrition Labeling, October, 2009, http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm064894.htm.

98. Plaintiff did not know, and had no reason to know, that Defendant's Purchased Products were misbranded, and bore nutrient claims despite failing to meet the requirements to make those nutrient claims. Plaintiff was equally unaware that Defendant's Purchased Products contained one or more nutrients like total fat or saturated fat at levels in the food that, according to the FDA, "may increase the risk of disease or health related condition that is diet related." Plaintiff was equally unaware that Defendants DV claim for calories was not authorized by the FDA or the GMA or the FMI and was not compliant with the guidelines established by the FDA, the GMA and the FMI for Nutrition Keys (Facts Up Front) voluntary labeling program. Plaintiff was also unaware that Defendants were utilizing an icon for calories that improperly understated calories compared to competing products.

99. Had Plaintiff known these facts, Plaintiff would not have purchased the Purchased Products. Plaintiff and members of the Class who purchased the Purchased Products paid an unwarranted premium for these products.

100. Defendants' unlawful statements on products of front of package calorie nutrient content claims result in two separate and independent unlawful violations, bringing into effect four separate law violations: one a specific labeling violation and one a violation for the sale of a misbranded product.

101. When a manufacturer such as the Mars Defendants make an unlawful calorie nutrient content claim and/or the Distribution Defendants knowingly advertise it to promote retailer sales at their stores, it violates Sherman Law §§ 110100, § 110670 and 110705 and various state consumer protection laws. Thus, it violates the unlawful prong. Such products are misbranded under the Sherman Law. Defendants' act of selling a misbranded product violates Sherman Law § 110760.

102. The sale of a misbranded product results in an independent violation of the unlawful prong that is separate from the labeling violation. The only necessary element of that claim is Defendants' unlawful label, and injury arises from the unlawful sale of an illegal product that is unlawful to sell and unlawful to possess.

Plaintiff and other Class Members have been deprived of money in an illegal sale and given a nonconforming product in return. In addition, due to the law's prohibition of possession of such a product, Plaintiff has been unwittingly placed by Defendants' conduct in a legal position that no reasonable consumer would agree to be placed.

103. 21 C.F.R. § 101.13 (h)(l) provides that:

> If a food … contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less … per 50 g … then that food must bear a statement disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for __ content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content."

104. 21 C.F.R. § 1.21 establishes that failure to disclose material facts is a violation of the disclosure rules and is *per se* "misleading." The fact which Defendants failed to disclose is material.

105. Defendants repeatedly violated these provisions when they prominently stated front of package calorie nutrient content claims claim on their labels of the Purchased Products without the mandatory disclosure statement.

106. This Court has found this exact kind of label representation to be misleading.

107. "A disqualifying level of, say, saturated fat is four grams per 'reference amount customarily consumed.'" 21 C.F.R. § 101.13(h)(1); *Chacanaca v. Quaker Oats Co.*, 752 F. Supp. 2d 1111 (N.D. Cal. 2010). If this level is exceeded, a food purveyor is prohibited from making an unqualified claim touting the health benefits of another nutrient in the food. *Id.* This is because the Agency has reasoned that the beneficent claim, standing alone, would be misleading." *Id.*

108. This Court has already held that an improper nutrient claim such as Defendants' calorie claim even if accurate, may be unlawful and misleading. *Wilson*

v. Frito-Lay North America, Inc., 2013 WL 1320468 (N.D. Cal., April 1, 2013) (Plaintiffs sufficiently alleged claim that the "0 Grams Trans Fat" statement on bags of potato chips was deceptive because, accompanied by a disclosure of at least one of the ingredients that 21 C.F.R. § 101.13(h)(1) requires to be disclosed, they and other reasonable consumers would think that the statements on the labels make accurate claims about the labeled products' nutritional content when, in fact, they do not; nutrient claim such as; "0 grams Trans Fat," even if accurate, may be unlawful and misleading).

109. In *Chacanaca*, U.S. Dist. Court Judge Seeborg explained:

> The federal regulatory statute provides for this precise scenario: that is, it categorizes as misleading and therefore prohibited even true nutrient content claims if the presence of another "disqualifying" nutrient exceeds and amount established by regulation. The Agency has by regulation imposed "disqualifying" levels for only four nutrients: total fat, saturated fat, cholesterol, and sodium. 21C.F.R. §§ 101.13(h)(1), 101.14(a)(4). It is important to note how disqualifying claims work. A disqualifying level of say, saturated fat is four grams per "reference amount customarily consumed." 21C.F.R. § 101.13 (h)(1). If this level is exceeded, a food purveyor is prohibited from making an unqualified claim touting the health benefits of another nutrient in the food. This is because the Agency has reasoned that the beneficent claim, standing alone, would be misleading.

Chacanaca, 752 F. Supp. 2d at 1122 (emphasis in original).

110. Despite the FDA's numerous warnings to industry, Defendants continued to sell Purchased Products in California bearing improper front of package calorie nutrient content claims and advertisements without meeting the requirements to make these advertised claims.

111. Due to Defendants misbranding/misadvertising of the Purchased Products, Plaintiff and other Californians lost money by purchasing unlawful products.

112. Thus, in this case, where Defendants unlawfully sold products containing an calorie related nutrient content statement and omitting the mandatory disclosure statement there is (1) a violation of specific labeling/advertisement laws and regulations; (2) a plaintiff who relied on that labeling/advertising statement(s);

(3) a violation of both the unlawful and misleading prongs due to Plaintiff's reliance; and (4) an independent violation of the unlawful prong due to Defendants' sale of an illegal product that is unlawful to possess.

