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8 GERBER PRODUCTS COMPANY

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 MICHELLE GYORKE-TAKATRI and
13 KATIE SILVER on behalf of themselves
and all others similarly situated,

14 Plaintiffs,

15 v.

16 NESTLÉ USA, INC. and GERBER
17 PRODUCTS COMPANY,

18 Defendants.

No.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332(d)(2),
1441(a), 1453(b) (CLASS ACTION
FAIRNESS ACT OF 2005)**

Defendant Gerber Products Company (“Gerber”), pursuant to 28 U.S.C. section 1441, removes to this Court the state court action described below, which is within the original jurisdiction of this Court and properly removed under 28 U.S.C. sections 1332, 1441, 1446, and 1453. Pursuant to 28 U.S.C. section 1446(d), Gerber is serving copies of this Notice of Removal on counsel for plaintiffs Michelle Gyorke-Takatri and Katie Silver (“Plaintiffs”) and filing it with the Clerk of the San Francisco County Superior Court as an exhibit to the Notice to State Court of Removal to Federal Court. A copy of the notice being filed in state court is attached hereto (without attachments) as **Exhibit A**.

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On July 14, 2015, Plaintiffs filed a class action complaint (“Complaint”) against defendants Nestlé USA, Inc. (“NUSA”) and Gerber (collectively, “Defendants”) in the Superior Court for the State of California for the County of San Francisco, Case No. CGC 15-546850 (“State Court Action”). A copy of the Complaint filed to commence the State Court Action and all attachments thereto is attached as **Exhibit B**.

2. Plaintiffs served Gerber with the Complaint and state court summons on July 17, 2015. Therefore, Gerber filed this notice timely pursuant to 28 U.S.C. section 1446(b). A copy of the state court summons served on Gerber is attached as **Exhibit C**.

3. On July 31, 2015, Plaintiffs filed proofs of service of summons on NUSA and Gerber. Copies of the proofs of service are attached as **Exhibit D**.

4. On or about August 12, 2015, the Clerk of the San Francisco County Superior Court entered the dismissal of NUSA. A copy of the dismissal is attached as **Exhibit E**.

5. The San Francisco County Superior Court is located within the Northern District of California. 28 U.S.C. § 84(a). This Notice of Removal is, therefore, properly filed in this Court. *See* 28 U.S.C. § 1441(a).

BASIS FOR REMOVAL

6. This action is within the original jurisdiction of this Court, and removal is, therefore, proper under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), which grants district courts original jurisdiction over class actions in which the number of

putative class members exceeds 100, the amount in controversy exceeds \$5,000,000, and any member of the class of plaintiffs is a citizen of a state different from any defendant. As set forth below, this action satisfies each of the requirements of section 1332(d)(2) for original jurisdiction under CAFA. *See Lowdermilk v. U.S. Bank, N.A.*, 479 F.3d 994, 997 (9th Cir. 2007).

7. This Is a Covered Class Action. According to the Complaint, “Plaintiffs bring this action as a statewide class action pursuant to section 382 of the California Code of Civil Procedure.” Ex. B (Compl.), ¶ 40. As a result, this action meets the CAFA definition of a class action, which is “any civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure.” 28 U.S.C. §§ 1332(d)(1)(B), 1453(a), (b).

8. There Are More than 100 Putative Class Members. While the Complaint does not directly specify a proposed class period or provide a complete list of all Gerber products that allegedly made the label claims at issue, Plaintiffs seek to represent a “statewide class” of all persons who purchased Gerber Graduates Puffs products (“Puffs Products”) since July 14, 2011. Ex. B (Compl.), ¶¶ 1-2, 40. According to the Complaint, “[c]lass members are so numerous that joinder of all members of the [c]lass is impracticable.” Ex. B (Compl.), ¶ 41. While Gerber does not sell directly to consumers and does not have data regarding the identities of consumers who purchased Puffs Products in California since July 14, 2011, Gerber sold in excess of \$5,000,000 of Puffs Products in California since July 14, 2011. Based on the foregoing, it is readily apparent Plaintiffs’ proposed class includes in excess of 100 members.

9. Minimal Diversity Exists. According to the Complaint, both Plaintiffs were residents of California during the relevant time period. Ex. B (Compl.), ¶ 8. The only remaining defendant in this action, Gerber, is a corporation organized under the laws of the State of Michigan, with its principal place of business in Florham Park, New Jersey. Ex. B (Compl.), ¶ 15. Thus, the minimal diversity requirement of CAFA is satisfied because “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

10. The Amount in Controversy Exceeds \$5,000,000. Under CAFA, the claims of individual class members are aggregated to determine if the amount in controversy exceeds

1 \$5,000,000, exclusive of interests and costs. 28 U.S.C. §§ 1332(d)(2), (d)(6). The Complaint
 2 seeks damages, restitution, injunctive relief, and punitive damages. Ex. B (Compl.), p. 22.
 3 Gerber disputes Plaintiffs' allegations and denies Plaintiffs or the putative class have sustained
 4 damages. Without conceding the merit of the Complaint's damages allegations or causes of
 5 action, the amount in controversy here satisfies CAFA's jurisdictional threshold.

6 The Complaint alleges Plaintiff and the putative class "suffered injury because had they
 7 known that Gerber's claims were deceptive, they would not have bought the Puffs at all, and
 8 certainly would not have paid a premium price for them." Ex. B (Compl.), ¶ 12. The Complaint
 9 asserts claims under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*
 10 *seq.* ("UCL"), False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* ("FAL"), and
 11 Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* ("CLRA").

12 The UCL, FAL, and CLRA authorize courts to award restitution as "may be necessary to
 13 restore to any person in interest any money or property . . . which may have been acquired by
 14 means of [an] unfair or deceptive act." *Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal. App. 4th
 15 663, 696 (2006) (quoting Cal. Bus. & Prof. Code §§ 17203, 17535); *see also id.* at 694 n.22
 16 (standard for awarding restitution is the same under UCL, FAL, and CLRA). The proper measure
 17 of restitution is the difference between what the plaintiff paid and the value of what the plaintiff
 18 received. *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 131 (2009).

19 As discussed above, Gerber sold in excess of \$5,000,000 of Puffs Products in California
 20 since July 14, 2011. Plaintiffs allege, among other allegations, the Puffs Products they purchased
 21 "did not have any value." Ex. B (Compl.), ¶ 81. Assuming the labels on the Puffs Products were
 22 deceptive (they were not), and even assuming retailers sold all products to consumers at
 23 wholesale cost (they typically do not), the putative class, in the aggregate, would be entitled to
 24 over \$5,000,000 in monetary relief under the facts alleged in the Complaint. Thus, CAFA's
 25 amount in controversy requirement is satisfied.