113. Further, the inclusion of a DV for calories on the label of Defendants' Purchased Products is completely false and misleading for the following reason. According to the 2010 U.S. dietary guidelines only a small amount of calories should be derived from fats or sugars even if a midrange 2000 calorie diet is used as the reference point. The guidelines actually list 5 lower caloric diets as reference points (1000, 1200, 1400, 1600 and 1800 calorie diets) recognizing as the FDA and USDA both do that different people have different caloric requirements and thus there is no single DV for calories. Indeed, the dietary guidelines recommend eliminating sources of added sugar such as candy from the diet entirely. According to these guidelines, "the maximum limit" of calories in a midrange 2000 calorie diet that should be derived from fats and added sugars is 258. Defendants' Purchased Products contain between 142 and 212 calories from fats and added sugars (using stated calories from fat and 4 calories for each stated gram of sugar). This represents between 55% and 82.2% of the maximum caloric limit that should comprise a 2000 calorie diet. Thus, Defendants fabricated DV for calories grossly overstates the amount of calories from a 2000 calorie diet that should come from candy such as Defendants.' This is true for each of Defendants' Purchased Products.

114. Thus, Defendants' M&M Chocolate Candy (80 calories from fat, 31 gm. sugars) has 204 calories from fat and sugars and provides 79.1% of the maximum daily caloric limit and not the 12% DV fabricated by Defendants; Defendants' Dove Bar - Dark Chocolate Dove Bar (120 calories from fat, 19 gm. sugars) and provides 76% of the maximum daily caloric limit and not the 11% DV fabricated by Defendants; Defendants' Dove Bar - Milk Chocolate (120 calories from fat, 23 gm. sugars) has 212 calories from fat and sugars and provides 82.2% of the maximum daily caloric limit and not the 12% DV fabricated by Defendants; and

Defendants' Snickers Bar (110 calories from fat), 27 gm. sugars, has 142 calories from fat and sugars and provides 55% of the maximum daily caloric limit and not the 4% DV per piece or 8% per serving fabricated by Defendants.

115. By placing a fabricated DV for calories that grossly misrepresented and overstated the maximum amount of calories that should come, Defendants misrepresented the healthiness of their candy and made them seem like more a part of a healthy diet than they actually were. Even if a person was to depend on just the amounts of fat and saturated fat that the FDA uses to calculate the daily recommended value percentages for fat and saturated fat to calculate a DV for calories (the FDA has no daily recommended value for sugar or calories), Defendants' fabricated DV for calories would still overstate the amount of calories that should be derived from a product such as Defendants' candy as on each purchased product the percentages for each of these two components both far exceed the percentage represented to be the DV for calories in some cases by more than 3 times the percentage stated as the purported DV for calories.

116. Thus, Defendants' M&M Chocolate Candy (fabricated 12% DV calories; has 14% of the recommended fat and 30% of the recommended saturated fat); Defendants' Dove Bar - Dark Chocolate (fabricated 11% DV calories; has 22% of the recommended fat and 40% of the recommended saturated fat); Defendants' Dove Bar - Milk Chocolate (fabricated 12% DV calories; has 20% of the recommended fat and 40% of the recommended saturated fat); and Defendants' Snickers Bar (fabricated 4% DV calories per piece and 8% per serving; has 12% of the recommended fat and 15% of the recommended saturated fat) all overstate the actual amount of calories these products should be allowed to contribute to a person's diet even if a midrange 2000 calorie diet is utilized as the reference point. Defendants' fabricated DV for calories overstates the relative portion of a 2000 calorie diet that should come from Defendants' candy and makes it falsely appear that pursuant to official guidelines Defendants' candy can feature in a larger portion

of a person's diet than it actually should according to government guidelines. Defendants' fabricated DV for calories was misleading to consumer like the Plaintiff who relied on Defendants' fabricated DV for calories. Moreover, any reasonable consumer would have been misled by Defendants' fabricated DV for calories.

117. The FDA has repeatedly issued warning letters to companies who made such unauthorized DV claims.

D. THE PURCHASED PRODUCTS ARE MISBRANDED UNDER THE HERMAN LAW AND ARE MISLEADING AND DECEPTIVE

118. Plaintiff purchased the Purchased Products in California during the Class Period and read and relied in substantial part on the claims on the labels and associated advertisements of the products, including the nutrient content claims and other misleading and unlawful information thereon as specified above in making his purchasing decisions.

119. Each Purchased Product has a label and/or was advertised in a manner that violated the Sherman Law and is therefore misbranded and may not be marketed or offered for sale in California.

120. Each Purchased Product has a label or accompanying product advertisement that is false, misleading and deceptive.

A. M&M Chocolate Candy

121. Plaintiff purchased at least one Mars M&M Chocolate Candy in the Class Period. The label (front and back) of the package purchased by Plaintiff is attached as **Exhibit A**.

122. The following unlawful and misleading language appears on the front label:

"Calories 230" / "12% DV" (front and back)

123. This product is unlawful, misleading, misbranded and violates the Sherman Law (through incorporation of 21 C.F.R. § 101.60(c) because the label touts 230 calories when there is no DV or RDI for calories and despite the fact the

product is high in fat it does not have the required disclosure adjacent to the nutrient claim that informs consumers of the high levels of fat, saturated fat, cholesterol or sodium. It is also misleading because it understates the amount of calories which should be derived from fats or sugars. The product is also unlawful, misleading and misbranded for violations of other provisions of California and Federal law as set out below.

124. Plaintiff read and reasonably relied on the label representation as set out above and based and justified the decision to purchase the product, in substantial part, on the label representation. Also, Plaintiff reasonably relied and believed that this product was not misbranded under the Sherman Law but would not have purchased it had he known it was illegally misbranded.

125. Plaintiff was misled by Defendants' unlawful and misleading label on this product. Plaintiff would not have otherwise purchased this product had he known the truth about this product, *i.e.*, not as healthy as labeled and contains high levels of fat and/or saturated fat. In addition, Plaintiff paid on unwarranted premium for this product. Plaintiff had other food alternatives and Plaintiff also had cheaper alternatives. Reasonable consumers would be misled by these label representations in the same way(s) as Plaintiff.