26 The Complaint also seeks punitive damages. Ex. B (Compl.), p. 22. Punitive damages are
 27 considered part of the amount in controversy. *See Sanchez v. Wal-Mart Stores, Inc.*, No. S-06-cv-
 28 2573 DFL KJM, 2007 U.S. Dist. LEXIS 33746, at *5-6 (E.D. Cal. May 8, 2007) (including

1 punitive damages for amount in controversy under CAFA); *Alexander v. FedEx Ground Package*
 2 *Sys., Inc.*, No. C 05-0038 MHP, 2005 U.S. Dist. LEXIS 5129, at *15 (N.D. Cal. Mar. 25, 2005)
 3 (same). Gerber believes Plaintiffs will not recover damages, compensatory or punitive. For
 4 purposes of the amount in controversy requirement, however, the Court should consider
 5 allegations of punitive damages.

6 The Complaint also seeks attorney fees. Ex. B (Compl.), p. 22. Attorney fees may be
 7 included in the amount in controversy for jurisdictional purposes. *Lowdermilk*, 479 F. 3d at 1000.
 8 Attorney fees “can exceed six figures in a class action and are properly aggregated and considered
 9 for purposes of determining the amount in controversy under CAFA.” *Frederico v. Home Depot*,
 10 507 F.3d 188, 197 (3d Cir. 2007).

11 11. No Joinder Is Necessary. CAFA expressly provides a class action may be
 12 removed by any defendant without the consent of any other defendant. 28 U.S.C. § 1453(b);
 13 *United Steel v. Shell Oil*, 549 F.3d 1204, 1208 (9th Cir. 2008) (CAFA’s statutory provision
 14 overrides the judicially created requirement that each defendant consent to removal).

15 12. The exceptions to removal under 28 U.S.C. sections 1332(d) and 1446 do not
 16 apply to this case.

17
 18 Dated: August 13, 2015

WHITE & CASE LLP

19
 20 By: /s/ Bryan A. Merryman
 Bryan A. Merryman

21 Attorneys for Defendant
 22 GERBER PRODUCTS COMPANY
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 26
 27
 28

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Attorneys for Defendant
GERBER PRODUCTS COMPANY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHELLE GYORKE-TAKATRI and
KATIE SILVER on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

NESTLÉ USA, INC. and GERBER
PRODUCTS COMPANY,

Defendants.

Case No. CGC 15-546850

**NOTICE OF REMOVAL TO THE
CLERK OF THE SUPERIOR COURT
FOR THE COUNTY OF SAN
FRANCISCO**

Complaint Filed: July 14, 2015

TO THE CLERK OF THE SUPERIOR COURT:

Defendant Gerber Products Company hereby gives notice that it filed the attached Notice of Removal concerning the above-captioned action in the United States District Court for the Northern District of California on August 13, 2015. Gerber removed this action to the United States District Court under 28 U.S.C. §§ 1332(a), 1441(a), and 1453(b).

Dated: August 13, 2015

WHITE & CASE LLP

By: 

Bryan A. Merryman

Attorneys for Defendant
GERBER PRODUCTS COMPANY

EXHIBIT B



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Jul-14-2015 10:41 am

Case Number: CGC-15-546850

Filing Date: Jul-14-2015 10:34

Filed by: VICTORIA GONZALEZ

Juke Box: 001 Image: 04990800

COMPLAINT

MICHELLE GYORKE-TAKATRI ET AL VS. NESTLE USA, INC. ET AL

001C04990800

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

NESTLE USA, INC. and GERBER PRODUCTS COMPANY

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MICHELLE GYORKE-TAKATRI and KATIE SILVER on behalf of themselves
and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco

Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102-4514

CASE NUMBER
(Número del caso):

15-546850

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matthew J. Zevin, Esq.

Stanley Law Group, 10021 Willow Creek Road, San Diego, CA 92131, Tel: (619) 235-5305

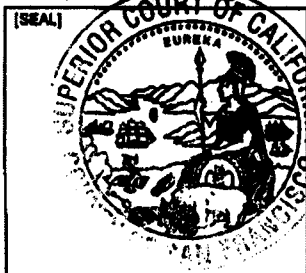
Victoria Gonzalez
Deputy
(Adjunto)

DATE: JUL 14 2015
(Fecha)

CLERK OF THE COURT Clerk, by
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

BY FAX

FILED

Superior Court of California
County of San Francisco

JUL 14 2015

CLERK OF THE COURT

BY:  Deputy Clerk

1 Matthew J. Zevin, SBN: 170736
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3 10021 Willow Creek Road, Suite 200
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8 Stephen Gardner, Texas SBN: 07660600
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15 E-mail: steve@consumerhelper.com

16 *Attorneys for Plaintiffs Michelle Gyorke-Takatri, Ka-*
17 *tie Silver, and the Proposed Class*
18 *[Additional Counsel Listed on Signature Page]*

12 **SUPERIOR COURT OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 MICHELLE GYORKE-TAKATRI and KA-
15 TIE SILVER on behalf of themselves and all
16 others similarly situated,

16 Plaintiffs,

17 v.

18 NESTLE USA, INC. and GERBER PROD-
19 UCTS COMPANY,

19 Defendants

CASE NO. **CGC 15-546850**

CLASS ACTION COMPLAINT FOR:

1. Violation of Consumers Legal Remedies Act (Cal. Civil Code § 1750 et seq.);
2. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.);
3. Violation of False Advertising Law (Cal. Bus. & Prof. Code § 17500 et seq.);
4. Breach of Express Warranty;
5. Breach of Implied Warranty of Merchantability;
- 6) Unjust Enrichment

BY FAX

DEMAND FOR JURY TRIAL

22 Plaintiffs Michelle Gyorke-Takatri and Katie Silver ("Plaintiffs"), individually and on
23 behalf of all others similarly situated, bring this action against Nestle USA, Inc. and Gerber
24 Products Company ("Gerber" or "Defendants"), because Gerber markets Gerber Graduates
25 Puffs as though they contain significant amounts of the fruits and vegetables vibrantly depicted
26 on its packaging, when in fact Gerber Graduates Puffs contain only trace amounts of those in-
27 gredients, or none at all.

28 ///

NATURE OF THE ACTION

1. This is a proposed statewide class action for Gerber's false and deceptive¹ practices in deceiving consumers about the fruit and vegetable content and the nutritional and health qualities of Gerber Graduates Puffs.

2. From January 1, 2011 to the present (the "Class Period"), Gerber made false and deceptive representations that Gerber Graduates Puffs and Gerber Graduates Organic Puffs ("Puffs" or "Products") contained significant amounts of the actual fruits or vegetables shown on the label, were nutritious and healthful to consume, and better than similar products.