B. <u>Dove Bar - Dark Chocolate</u>

126. Plaintiff purchased at least one Mars Dark Chocolate Dove Bar in the Class Period. The label (front and back) of the package purchased by Plaintiff is attached as **Exhibit B**.

127. The following unlawful and misleading language appears on the front label:

"Calories 220" / "11% DV"

128. The following unlawful and misleading language appears on the back label:

"Calories 220" / "11% DV"

a "natural source of cocoa flavanols"

129. This product is unlawful, misleading, misbranded and violates the Sherman Law (through incorporation of 21 C.F.R. § 101.60(c) because (i) the label touts 220 calories when there is no DV or RDI for calories and despite the fact the product is high in fat it does not have the required disclosure adjacent to the nutrient claim that informs consumers of the high levels of fat, saturated fat, cholesterol or sodium and (ii) the back label of the product is also unlawful, misleading and misbranded for violations the nutrient content rules regarding antioxidants. Flavanols do not have an RDI. It is also misleading because it understates the amount of calories which should be derived from fats or sugars. The product is also unlawful, misleading and misbranded for violations of other provisions of California and Federal law as set out below.

130. Plaintiff read and reasonably relied on the label representations as set out above and based and justified the decision to purchase the product, in substantial part, on the label representations. Also, Plaintiff reasonably relied and believed that this product was not misbranded under the Sherman Law and was therefore legal to buy and possess and would not have purchased it had he known it was illegally misbranded.

131. Plaintiff was misled by Defendants' unlawful and misleading label on this product. Plaintiff would not have otherwise purchased this product had he known the truth about this product, *i.e.*, not as healthy as labeled and contains high levels of fat and/or saturated fat and In addition, Plaintiff paid on unwarranted premium for this product. Plaintiff had other food alternatives and Plaintiff also had cheaper alternatives. Reasonable consumers would be misled by these label representations in the same way(s) as Plaintiff.

C. <u>Dove Bar - Milk Chocolate</u>

132. Plaintiff purchased at least one Mars Chocolate Dove Bar in the Class Period. The label (front and back) of the package purchased by Plaintiff is attached

as **Exhibit C**. (*Compare* with Ex. B).

133. The following unlawful and misleading language appears on the front label:

"Calories 230" / "12% DV"

134. This product is unlawful, misleading, misbranded and violates the Sherman Law (through incorporation of 21 C.F.R. § 101.60(c) because the label touts 230 calories when there is no DV or RDI for calories and despite the fact the product is high in fat it does not have the required disclosure adjacent to the nutrient claim that informs consumers of the high levels of fat, saturated fat, cholesterol or sodium. It is also misleading because it understates the amount of calories which should be derived from fats or sugars. The product is also unlawful, misleading and misbranded for violations of other provisions of California and Federal law as set out below.

135. Plaintiff read and reasonably relied on the label representation as set out above and based and justified the decision to purchase the product, in substantial part, on the label representation. Also, Plaintiff reasonably relied and believed that this product was not misbranded under the Sherman Law and was therefore legal to buy and possess and would not have purchased it had he had known it was illegally misbranded.

136. Plaintiff was misled by Defendants' unlawful and misleading label on this product. Plaintiff would not have otherwise purchased this product had he known the truth about this product, *i.e.*, not as healthy as labeled and contains high levels of fat and/or saturated fat. In addition, Plaintiff paid an unwarranted premium for this product. Plaintiff had other food alternatives and Plaintiff also had cheaper alternatives. Reasonable consumers would be misled by these label representations in the same way(s) as Plaintiff.

E. <u>Snickers Bar</u>

137. Plaintiff purchased at least one Snickers Bar in the Class Period. The

label (front and back) of the package purchased by Plaintiff is attached as **Exhibit D**.

138. The following unlawful and misleading language appears on the front label:

"Calories 250" / "13% DV"

139. This product is unlawful, misleading, misbranded and violates the Sherman Law (through incorporation of 21 C.F.R. § 101.60(c) because the label touts 250 calories when there is no DV or RDI for calories and despite the fact the product is high in fat it does not have the required disclosure adjacent to the nutrient claim that informs consumers of the high levels of fat, saturated fat, cholesterol or sodium. It is also misleading because it understates the amount of calories which should be derived from fats or sugars. The product is also unlawful, misleading and misbranded for violations of other provisions of California and Federal law as set out below.

140. Plaintiff read and reasonably relied on the label representation as set out above and based and justified the decision to purchase the product, in substantial part, on the label representation. Also, Plaintiff reasonably relied and believed that this product was not misbranded under the Sherman Law and was therefore legal to buy and possess and would not have purchased it had he had known it was illegally misbranded.

141. Plaintiff was misled by Defendants' unlawful and misleading label on this product. Plaintiff would not have otherwise purchased this product had he known the truth about this product, *i.e.*, not as healthy as labeled and contains high levels of fat and/or saturated fat. In addition, Plaintiff paid on unwarranted premium for this product. Plaintiff had other food alternatives and Plaintiff also had cheaper alternatives. Reasonable consumers would be misled by these label representations in the same way(s) as Plaintiff.

DEFENDANTS HAVE VIOLATED CALIFORNIA LAW BY MANUFACTURING, ADVERTISING DISTRIBUTING AND SELLING MISBRANDED FOOD PRODUCTS

142. Defendants have manufactured, advertised, distributed and sold products that are misbranded under California law. Misbranded products cannot be legally manufactured, advertised, distributed, sold or held.

143. Defendants have violated California Health & Safety Code §§ 109885 and 110390 which make it unlawful to disseminate false or misleading food advertisements that include statements on products and product packaging or labeling or any other medium used to directly or indirectly induce the purchase of a food product.

144. Defendants have violated California Health & Safety Code § 110395 which makes it unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

145. Defendants have violated California Health & Safety Code § 110398 which makes it unlawful to deliver or proffer for delivery any food that has been falsely advertised.

146. Defendants have violated California Health & Safety Code § 110660 because their labeling is false and misleading in one or more ways.

147. Defendants' Purchased Products are misbranded under California Health & Safety Code § 110665 because their labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto.

148. Defendants' Purchased Products are misbranded under California Health & Safety Code § 110670 because their labeling fails to conform with the requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto.

149. Defendants' Purchased Products are misbranded under California Health & Safety Code § 110705 because words, statements and other information required by the Sherman Law to appear on their labeling either are missing or not

sufficiently conspicuous.

150. Defendants have violated California Health & Safety Code § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

151. Defendants have violated California Health & Safety Code § 110765 which makes it unlawful for any person to misbrand any food.

152. Defendants have violated California Health & Safety Code § 110770 which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.

153. Defendants have violated the standard set by 21 C.F.R. §§ 101.2, 101.3, 101.4; 101.9, 101.12, 101.22, 102.5, and 105.66 all of which have been incorporated by reference in the Sherman Law, by failing to include on their product labels the nutritional information required by law.

154. Defendants have violated and continue to violate the standards set by 21 C.F.R. §§ 101.13, 101.54, 101.60 and 105.66, which have been adopted by reference in the Sherman Law, by including unauthorized nutrient content claims on their products.

155. Defendants have violated and continue to violate the standard set by 21 C.F.R. § 101.18 which have been adopted by reference in the Sherman Law, by misrepresenting their non-low-calorie food products as low-calorie alternatives to other food products.

156. Defendants have violated and continue to violate the standard set by 21 C.F.R. § 101.60 which have been adopted by reference in the Sherman Law, by representing either expressly or implicitly that their products are low-calorie and or lack sugar when they fail to meet the requirements for making such claims.

157. Defendants have manufactured, distributed, advertised, marketed and sold products misbranded in violation of the standards contained in 21 U.S.C. § 343(r), which has been incorporated in the Sherman Law, and continue to do so.

Pursuant to 21 U.S.C. § 343(r), food is misbranded if, as here, it bears a nutrient content claim despite failing to meet the requirements for making that claim. *See* California Health and Safety Code § 110670.

158. In addition to their violation of subsections (q) and (r) of 21 U.S.C. § 343, Defendants have manufactured, distributed, advertised, marketed and sold products misbranded in violation of the standard set by subsections (a), (f), and (j) of 21 U.S.C. § 343 which has been adopted by reference in the Sherman Law, and continue to do so. Pursuant to 21 U.S.C. § 343 food shall be deemed to be misbranded if, as in the instant case:

> (a) it bears a false or misleading label …
>
> (f) its label fails to conspicuously depict any word, statement, or other information required to appear on the label or labeling and be prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; …
>
> (j) it purports to be or is represented for special dietary uses, and its label fails to bear such information concerning its vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

159. Each of the federal requirements has been expressly adopted by California and thus each of Defendants' violations of these federal standards constitutes an independent violation of state law.

PLAINTIFF PURCHASED DEFENDANTS' FALSELY ADVERTISED AND MARKETED "PURCHASED PRODUCTS"

160. Plaintiff at all time material has been a California resident and has a personal interest in the nutritional content of food and seeks to maintain a healthy diet.

161. Plaintiff purchased the Mars Defendants' Purchased Products at issue in this Class Action Complaint throughout the Class Period through the Distribution Defendants.

162. During the Class Period, Plaintiff spent, at least, more than two hundred-fifty dollars ($250.00) on the Mars Defendants' Purchased Products through the Distribution Defendants.

163. Plaintiff read the labels on Defendants' products and the Distribution Defendants' advertisements (including nutrient content claims and other unlawful and misleading information described above on the labels before purchasing them). All of the Defendants failed to disclose the presence of risk-increasing nutrients and calories and their utilization of false and improper labeling claims and advertisements were deceptive because it falsely conveyed to the Plaintiff the net impression that the Purchased Products he bought made better contributions to a diet than other non-misbranded similar products, and did not contain any nutrients or calories at levels that raised the risk of diet-related disease or health-related condition. Defendants' utilization of unlawful and unauthorized nutrient content claims also misled the Plaintiff with respect to the nature of the products he was purchasing.

164. Plaintiff relied on Defendants' package labeling nutrient content claims, advertisements, and other unlawful and misleading information on the labels and based and justified the decision to purchase Defendants' products in substantial part on Defendants' package labeling. Plaintiff would have foregone purchasing Defendants' products and bought other products readily available at a lower price.

165. At the point of sale, Plaintiff did not know, and had no reason to believe, that Defendants' products were misbranded as alleged herein, and would not have bought the products had he known the truth about them.

166. As a result of Defendants' misrepresentations, Plaintiff and thousands of others in California and the United States purchased the misbranded products at issue.

167. Defendants' labeling, advertising and marketing as alleged herein are false and misleading and designed to increase sales of the products at issue.

Defendants' misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendants' representations in determining whether to purchase the products at issue.

168. A reasonable person would also attach importance to whether Defendants' Purchased Products were legally saleable, and capable of legal possession (and lawful resale), and to Defendants' representations about these issues in determining whether to purchase the products at issue. Plaintiff would not have purchased Defendants' Purchased Products had he known they were not capable of being legally sold or held and did not possess the characteristics or nutritional attributes they were falsely represented to have by the Defendants.

CLASS ACTION ALLEGATIONS

169. Plaintiff brings this action on behalf of themselves and all other similarly situated persons/entities comprising the Class and residing in California as of the date of the commencement of this action. The Class is defined as:

> All persons residing in California who, within four (4) years of the filing of the Original Complaint, purchased a food product manufactured and/or distributed or sold by Defendants that: (1) bears a flavanol claim on its label, or (2) a percentage of daily value claim for calories on its label.