3. In fact, Gerber's Puffs do not contain any, or significant amounts of, the fruits or vegetables shown on the label. The closest ingredient to fruits or vegetables in the Puffs is little more than a powder ("dried apple puree"). Even then, there is less than one gram of this apple powder in each serving of the Puffs—meaning the Puffs contain much more sugar in each serving than any fruit- or vegetable-like ingredient.

4. Thus, although Gerber markets Puffs as healthful and nutritious, these Products are devoid of the health benefits of consuming fruit or vegetables, and are mostly a combination of flour and sugar.

5. In addition, Gerber violates federal law aimed at preventing consumer deception. 21 C.F.R. section 102.5 requires any company that (1) markets a food based on its fruit or vegetable content if the fruit or vegetable content affects price or consumer acceptance, or (2) chooses to make it appear that there is more fruit or vegetable in the product than is actually the case, to display the true percentage of fruits or vegetables in the product name on the front label. Gerber violates this requirement.

///

///

¹ The terms "deceptive," "deceptively," and "deception" encompass other descriptive terms, including various forms of the words: mislead, misrepresent, untrue, unfair, false, disparage, and unlawful. All of these terms are referenced in California's Civil Code and California's Health and Safety Code.

JURISDICTION

6. This court has jurisdiction over all causes of action Plaintiffs assert, pursuant to California Constitution, Article VI, Sec. 10, because this case involves causes of action not given by statute to other trial courts.

7. Venue is proper in this district pursuant to Code of Civil Procedure section 395 because substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and deceptive information about the Puffs, occurred within this County.

PARTIES

Plaintiffs

8. During the Class Period, Plaintiff Michelle Gyorke-Takatri ("Gyorke-Takatri") was a resident of California and purchased Gerber's Puffs about once a week for herself and her children.

9. During the Class Period, Plaintiff Katie Silver ("Silver") was a resident of California and purchased Gerber's Puffs about once a week for herself and her children

10. Ms. Gyorke-Takatri purchased Apple, Banana, Blueberry, Organic Green Veggies, Sweet Potato, and Vanilla Puffs. Ms. Silver purchased Blueberry Puffs. Both Plaintiffs relied on Gerber's large and prominent representations of fruits or vegetables on front of the Puffs packaging when they decided to purchase the Puffs. The prominent graphics of fresh fruits and vegetables on the front of the Puffs packages led Ms. Gyorke-Takatri and Ms. Silver to believe that the depicted fruit or vegetable was a primary ingredient in the Puffs and that the Puffs were healthy and nutritious. Had Plaintiffs known that the Puffs contained none, or only a tiny amount, of any fruit or vegetable depicted, they would not have purchased the Puffs.

11. Plaintiffs saw and relied on Gerber's deceptive depictions of the ostensibly primary ingredients on the packaging of the Puffs as well as Gerber's widespread advertising and marketing² campaign (such as print magazine and mailer coupons). Gerber's marketing

² The terms "markets" and "marketing" include all forms of advertising in all forms of media, including without limitation, print advertisements, television and radio commercials, packaging and product labels, viral marketing, incentives, and websites.

1 campaign uniformly emphasized fruits and vegetables and represented that the Puffs were nu-
2 tritious, healthful, and better than similar products. Plaintiffs relied on these misrepresentations
3 when they decided to purchase Puffs.

4 12. Gerber's representations are deceptive because Gerber's Puffs are not healthful,
5 do not contain any, or significant amounts of, the fruit or vegetables depicted on the label, and
6 lack significant amounts of any actual fruit or vegetables. Plaintiffs suffered injury because,
7 had they known that Gerber's claims were deceptive, they would not have bought the Puffs at
8 all, and certainly would not have paid a premium price for them.

9 13. Plaintiffs acted as reasonable consumers with respect to their decisions to buy
10 Gerber's Puffs.

11 Defendants

12 14. Defendant Nestle USA, Inc. (Nestle USA) is a subsidiary of Nestle SA, a Swiss
13 corporation that does business in this country and touts itself as the world's largest food com-
14 pany.³ Nestle USA controls the practices of Gerber Products Company in this country. Nestle
15 USA is a Delaware corporation headquartered at 800 North Brand Boulevard, Glendale, Cali-
16 fornia 91203.

17 15. Defendant Gerber Products Company is the best-known baby food company in
18 the country. Gerber does business in California and every other state in the country. Gerber is a
19 Michigan corporation headquartered at 12 Vreeland Road, Florham Park, New Jersey 07932.
20 On information and belief, Gerber does business as Nestle Nutrition, Nestle Infant Nutrition,
21 and Nestle Nutrition North America.

22 FACTS

23 16. Gerber engages in a widespread and uniform marketing and advertising cam-
24 paign to portray its Puffs as nutritious and healthful. Gerber engages in this deceptive cam-
25 paign to sell Puffs to consumers (who would not otherwise buy them), to charge a premium
26 price, and to take away market share from other similar companies.

27 ³Nestle website, About Us, Key Figures, [http://www.nestleusa.com/about-us/key-](http://www.nestleusa.com/about-us/key-figures)
28 [figures](http://www.nestleusa.com/about-us/key-figures) (last visited June 18, 2015).

1 17. Plaintiffs and other class members want to be sure they are feeding their young
2 children healthy snacks.

3 18. When deciding what products to buy, Plaintiffs and other class members rely on
4 the information companies choose to put on package labels.⁴

5 19. Gerber has one of the most respected and well-known names in the world when
6 it comes to infant food. On information and belief, that was a significant factor when Nestle
7 acquired Gerber in 2007—at a time when Gerber Graduates had sales of \$250 million and 91%
8 market share.⁵

9 20. Nestle describes Gerber as “One of the most trusted names in baby food and
10 baby care since 1927. Gerber baby food and baby care is committed to promoting good nutri-
11 tion and healthy eating habits for children.”⁶

12 21. In its most recent Annual Report, Nestle bragged that it “aims to support par-
13 ents with the information they need to make the most informed decisions about their children’s
14 health and eating habits, such as the importance of regular consumption of fruits and vegeta-
15 bles, and of exercise.”⁷ Also, in its corporate principles, Nestle promises that it is “[c]ommitted
16 to responsible, reliable consumer communication that empowers consumers to exercise their
17 right to informed choice and promotes healthier diets.”⁸

18
19 ⁴ See, e.g., Christina R. Munsell, Jennifer L. Harris, Vishnudas Sarda, and Marlene B.
20 Schwartz, *Parents’ Beliefs About the Healthfulness of Sugary Drink Options: Opportunities*
21 *to Address Misperceptions*, Pub. Health Nutrition, available on CJO2015.
doi:10.1017/S1368980015000397 (Mar. 11, 2015).

22 ⁵ Hugo Miller and Evan von Schaper, *Nestle Buys Gerber for \$5.5 Billion*, BLOOMBERG
23 NEWS Apr. 13, 2007, available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2007/04/12/AR2007041200372.html)
24 [dyn/content/article/2007/04/12/AR2007041200372.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/04/12/AR2007041200372.html).

25 ⁶ Nestle website, Brands, Gerber <http://www.nestle.com/brands/allbrands/gerber> (last
visited June 18, 2015).

26 ⁷ Nestle Annual Report 2014, available at [http://www.nestle.com/asset-](http://www.nestle.com/asset-library/documents/library/documents/annual_reports/2014-annual-report-en.pdf)
27 [library/documents/library/documents/annual_reports/2014-annual-report-en.pdf](http://www.nestle.com/asset-library/documents/library/documents/annual_reports/2014-annual-report-en.pdf).

28 ⁸ The Nestle Corporate Business Principles June 2010, available at
<http://www.nestle.com/asset->

1 22. On its consumer website, Gerber proclaims that “we work hard to become a
2 parent’s trusted partner in fostering healthy growth and development and helping establish
3 healthy eating habits from Birth+ to Toddler 2+.”⁹

4 23. On that same website, speaking specifically about Graduates products, Gerber
5 promises that Graduates products, including Puffs, “offer a range of nutritious, delicious prod-
6 ucts designed for your Crawler.”¹⁰

7 24. Because of Gerber’s reputation, Plaintiffs and other class members trusted Ger-
8 ber to provide healthy snacks for their young children.

9 25. Gerber violated Plaintiffs’ trust, and broke its promises, because Puffs are not
10 the fruit- or vegetable-packed healthy snacks that the label and advertising make them appear
11 to be.

12 26. Specifically, although the Graduates Puffs varieties all bear the name of a fruit
13 or vegetable with prominent depictions of the fruit or vegetable (often in large quantities), in
14 truth the Puffs that Plaintiffs purchased contain none, or only miniscule amounts, of the actual
15 fruit or vegetable promised by Gerber, thus providing little more than empty calories for young
16 children.

17 27. Gerber’s Puffs provide no dietary fiber (a key substance found in fruits and
18 vegetables) and contain the vitamins emphasized in Gerber’s marketing campaign¹¹ only due
19
20

21 library/documents/library/documents/corporate_governance/corporate-business-
22 principles-en.pdf.

23 ⁹ Gerber website, Why Gerber, <https://www.gerber.com/why-gerber/why-gerber> (last
24 visited June 18, 2015).

25 ¹⁰ Gerber website, Products, Snacks, <https://www.gerber.com/products/snacks> (last
26 visited June 18, 2015).

27 ¹¹ E.g., Gerber website, Products, Banana Puffs,
28 [https://www.gerber.com/products/product/gerber-graduates-puffs-banana-naturally-
flavored-with-other-natural-flavors](https://www.gerber.com/products/product/gerber-graduates-puffs-banana-naturally-flavored-with-other-natural-flavors) (“Good Source of five B Vitamins, Vitamin E, Zinc
and Iron”) (last visited June 18, 2015).

1 to synthetic fortification.¹² Reasonable consumers are likely deceived by Gerber's marketing
 2 campaign into believing that these vitamins are present in the Puffs thanks to significant
 3 amounts of fruits and vegetables. Unfortunately for consumers, the synthetic vitamins Gerber
 4 adds to the Puffs do not provide the same health benefits as vitamins obtained by eating fruits
 5 and vegetables.¹³

6 28. Each variety of Gerber's Puffs contains more sugar than fruits or vegetables.¹⁴
 7 Gerber takes advantage of its trusted name to market unhealthful and even dangerous Products
 8 for consumption by some of the youngest and most vulnerable consumers.

9 29. Examination of three of the Puffs varieties illustrates Gerber's deliberate and
 10 uniform deceptions. The Products' images and lists of ingredients are from Gerber's website
 11 (although the size of the ingredients list is considerably greater than on the actual product la-
 12 bel).

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24 ¹² See Gerber Graduates Puffs' ingredients lists, Illustrations 1-3.

25 ¹³ See, e.g., Rui Hai Liu, *Health Benefits of Fruits and Vegetables are from Additive and Syn-*
 26 *ergistic Combinations of Phytochemicals*, 78 AM. J. CLIN. NUTR. 517S, 517S-520S, at 518S
 27 (2003); INST. OF MEDICINE, FOOD AND NUTRITION BOARD, *Dietary Reference Intakes for*
 28 *Vitamin C, Vitamin E, Selenium, and Carotenoids* (Nat'l Academy Press, 2000).

¹⁴ See Gerber Graduates Puffs' ingredients lists, Illustrations 1-3.

Illustration 1

Sweet Potato Puffs Packaging and Ingredients



Rice Flour, Whole Wheat Flour, Wheat Starch, Sugar, Whole Grain Oat Flour, Dried Apple Puree, Less than 2% of: Tri- and Dicalcium Phosphate, Natural Sweet Potato Flavor, (Includes Dried Sweet Potato), Mixed Tocopherols (To Maintain Freshness), Soy and Sunflower Lecithin, Annatto Extract Color. Vitamins and Minerals: Zinc Sulfate, Vitamin E (Alpha Tocopheryl Acetate), Iron (Electrolytic), Niacinamide (A B Vitamin), Vitamin B2 (Riboflavin), Vitamin B1 (Thiamine Hydrochloride), Vitamin B12 (Cyanocobalamin)¹⁵

¹⁵ Cf. Gerber website, Products, Gerber Graduates, Puffs, <https://www.gerber.com/products/product/gerber-graduates-puffs-sweet-potato-naturally-flavored-with-other-natural-flavors> (emphasis added) (last visited June 18, 2015).

Illustration 2
Banana Puffs Packaging and Ingredients



Rice Flour, Whole Wheat Flour, Wheat Starch, Sugar, Whole Grain Oat Flour, Dried Apple Puree, Less Than 2% of: Tri- and Dicalcium Phosphate, Natural Banana Flavor, Calcium Phosphate, Mixed Tocopherols (To Maintain Freshness), Soy and Sunflower Lecithin, Caramel Color, Turmeric Extract Color. Vitamins and Minerals: Zinc Sulfate, Vitamin E (Alpha Tocopheryl Acetate), Iron (Electrolytic), Niacinamide (A B Vitamin), Vitamin B2 (Riboflavin), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B1 (Thiamine Hydrochloride), Vitamin B12 (Cyanocobalamin)¹⁶

¹⁶ Cf. Gerber website, Products, Snacks, Puffs, Banana, <https://www.gerber.com/products/snacks-products/product/gerber-graduates-puffs-banana-naturally-flavored-with-other-natural-flavors/27> (emphasis added) (last visited June 18, 2015).