170. The following persons are expressly excluded from the Class: (1) Defendants and their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

171. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

172. Numerosity: Based upon Defendants' publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class number is in the thousands, and that joinder of all Class members is impracticable.

173. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

a. Whether Defendants engaged in unlawful and misleading business practices by failing to properly package and label their Purchased Products sold to consumers;

b. Whether the food products at issue were misbranded or unlawfully packaged and labeled as a matter of law;

c. Whether Defendants made unlawful and misleading nutrient content flavanol claims with respect to their food products sold to consumers;

d. Whether Defendants violated California Bus. & Prof. Code § 17200, California Bus. & Prof. Code § 17500, and the Sherman Law;

e. Whether Plaintiff and the Class is entitled to equitable and/or injunctive relief; and,

f. Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.

174. Typicality: Plaintiff's claims are typical of the claims of the Class because Plaintiff bought Defendants' Purchased Products during the Class Period. Defendants' unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendants' conduct in violation of California law. The injuries of each member of the Class were caused directly by Defendants' wrongful conduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

175. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or

are antagonistic to the interests of the Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and his counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

176. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendants and result in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

177. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Federal Rule of Civil Procedure 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

178. The prerequisites to maintaining a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) are met as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

179. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST COUNT

Business and Professions Code § 17200, *et seq.*

Unlawful Business Acts and Practices

180. Plaintiff incorporates by reference each allegation set forth above.

181. Defendants' conduct constitutes unlawful business acts and practices.

182. Defendants marketed and sold Purchased Products in California.

183. Defendants are corporations and, therefore are "persons" within the meaning of the Sherman Law.

184. Defendants' business practices are unlawful under § 17200, *et seq*. by virtue of Defendants' violations of the advertising provisions of the Sherman Law (Article 3) and the misbranded food provisions of the Sherman Law (Article 6).

185. Defendants' business practices are unlawful under § 17200, *et seq*. by virtue of Defendants' violations of § 17500, *et seq.*, which forbids untrue and misleading advertising. Defendants' business practices are unlawful under § 17200, *et seq*. by virtue of Defendants' violations of § the Consumer Legal Remedies Act, Cal Civ. Code § 17500, *et seq.*

186. Defendants marketed and sold Plaintiff and the Class Purchased Products that were misbranded and thus not capable of being legally sold in California. Plaintiff and the Class paid a premium price for theses unlawful Purchased Products.

187. As a result of Defendants' illegal business practices, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any Class Member any money paid for the Purchased Products.

188. Defendants' unlawful business acts present a threat and reasonable continued likelihood of deception to Plaintiff and the Class.

189. As a result of Defendants' conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Purchased Products by Plaintiff and the Class.

SECOND COUNT

Business and Professions Code § 17200, *et seq.*

Unfair Business Acts and Practices

190. Plaintiff incorporates by reference each allegation set forth above.

191. Defendants' conduct as set forth herein constitutes unfair business acts and practices.

192. Defendants sold Purchased Products in and throughout California during the Class Period.

193. Defendants' deceptive marketing, advertising, packaging and labeling of their Purchased Products was of no benefit to consumers, and the harm and injury to consumers and competition is substantial. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendants' Purchased Products that they would not have purchased absent the Defendants' illegal conduct as set forth herein.

194. Defendants' sold Plaintiff (and the Class) Purchased Products that were misbranded in violation of California law. Plaintiff and the Class paid a premium

price for the Purchased Products. Plaintiff and the Class who purchased Defendants' Purchased Products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of them suffered.

195. The consequences of Defendants' conduct as set forth herein outweighs any justification, motive or reason therefor. Defendants' conduct is and continues to be immoral, unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the Class.

196. As a result of Defendants' conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Purchased Products by Plaintiff and the Class.

THIRD COUNT

Business and Professions Code § 17200, *et seq.*

Fraudulent Business Acts and Practices

197. Plaintiff incorporates by reference each allegation set forth above.

198. Defendants' conduct as set forth herein constitutes fraudulent business practices under California Business and Professions Code sections § 17200, *et seq.*

199. Defendants sold Purchased Products in and throughout California during the Class Period.

200. Defendants' misleading marketing, advertising, packaging and labeling of the Purchased Products and its misrepresentations that the products at issue were saleable, capable of legal possession and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff and members of the Class were deceived. Defendants have engaged in fraudulent business acts and practices in this State.

201. Defendants' fraud and deception caused Plaintiff and the Class to purchase Defendants' Purchased Products that they would otherwise not have

purchased had they known the true nature of those products.

202. Defendants marketed and sold Plaintiff and the Class Purchased Products that were not capable of being lawfully sold in this State. Plaintiff and the Class paid a premium price for the Purchased Products.

203. As a result of Defendants' conduct as set forth herein, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Purchased Products by Plaintiff and the Class.

FOURTH COUNT

Business and Professions Code § 17500, *et seq.*

Misleading and Deceptive Advertising

204. Plaintiff incorporates by reference each allegation set forth above.

205. Plaintiff asserts this cause of action for violations of California Business and Professions Code § 17500, *et seq.*, for misleading and deceptive advertising against Defendants.

206. Defendants marketed and sold Purchased Products in California to residents of this State during the Class Period.

207. Defendants engaged in a scheme of advertising and offering Defendants' Purchased Products for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of Defendants' Purchased Products. Defendants' advertisements and inducements were made within California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.*, in that such product packaging and labeling, and promotional materials were intended as inducements to purchase Defendants' Purchased Products and are statements disseminated by Defendants to Plaintiff and the Class that were intended to reach members of the Class. Defendants

knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive as set forth herein.