Illustration 3
Peach Puffs Packaging and Ingredients



Rice Flour, Whole Wheat Flour, Wheat Starch, Sugar, Whole Grain Oat Flour, Dried Apple Puree, Natural Peach Vanilla Flavor (Includes Citric Acid, Acetic Acid, Invert Sugar, Peach Juice Concentrate, Vanilla Extract) Less Than 2% of: Calcium Phosphate, Mixed Tocopherols (To Maintain Freshness), Soy and Sunflower Lecithin, Annatto Extract Color. Vitamins and Minerals: Zinc Sulfate, Vitamin E (Alpha Tocopheryl Acetate), Iron (Electrolytic), Niacinamide (A B Vitamin), Vitamin B2 (Riboflavin), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B1 (Thiamine Hydrochloride), Vitamin B12 (Cyanocobalamin)¹⁷

¹⁷ Cf. Gerber website, Products, Snacks, Puffs, Peach, <https://www.gerber.com/products/product/gerber-graduates-puffs-peach-naturally-flavored-with-other-natural-flavors> (emphases added) (last visited June 18, 2015).

1 30. The Sweet Potato variety, despite the name and the prominent images of whole
2 and sliced sweet potatoes, contains barely any sweet potato at all. The best Gerber can muster
3 is less than 2% (less than the amount of sugar) of natural sweet potato flavor—and a percent-
4 age of that natural sweet potato flavor is composed of “dried sweet potato.” Like the other va-
5 rieties, Sweet Potato contains “dried apple puree”—little more than apple-flavored powder.

6 31. The Banana variety, despite the name and the prominent images of a bunch of
7 bananas and sliced bananas, contains no banana at all. Like the other varieties, Banana Puffs
8 contain “dried apple puree”—little more than apple-flavored powder.

9 32. The Peach variety, despite the name and the prominent images of whole and
10 sliced ripe peaches, contains barely any peach at all. The best Gerber can muster is natural
11 peach vanilla flavor—and a percentage of that natural peach vanilla flavor is composed of
12 “peach juice concentrate.” And, as with the Sweet Potato and Banana varieties, the Peach vari-
13 ety contains a trivial amount of “dried apple puree.”

14 33. The federal Food and Drug Administration (“FDA”) requires companies to list
15 food ingredients in “descending order of predominance by weight.”¹⁸ When an ingredient is
16 present in amounts of 2 percent or less by weight, FDA allows companies to choose to lump
17 all those minor ingredients under a heading such as “Less than _ percent of ____.”¹⁹ Once a
18 company uses this heading, the following ingredients are not necessarily listed in descending
19 order of predominance by weight.²⁰ Gerber lists the ingredients list for the Puffs Products us-
20 ing the heading “Less than 2% of ____.”

21 34. Dried apple puree appears in the ingredients lists after sugar and four types of
22 flour ingredients, and immediately before the “Less than 2% of:____” heading. Thus, it is likely
23 that barely more than 2% of this fruit-like ingredient is in the Puffs.

24
25
26 ¹⁸ 21 C.F.R. § 101.4(a)(1).

27 ¹⁹ 21 C.F.R. § 101.4(a)(2).

28 ²⁰ 21 C.F.R. § 101.4(a)(2).

35. Despite the complete absence of any, or significant amounts of, actual fruit or vegetables, these Puffs are marketed as though they did contain fruit or vegetables, and in substantial amounts. See Illustration 4 below.

Illustration 4
Graphic from Gerber Facebook Page



36. On Amazon, the Banana and Peach varieties are described as "Puffed grains with Real Fruit."²¹ Gerber knows this statement is deceptive, and intends for consumers to rely

²¹ Amazon.com website, Gerber Graduates Puffs, Banana, <http://www.amazon.com/Gerber-Graduates-Puffs-Strawberry-1-48-Ounce/dp/B000FPM22Y> (last visited June 18, 2015); Amazon.com website, Gerber Graduates Puffs, Peach, <http://www.amazon.com/Gerber-Graduates-Puffs-Peach-1->
CLASS ACTION COMPLAINT

1 on Puffs' advertising, packaging, and labels. Reliance on the information Gerber chooses to
2 provide consumers is reasonable.

3 37. Plaintiffs and other class members would never have paid the premium price
4 that Gerber commands, and in fact would not have bought the Puffs at all, had they known the
5 truth. They wanted healthy fruit- or vegetable-packed snacks for their children, not the empty
6 calories and total or practical absence of fruit or vegetables actually provided.

7 38. The Center for Science in the Public Interest has criticized this very practice:

8 Food companies aggressively market phony fruit snacks to toddlers, children, and
9 their parents, pushing them as healthy options and substitutes for real fruit. Un-
10 fortunately for parents and kids, phony fruit snacks don't always contain the
11 fruits advertised on the front of the box and never in the quantities suggested. In-
12 stead, companies use relatively cheap, nutritionally void, and highly processed
13 pear, apple, and white grape juices, making phony fruit snacks much closer to
14 gummy bears than actual fruit.

15 ...
16 The Dietary Guidelines Advisory Committee concluded that "nutrient intake
17 should come primarily from foods" and that "the more scientists learn about nu-
18 trition and the human body, the more they realize the importance of eating foods
19 in their most intact forms without added solid fats, sugars, starches, or sodium."
20 Another good reason to stay away from phony fruit snacks, which are mainly
21 sugar and small amounts of fruit that has been dehydrated, pureed, concentrated,
22 heated, and otherwise processed until it is shelf stable and largely unrecognizable,
23 requiring colors, flavors, and vitamins to be added back in.²²

24 39. Plaintiffs were therefore deceived, and spent money they would not have spent
25 as a result of Gerber's deceptive practices.

26 CLASS ALLEGATIONS

27 40. Plaintiffs bring this action as a statewide class action pursuant to section 382 of
28 the California Code of Civil Procedure on behalf of all persons who purchased Gerber Gradu-
ates during the Class Period (the "Class"). Excluded from the Class are officers and directors
of Gerber, members of the immediate families of the officers and directors of Gerber, and its

26 48-Ounce/dp/B004BCT2JI/ref=sr_1_1?ie=UTF8&qid=1427226526&sr=8-
27 1&keywords=graduates+puffs+peach (last visited June 18, 2015).

28 ²² CSPI website, Nutrition Policy, Fruit Fraud,
<http://cspinet.org/nutritionpolicy/fruitfraud.html> (last visited June 18, 2015).

1 legal representatives, heirs, successors or assigns and any entity in which they have or have
2 had a controlling interest.

3 41. Plaintiffs presently do not know the exact number or identities of all Class
4 members, but given the nature of the claims and the number of retail stores selling Gerber's
5 Puffs, Plaintiffs believe that Class members are so numerous that joinder of all members of the
6 Class is impracticable.