208. In furtherance of their plan and scheme, Defendants prepared and distributed within California via product packaging and labeling, print media, and other promotional materials, statements that misleadingly and deceptively represented the ingredients contained in and the nature of Defendants' Purchased Products. Plaintiff and the Class necessarily and reasonably relied on Defendants' materials, and were the intended targets of such representations.

209. Defendants' conduct in disseminating misleading and deceptive statements in California to Plaintiff and the Class was and is likely to deceive reasonable consumers by obfuscating the true ingredients and nature of the Defendants' Purchased Products in violation of the "misleading prong" of California Business and Professions Code § 17500, *et seq*.

210. As a result of Defendants' violations of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of Plaintiff and the Class. These misbranded products cannot be legally sold in California. Plaintiff and the Class paid a premium price for these Purchased Products.

211. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Purchased Products by Plaintiff and the Class.

FIFTH COUNT

Business and Professions Code § 17500, *et seq.*

Untrue Advertising

212. Plaintiff incorporates by reference each allegation set forth above.

213. Plaintiff asserts this cause of action against Defendants for violations of

California Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

214. Defendants sold mislabeled and Purchased Products in California during the Class Period.

215. Defendants engaged in a scheme of offering the Defendants' Purchased Products for sale to Plaintiff and the Class by way of product packaging and labeling, advertisements, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of the Mars Defendants' Purchased Products. Defendants' advertisements and inducements were made in California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq*. in that the product packaging and labeling, and promotional materials were intended as inducements to purchase the Mars Defendants' Purchased Products, and are statements disseminated by all Defendants to Plaintiff and the Class. All Defendants knew, or in the exercise of reasonable care should have known, that these statements were untrue and/or deceptive.

216. In furtherance of their plan and scheme, Defendants prepared and distributed in California and nationwide via product packaging and labeling, and other promotional materials, statements that falsely advertise the ingredients contained in the Defendants' Purchased Products, and falsely misrepresented the nature of those products. Plaintiff and the Class were the intended targets of such representations and would reasonably be deceived by Defendants' materials.

217. Defendants' conduct in disseminating untrue advertising throughout California and nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of the Defendants' Purchased Products in violation of the "untrue prong" of California Business and Professions Code § 17500.

218. As a result of Defendants' violations of the "untrue prong" of California Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly

enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold and are legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

219. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Purchased Products by Plaintiff and the Class.

SIXTH COUNT

Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*

220. Plaintiff incorporates by reference each allegation set forth above.

221. This cause of action is brought pursuant to the CLRA. Defendants' violations of the CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive damages.

222. Plaintiff and the Class are entitled to actual and punitive damages against Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class are entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

223. Defendants' actions, representations and conduct have violated, and continue to violate the CLRA, because they extend to transactions that are intended to result, or which have resulted, in the sale of goods or services to consumers.

224. Defendants sold Purchased Products in California during the Class Period.

225. Plaintiff and members of the Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §1761(d).

226. Defendants' Purchased Products were and are "goods" within the

meaning of Cal. Civ. Code §1761(a).

227. By engaging in the conduct set forth herein, Defendants violated and continue to violate Section 1770(a)(5), of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that they misrepresented the particular ingredients, characteristics, uses, benefits and quantities of the goods.

228. By engaging in the conduct set forth herein, Defendants violated and continue to violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that they misrepresented the particular standard, quality or grade of the goods.

229. By engaging in the conduct set forth herein, Defendants violated and continue to violate Section 1770(a)(9) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that they advertised goods with the intent not to sell the goods as advertised.

230. By engaging in the conduct set forth herein, Defendants have violated and continue to violate Section 1770(a)(16) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that they represented that a subject of a transaction has been supplied in accordance with a previous representation when they have not.

231. Plaintiff requests that the Court enjoin Defendants from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If Defendants are not restrained from engaging in these practices in the future, Plaintiff and the Class will continue to suffer harm.

232. On July 22, 2014, Plaintiff served on Defendants (pursuant to Section 1782(a) of the CLRA) notice of Defendant's violations of the CLRA and offered Defendant 30 days for each to take appropriate corrective action. However, Defendants fail to provide an appropriate remedy or relief for its violations of the CLRA within 30 days of its receipt of the CLRA demand notice, Plaintiff Amended

Complaint now seeks monetary and punitive damages, attorneys' fees and costs, and any other relief the Court deems proper from all Defendants.

233. Plaintiff will demonstrate that the violations of the CLRA by Defendants were willful, oppressive and fraudulent, thus supporting an award of actual and punitive damages. Consequently, Plaintiff and the Class are entitled to actual and punitive damages against Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate (including treble damages for Plaintiff and all other Class members over the age of 65 pursuant to Cal. Civ. Code §§ 1761(f) and 1780(b)(1)).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on behalf of the general public, prays for judgment against Defendants as follows:

A. For an order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class;

B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiff and the Class for all causes of action;

C. For an order requiring Defendants to immediately cease and desist from selling their Purchased Products in violation of law; enjoining Defendants from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendants to engage in corrective action;

E. For an order awarding attorneys' fees and costs;

F. For an order awarding punitive damages;

G. For an order awarding pre-and post-judgment interest; and

H. For an order providing such further relief as this Court deems proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

Dated: September 29, 2014

By: /s/ Mark L. Knutson

Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
501 West Broadway, Suite 1250
San Diego, California 92101-3579
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

Attorneys for Plaintiff

EXHIBIT A


PEANUT
Made with Real Milk Chocolate
m&m's
BRAND
CHOCOLATE CANDIES
what's inside
CALORIES 250
13%DV
PER PACK
NET WT 1.74 OZ 49.3g


BEST BEFORE
®/TM trademarks ©Mars, Incorporated
Nutrition Facts Serv size: 1 pack, Amount per serving: Calories 250, Fat Cal. 120, Total Fat 13g (20%DV), Sat. Fat 5g (25%DV), Trans Fat 0g, Cholest. 5mg (2%DV), Sodium 25mg (1%DV), Total Carb. 30g (10%DV), Fiber 2g (8%DV), Sugars 25g, Protein 5g, Vitamin A (0%DV), Vitamin C (0%DV), Calcium (4%DV), Iron (2%DV), Thiamine (2%DV), Riboflavin (4%DV), Niacin (8%DV). Percent Daily Values (DV) are based on a 2,000 calorie diet.
MILK CHOCOLATE (SUGAR, CHOCOLATE, COCOA BUTTER, SKIM MILK, LACTOSE, MILKFAT, PEANUTS, SOY LECITHIN, SALT, ARTIFICIAL FLAVORS), SUGAR, PEANUTS, CORNSTARCH, LESS THAN 1% - CORN SYRUP, DEXTRIN, COLORING (INCLUDES BLUE 1 LAKE, YELLOW 6, RED 40, YELLOW 5, BLUE 1, YELLOW 6 LAKE, RED 40 LAKE, YELLOW 5 LAKE, BLUE 2 LAKE, BLUE 2), GUM ACACIA.
ALLERGY INFORMATION: CONTAINS PEANUTS, MILK AND SOY. MAY CONTAIN TREE NUTS.
Distributed by
Mars Chocolate North America, LLC
Hackettstown, NJ 07840-1503 USA
mms.com
MARS Real Chocolate
m&m's BRAND
CHOCOLATE CANDIES
M&M'S® Chocolate Candies are made of the finest ingredients. This product should reach you in excellent condition. Satisfaction guaranteed or we will replace it. We value your questions or comments. Call 1-800-627-7852 M-F, 8:30 AM to 5 PM EST. Please save the unused product and the wrapper.
what's inside... PER PACK
CALORIES 250 13%DV
TOTAL FAT 13g 20%DV
SAT. FAT 5g 25%DV
SUGARS 25g *
SODIUM 25mg 1%DV
GDA's ARE BASED ON A 2,000 CALORIE DIET
To learn more visit www.marshealthyliving.com
*No DV defined
0 400320 7
1290684 SM


PEANUT BUTTER
Made with Real Peanut Butter
m&m's
BRAND
CHOCOLATE CANDIES
what's inside
CALORIES 240 12%DV PER PACK
NET WT 1.63 OZ 46.2g


Best Before 07/2014
Nutrition Facts
MARS
m&m's
CHOCOLATE CANDIES
Visit mms.com
MARS Real Chocolate
what's inside...
PER PACK
CALORIES 240 12%DV
TOTAL FAT 14g 22%DV
SAT. FAT 8g 40%DV
SUGARS 22g *
SODIUM 100mg 4%DV
GDA'S ARE BASED ON A 2,000 CALORIE DIET
To learn more visit www.marshealthyliving.com
*No DV defined

EXHIBIT B


silky smooth
dark chocolate
Dove®
what's inside
CALORIES 220
11%DV
PER PACK
NET WT 1.44 OZ 40.8g
RAINFOREST ALLIANCE CERTIFIED COCOA
SEMISWEET CHOCOLATE (SUGAR, CHOCOLATE, CHOCOLATE PROCESSED WITH ALKALI, COCOA BUTTER, MILKFAT, SOY LECITHIN, NATURAL AND ARTIFICIAL FLAVORS).
Distributed by Mars Chocolate North America, LLC, Hackettstown, NJ 07840-1503 USA
Also available in a DOVE® Brand PROMISES® Silky Smooth Dark Chocolate bag
what's inside...
PER PACK
CALORIES 220 11%DV
TOTAL FAT 13g 20%DV
SAT. FAT 8g 40%DV
SUGARS 19g *
SODIUM 0mg 0%DV
GDA's ARE BASED ON A 2,000 CALORIE DIET
To learn more visit www.marshealthyliving.com
*No DV defined
We value your questions or comments. Call 1-800-551-0704.
0 40000 45985 9
We buy cocoa from Rainforest Alliance Certified™ farms. Traceable from the farms into our factory.
www.mars.com/rainforest-alliance
www.cocoapro.com
Patent Pending
12451 96 MP 8
©/TM Trademarks ©Mars, Incorporated
Natural Source of Cocoa Flavanols

EXHIBIT C


Nutrition Facts Serv size: 1 bar, Amount per serving: Calories 220, Fat Cal. 120, Total Fat 13g (20%DV), Sat. Fat 8g (40%DV), Trans Fat 0g, Cholest. 15mg (5%DV), Sodium 25mg (1%DV), Total Carb. 24g (8%DV), Fiber 1g (4%DV), Sugars 22g, Protein 2g, Vitamin A (2%DV), Vitamin C (0%DV), Calcium (6%DV), Iron (2%DV). Percent Daily Values (DV) are based on a 2,000 calorie diet.
MILK CHOCOLATE (SUGAR, COCOA BUTTER, CHOCOLATE, SKIM MILK, MILKFAT, LACTOSE, CHOCOLATE PROCESSED WITH ALKALI, SOY LECITHIN, NATURAL AND ARTIFICIAL FLAVORS).
Distributed by Mars Chocolate North America LLC Hackettstown NJ 07840-1503 USA
NET WT 1.44 OZ 40.8g
Dove
silky smooth
milk chocolate
what's inside...
CALORIES 220 11%DV PER PACK
What's Inside
PER PACK
CALORIES 220 11%DV
TOTAL FAT 13g 20%DV
SAT. FAT 8g 40%DV
SUGARS 22g *
SODIUM 25mg 1%DV
GDA's ARE BASED ON A 2,000 CALORIE DIET
To learn more visit www.marshealthyliving.com
*No DV defined
Also available in a DOVE® Brand PROMISES® Silky Smooth Milk Chocolate bag
®/TM trademarks ©Mars, Incorporated
1245197 MP 8
Patent Pending
BEST BEFORE 05/2015 421BE ELZ03
We value your questions or comments. Call 1-800-551-0704.