7 42. There is a well-defined community of interest in the questions of law and fact
8 involved in this case. Questions of law and fact common to the members of the Class which
9 predominate over questions which may affect individual Class members include:

- 10 a. Whether Gerber labeled, marketed, advertised, or sold Puffs to Plaintiffs and
11 those similarly situated using false, misleading, or deceptive statements or rep-
12 resentations, including statements or representations concerning the nutritional
13 and health qualities of its Puffs;
- 14 b. Whether Gerber omitted or misrepresented material facts in connection with the
15 sales of its Puffs;
- 16 c. Whether Gerber participated in and pursued the common course of conduct
17 complained of; and
- 18 d. Whether Gerber's labeling, marketing, advertising, or selling of its Puffs as
19 healthful and nutritious constitutes an unfair or deceptive consumer sales prac-
20 tice.

21 43. Plaintiffs' claims are typical of those of the Class because Plaintiffs, like all
22 members of the Class, purchased Gerber's Puffs at a premium price in a typical consumer set-
23 ting and sustained damages from Gerber's wrongful conduct.

24 44. Plaintiffs will adequately protect the interests of the Class and have retained
25 counsel experienced in litigating complex class actions. Plaintiffs have no interests that conflict
26 with those of the Class.

27 45. A class action is superior to adjudication of this controversy over the other
28 available methods for the fair and efficient.

48. Gerber's conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Gerber's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

FIRST CAUSE OF ACTION

49. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA"). Plaintiffs have provided Gerber with notice pursuant to California Civil Code § 1782 and Gerber failed to respond to Plaintiffs' notice. Plaintiffs seek damages in accordance with the CLRA.

51. Plaintiffs, members of the Class, and Gerber have engaged in "transactions," as that term is defined by California Civil Code § 1761(e).

15

1 was undertaken by Gerber in transactions intended to result in, and which did result in, the sale
2 of goods to consumers.

3 53. As alleged more fully above, Gerber has violated the CLRA by falsely repre-
4 senting to Plaintiffs and the Class certain health qualities of its Puffs.

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

7 55. Pursuant to California Civil Code §§ 1780(a)(2) and (a)(5), Plaintiffs seek an
8 order of this Court that requires, among other things, Gerber to remove language on Gerber's
9 labeling and advertising representing Puffs as healthful and nutritious, include the percentage
10 of the characterizing ingredient for Puffs in their statements of identity, make any other chang-
11 es in the labeling and advertising of Puffs to prevent the deception described in this Complaint,
12 and award damages, attorneys' fees, and any other relief the Court deems proper pursuant to
13 Cal. Civ. Code §§ 1780 and 1781.

14 56. Plaintiffs and members of the Class may be irreparably harmed or denied an ef-
15 fective and complete remedy if such an order is not granted.

16 57. The unfair and deceptive acts and practices of Gerber, as described above, pre-
17 sent a serious threat to Plaintiffs and members of the Class.

18 **SECOND CAUSE OF ACTION**

19 **Unlawful Business Acts and Practices,** 20 **In Violation of California Business and Professions Code § 17200, *et seq.***

21 58. The acts of Gerber described above constitute unlawful business acts and prac-
22 tices.

23 59. Gerber's manufacturing, marketing, advertising, packaging, labeling, distribut-
24 ing, and selling of Puffs violate California's Sherman Food, Drug and Cosmetics Law, Cal.
25 Health & Saf. Code § 109875, *et seq.* (the "Sherman Law").

26 60. The Sherman Law defines a "person" as "any individual, firm, partnership,
27 trust, corporation, limited liability company, company, estate, public or private institution, as-
28 sociation, organization, group, city, county, city and county, political subdivision of this state,

1 other governmental agency within the state, and any representative, agent, or agency of any of
2 the foregoing." Cal. Health & Saf. Code § 109995. Gerber is a corporation and, therefore, a
3 "person" within the meaning of the Sherman Law.

4 61. In relevant part, the Sherman Law declares that food is misbranded if its label-
5 ing is false or misleading in any particular way and further provides that it is unlawful for any
6 person to misbrand any food. Cal. Health & Saf. Code §§ 110660, 110765.

7 62. The Sherman Law adopts the federal Food, Drug, and Cosmetic Act and regula-
8 tions written by FDA. Cal. Health & Safety Code §§ 109875, *et seq.* Gerber's actions violate
9 21 C.F.R. section 102.5, as discussed above.

10 63. Gerber's practices are unlawful under the California Consumers Legal Remedy
11 Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA") because they violate the Sherman Law and the
12 federal Food, Drug, and Cosmetic Act.

13 64. Gerber's practices alleged above are unlawful under California Business and
14 Professions Code § 17200, *et seq.* because they violate § 17500, *et seq.*, which forbids untrue
15 advertising and misleading advertising.

16 65. As a result of the Gerber's practices described above, Plaintiffs and the Class,
17 pursuant to California Business and Professions Code § 17203, are entitled to an order enjoin-
18 ing future wrongful conduct on the part of Gerber and any other orders and judgments which
19 may be necessary to disgorge Gerber's ill-gotten gains and to restore to any person in interest
20 any money paid for Puffs as a result of the wrongful conduct of Gerber.

21 66. The above-described unlawful business acts and practices of Gerber present a
22 threat and reasonable likelihood of deception to Plaintiffs and members of the Class in that
23 Gerber has systematically perpetrated and continues to perpetrate unlawful acts or practices
24 upon members of the Class by means of its misleading manufacturing, marketing, advertising,
25 packaging, labeling, distributing, and selling of Puffs.

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1 **THIRD CAUSE OF ACTION**

2 **Fraudulent Business Acts and Practices,**
 3 **In Violation of California Business and Professions Code § 17200, *et seq.***

4 67. The acts of Gerber as described above constitute fraudulent business practices
 5 under California Business and Professions Code § 17200, *et seq.*

6 68. As more fully described above, Gerber's misleading marketing, advertising,
 7 packaging, and labeling of Puffs is likely to deceive reasonable California consumers. Indeed,
 8 Plaintiffs and other members of the Class were unquestionably deceived regarding the charac-
 9 teristics of Gerber's Puffs, as Gerber's marketing, advertising, packaging, and labeling of
 10 Puffs misrepresents or omits the true nutritional content and levels of fruit and vegetables in
 11 Puffs.

12 69. This deception caused Plaintiffs and members of the Class to purchase Products
 13 that they would not otherwise have purchased or to pay more than they would have for Puffs
 14 had they known the statements on the front of Gerber's Puffs conveying healthfulness are con-
 15 trary to the actual ingredients of the Puffs.

16 70. As a result of the business acts and practices described above, Plaintiffs and the
 17 Class, pursuant to California Business and Professions Code § 17203, are entitled to an order
 18 enjoining future wrongful conduct on the part of Gerber and any other orders and judgments
 19 which may be necessary to disgorge Gerber's ill-gotten gains and to restore to any person in
 20 interest any money paid for Puffs as a result of the wrongful conduct of Gerber.