EXHIBIT D


what's inside
CALORIES 250 13%DV PER PACK
SNICKERS
REFUEL & WIN
your could
Cash for Gas!*
*No Purchase Necessary. See Back Panel for Details.
NET WT 1.86 OZ 52.7g
MILK CHOCOLATE • PEANUTS • CARAMEL • NOUGAT
BAR
BEST BEFORE:
0 40000 42431 4
SNICKERS BAR
*SNICKERS® BRAND 2014 FUEL GAME. NO PURCHASE NECESSARY. PURCHASE WON'T INCREASE CHANCES OF WINNING. Game begins at Noon ET on 3/31/14 and ends at 11:59:59 AM ET on 4/13/15. Entry codes available in specially-marked packages of SNICKERS® Brand products. To play, text your code to 78787 (3 Sent Text Messages Required Per Play. Message & data rates apply) OR to play without purchase, send your name, mailing address (no P.O. Boxes), email address, telephone number and date of birth to: SNICKERS® Brand Fuel Entries, Department K, P.O. Box 5705, Blair, NE 68009-5705. Game has 2 phases, each with separate weekly prize structure and odds. See Official Rules for details. Text plays for phase 1 must be received by 11:59:59 AM ET on 8/18/14; mail-in plays must be postmarked by 8/18/14 and received by 8/25/14. Text plays for phase 2 must be received by 11:59:59 AM ET on 4/13/15; mail-in plays must be postmarked by 4/13/15 and received by 4/20/15. Limit: 1 mail-in play/outer envelope. Open to individual legal residents of US (including Puerto Rico and US territories/possessions), age 13 or older as of 3/31/14. Additional terms apply. Participation is subject to Official Rules at www.snickersfuel.mars.com. Void outside US and where prohibited. All applicable federal, state & local law, rules & regulations apply. ©/TM trademarks ©Mars, Incorporated 2013
We value your questions or comments. Call 1-800-551-0702 or visit us at www.snickers.com
Nutrition Facts Serv Size: 1 bar, Amount per serving: Calories 250, Fat Cal. 110, Total Fat 12g (18%DV), Sat. Fat 4.5g (23%DV), Trans Fat 0g, Cholest. 5mg (2%DV), Sodium 120mg (5%DV), Total Carb. 33g (11%DV), Fiber 1g (4%DV), Sugars 27g, Protein 4g, Vitamin A (0%DV), Vitamin C (0%DV), Calcium (4%DV), Iron (2%DV).
Percent Daily Values (DV) are based on a 2,000 calorie diet.
Distributed by Mars Chocolate North America, LLC
Hackettstown, NJ 07840-1503 USA
©/TM & ©Mars, Inc.
12782602 PR 8
MILK CHOCOLATE (SUGAR, COCOA BUTTER, CHOCOLATE, SKIM MILK, LACTOSE, MILKFAT, SOY LECITHIN, ARTIFICIAL FLAVOR), PEANUTS, CORN SYRUP, SUGAR, MILKFAT, SKIM MILK, PARTIALLY HYDROGENATED SOYBEAN OIL, LACTOSE, SALT, EGG WHITES, CHOCOLATE, ARTIFICIAL FLAVOR.
ALLERGY INFORMATION: CONTAINS PEANUTS, MILK, EGG AND SOY. MAY CONTAIN ALMONDS.
what's inside PER PACK
CALORIES 250 13%DV
TOTAL FAT 12g 18%DV
SAT. FAT 4.5g 23%DV
SUGARS 27g *
SODIUM 120mg 5%DV
GDA's ARE BASED ON A 2,000 CALORIE DIET
To learn more visit www.marsheartfelt.com
*No DV defined

FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
William R. Restis, Esq. (SBN 246823)
wrr@classactionlaw.com
501 West Broadway, Suite 1250
San Diego, California 92101-3579
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

Attorneys for Plaintiff
Weston Anson, and all other similary situated Californians

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WESTON ANSON, and all other similarly situated Californians, Plaintiff, v. MARS, INC.; MARS CHOCOLATE NORTH AMERICA, LLC,; SAFEWAY INC.; and THE VONS COMPANIES, INC., and Does 1 through 50, inclusive, Defendants.	Case No: 14cv2032-WQH-JLB PROOF OF SERVICE Dept: Courtroom 14B Judge: Hon. William Q. Hayes NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT

I, the undersigned, declare that I am over the age of eighteen (18) years and not a party to the within action. I am employed in the County of San Diego, State of California. My business address is 501 West Broadway, Suite 1250, San Diego, California 92101-3593.

I served the following document(s) on September 29, 2014:

FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES EQUITABLE AND INJUNCTIVE RELIEF

On the person(s) listed below:

Stephen D. Raber (State Bar No. 121958)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Fax: (202) 434-5029
E-mail: sraber@wc.com

By the following means:

VIA U.S. MAIL: I enclosed the documents in a sealed envelope or package addressed to the person(s) at the address(es) listed above. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is place for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

__ **VIA OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address listed above. I placed the envelope or package for collection and overnight delivery to an office or a regularly utilized drop box of the overnight delivery carrier.

__ **VIA FACSIMILE TRANSMISSION:** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the person(s) at the fax number(s) listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

VIA ELECTRONIC TRANSMISSION: Based on a court order or agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above.

XX **VIA NOTICE OF ELECTRONIC FILING (ECF):** Electronic Services via the Court's CM/ECF system pursuant to CivLR 5.4(c).

___ **VIA PERSONAL SERVICE:** I personally delivered the documents to the person(s) at the address(es) listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by I leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

I declare under penalty of perjury under the laws of the United State of America, that the foregoing is true and correct and that I am employed in the office, at whose direction the within service was made.

Executed: September 29, 2014, at San Diego, California.

Rebecka A. Garcia