21 **FOURTH CAUSE OF ACTION**

22 **Misleading and Deceptive Advertising,**
 23 **In Violation of California Business and Professions Code § 17500, *et seq.***

24 71. Plaintiffs assert this cause of action against Gerber for violations of California
 25 Business and Professions Code § 17500, *et seq.* for misleading and deceptive advertising.

26 72. At all material times, Gerber engaged in a scheme of offering its Puffs for sale
 27 to Plaintiffs and other members of the Class by way of, inter alia, commercial marketing and
 28 advertising, the Internet, product packaging and labeling, and other promotional materials.

1 Gerber's portrayal of its Puffs as healthful and nutritious is misleading and deceptive. Gerber's
2 advertisements and inducements were made within the State of California and come within the
3 definition of advertising as contained in Business and Professions Code § 17500, *et seq.* in that
4 such promotional materials were intended as inducements to purchase Puffs and are statements
5 disseminated by Gerber to Plaintiffs and the Class and were intended to reach members of the
6 Class. Gerber knew, or in the exercise of reasonable care should have known, that these state-
7 ments were misleading and deceptive.

8 73. In furtherance of its plan and scheme, Gerber prepared and distributed within
9 the State of California—via commercial marketing and advertising, the Internet, product pack-
10 aging and labeling, and other promotional materials—statements that misleadingly and decep-
11 tively represented Puffs as healthful and nutritional. Consumers, including Plaintiffs, necessar-
12 ily and reasonably relied on these materials concerning Puffs. Consumers, including Plaintiffs
13 and the Class members, were among the intended targets of such representations.

14 74. These acts of Gerber, in disseminating said misleading and deceptive state-
15 ments throughout the State of California to consumers, including Plaintiffs and members of the
16 Class, were and are likely to deceive reasonable consumers, including Plaintiffs and other
17 members of the Class, by obfuscating the unhealthy ingredients in Puffs and misrepresenting
18 the levels of the expected ingredients contained in Puffs, all in violation of the “misleading
19 prong” of California Business and Professions Code § 17500.

20 75. As a result of these violations of the “misleading prong” of California Business
21 and Professions Code § 17500, *et seq.*, Gerber has been unjustly enriched at the expense of
22 Plaintiffs and the other members of the Class. Plaintiffs and the Class, pursuant to California
23 Business and Professions Code § 17535, are entitled to an order of this Court enjoining wrong-
24 ful future conduct on the part of Gerber, and any other orders and judgments which may be
25 necessary to disgorge Gerber's ill-gotten gains and restore to any person in interest any money
26 paid for Puffs as a result of the wrongful conduct of Gerber.

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FIFTH CAUSE OF ACTION**Breach of Express Warranty**

76. Gerber provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that Puffs were healthful and had particular healthful characteristics as set forth above.

77. Gerber breached these warranties, causing damage to Plaintiffs and other members of the Class, who overpaid for Puffs, which were not healthful in that they contained ingredients harmful to one's health that did not otherwise conform to Gerber's warranties.

78. As a proximate result of the breach of warranties by Gerber, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid a premium for Products that did not conform to what was promised as promoted, marketed, advertised, packaged, and labeled by Gerber, and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products that they would not have purchased at a premium and used had they known the true facts about Puffs.

SIXTH CAUSE OF ACTION**Breach of Implied Warranty of Merchantability**

79. Plaintiffs and other Class members purchased Gerber's Puffs, which Gerber promoted, marketed, advertised, packaged, and labeled as healthful and as having particular healthful characteristics as set forth above. Pursuant to these sales, Gerber impliedly warranted that Puffs would be merchantable and fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in Puffs' promotions, marketing, advertising, packaging, and labels. As a result, Plaintiffs and other Class members relied on Gerber's representations that Puffs were healthful and had particular healthful characteristics as set forth above, and, at or about that time, Gerber sold its Puffs to Plaintiffs and other Class members. By Gerber's representations regarding the reputable nature of its companies and related entities, and by its promotion, marketing, advertising, packaging, and labeling of

1 Puffs, Gerber warranted that its Puffs are healthful and have particular healthful characteristics
 2 as set forth above. Plaintiffs and Class members bought Puffs, relying on Gerber's representa-
 3 tions that its Products were healthful and have particular healthful characteristics when, in fact,
 4 they are not healthful in that they lack significant amounts of real, natural fruit and thus do not
 5 conform to Gerber's warranties.

6 80. Gerber breached the warranty implied at the time of sale in that Plaintiffs and
 7 Class members did not receive goods that were healthful or that have the healthful characteris-
 8 tics represented and, thus, the goods were not merchantable as fit for the ordinary purposes for
 9 which such goods are used or as promoted, marketed, advertised, packaged, labeled, or sold.

10 81. As a proximate result of this breach of warranty by Gerber, Plaintiffs and the
 11 Class members have suffered damages in an amount to be determined at trial in that, among
 12 other things, they purchased and paid a premium for Puffs that did not conform to what was
 13 promised as promoted, marketed, advertised, packaged, and labeled by Gerber, and they were
 14 deprived of the benefit of their bargain and spent money on Products that did not have any
 15 value or have less value than warranted or Products that they would not have purchased at a
 16 premium and used had they known the true facts about them.

17 SEVENTH CAUSE OF ACTION

18 Unjust Enrichment

19 82. As a result of Gerber's deceptive and misleading labeling, advertising, market-
 20 ing, and sales of Puffs, Gerber was enriched at the expense of Plaintiffs and all others similarly
 21 situated, through the payment of the purchase price for Gerber's Puffs.

22 83. Under the circumstances, it would be against equity and good conscience to
 23 permit Gerber to retain the ill-gotten benefits that it received from Plaintiffs and the members
 24 of the Class in light of the fact that Puffs purchased by Plaintiffs and the members of the Class
 25 were not what Gerber purported them to be. Thus, it would be unjust or inequitable for Gerber
 26 to retain the benefit without restitution to Plaintiffs and the members of the Class for the mon-
 27 ies paid to Gerber for such Products.

28 ///

PRAYER FOR RELIEF

THEREFORE, Plaintiffs demand judgment as follows:

- 1. An order certifying the proposed Class, appointing Plaintiffs as representatives of the Class, and appointing their undersigned counsel as class counsel;**
- 2. A declaration that Gerber is financially responsible for notifying Class members of the pendency of this suit;**
- 3. An award of restitution, including disgorgement pursuant to California Business & Professional Code §§ 17203, 17535;**
- 4. An order enjoining Gerber's unlawful and deceptive acts and practices pursuant to California Business & Professional Code §§ 17203, 17535.**
- 5. Injunctive relief pursuant to California Civil Code § 1780;**
- 6. Monetary damages, including, but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;**
- 7. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;**
- 8. An order awarding Plaintiffs and the Class members the reasonable costs and expenses of suit, including their attorneys' fees; and**
- 9. Any further relief that the Court may deem appropriate.**

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: July 13, 2015

STANLEY LAW GROUP
MATTHEW J. ZEVIN


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19 *Attorneys for Plaintiffs Michelle Gyorke-Takatri,*
 20 *Katie Silver, and the Proposed Class*
 21 *[Additional Counsel Listed on Signature Page]*

22 **SUPERIOR COURT OF CALIFORNIA**

23 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

24 **MICHELLE GYORKE-TAKATRI and**
 25 **KATIE SILVER, on behalf of themselves**
 26 **and all others similarly situated,**

27 **Plaintiffs,**

28 **v.**

NESTLE USA, INC. and GERBER
PRODUCTS COMPANY,

Defendants.

CASE NO.

CLASS ACTION

AFFIDAVIT OF VENUE BY PLAINTIFF
MICHELLE GYORKE-TAKATRI

MBT

1 I, Michelle Gyorke-Takatri, hereby declare that:

2 1. I have personal knowledge of the facts stated herein. If called upon, I could and
3 would competently testify to the facts contained in this Affidavit.

4 2. I am a Plaintiff in the above-entitled action.

5 3. The Complaint filed in this matter contains causes of action for violations of the
6 Consumers Legal Remedies Act against Nestle USA, Inc. and Gerber Products Company
7 ("Defendants"). These causes of action arise out of my purchases of Defendants' Gerber
8 Graduates Puffs, which were falsely marketed as healthful and containing significant amounts of
9 the fruit or vegetables depicted on the products' packaging.

10 4. I purchased the Gerber Graduates Puffs in San Francisco County.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing Affidavit is true and correct, and was executed by me in the City of San Francisco,
13 California, on July 7, 2015.

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15 MICHELLE GYORKE-TAKATRI
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew J. Zevin, Esq. SBN 170736 STANLEY LAW GROUP 10021 Willow Creek Road, Suite 200 San Diego, CA 92131 TELEPHONE NO.: (619) 235-5306 FAX NO.: (815) 377-8419 ATTORNEY FOR (Name): Plaintiffs, Michelle Gyorke-Takatri and Katie Silver		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Superior Court of California County of San Francisco <div style="font-size: 1.2em;">JUL 14 2015</div> CLERK OF THE COURT BY: Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102-4514 BRANCH NAME: Civic Center Courthouse			
CASE NAME: MICHELLE GYORKE-TAKATRI, et al. v. NESTLE USA, INC., et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: 15-546850 JUDGE: _____ DEPT: _____	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/DPDWD (23) Non-PI/DPDWD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/DPDWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **7** (Unfair Business Acts & Practices; Fraudulent Business Acts, etc.)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 13, 2015

Matthew J. Zevin, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other P/PPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/PPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PPD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/PPD/WD

Non-P/PPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-P/PPD/WD Tort (35)
Employment
Wrongful Termination (36) Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)
Enforcement of Judgment
Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition Partnership and Corporate Governance (21)

Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

EXHIBIT C

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
NESTLE USA, INC. and GERBER PRODUCTS COMPANY

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MICHELLE GYORKE-TAKATRI and KATIE SILVER on behalf of themselves
and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presente su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

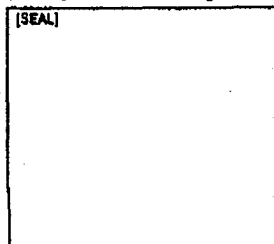
The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Francisco
Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102-4514

CASE NUMBER:
(Número de Caso) 15-546850

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre y dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Matthew J. Zevin, Esq.
Stanley Law Group, 10021 Willow Creek Road, San Diego, CA 92131, Tel: (619) 235-6306

DATE: JUL 14 2015 CLERK OF THE COURT Clerk, by Victoria Gonzalez, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): GERBER PRODUCTS COMPANY
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☒ by personal delivery on (date): 7/17/15

BY FAX

CASE NUMBER: CGC-15-546850 MICHELLE GYORKE-TAKATRI ET AL VS. NESTLE USA, INC.

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: DEC-16-2015

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.10. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) STANLEY LAW GROUP Matthew J. Zevin, Esq. (SBN 170736) 10021 Willow Creek Road, Suite 200 San Diego, California 92131 TELEPHONE NO. (619) 235-5306 FAX NO. (Optional) (815) 377-8419 E-MAIL ADDRESS (Optional): mzevin@aol.com ATTORNEY FOR (Name): Plaintiffs Michelle Gyorke-Takatri, etc.; et al.	FOR COURT USE ONLY ELECTRONICALLY FILED <i>Superior Court of California, County of San Francisco</i> 07/31/2015 Clerk of the Court BY: MICHAEL RAYRAY Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, California 94102 BRANCH NAME:	
PLAINTIFF/PETITIONER: MICHELLE GYORKE-TAKATRI, etc.; et al. DEFENDANT/RESPONDENT: NESTLE USA, INC.; et al.	CASE NUMBER CGC 15-546850
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No. 1236390KS

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): SEE ATTACHED LIST OF DOCUMENTS
3. a. Party served (specify name of party as shown on documents served):
NESTLE USA, INC.
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Gladys Aguilera, CT Corporation System, Agent for Service of Process
4. Address where the party was served:
818 West 7th Street, Suite 930, Los Angeles, California 90012
5. I served the party (check proper box)
 - a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 07/20/2015 (2) at (time): 10:08 a.m.
 - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: MICHELLE GYORKE-TAKATRI, etc.; et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: NESTLE USA, INC.; et al.	CGC 15-546850

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): NESTLE USA, INC.

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Fernando Urvina, Ace Attorney Service, Inc.
- b. Address: 811 Wilshire Boulevard, Suite 900, Los Angeles, California 90017
- c. Telephone number: (213) 623-3979
- d. The fee for service was: \$
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☒ employee ☐ independent contractor.
- (ii) Registration No.: 2015041396
- (iii) County: LOS ANGELES

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

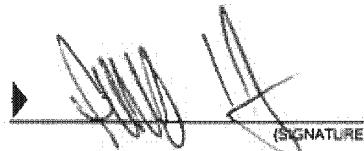
or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: July 21, 2015

FERNANDO URVINA

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

SHORT TITLE: MICHELLE GYORKE-TAKATRI, etc.; et al.
v. NESTLE USA, INC.; et al.

CASE NUMBER

CGC 15-546850

ATTACHED LIST OF DOCUMENTS

1. NOTICE TO PLAINTIFF;
2. EXPEDITED JURY TRIAL INFORMATION SHEET;
3. JUDICIAL MEDIATION PROGRAM;
4. AFFIDAVIT OF VENUE BY PLAINTIFF MICHELLE GYORKE-TAKATRI;
5. [BLANK] CASE MANAGEMENT STATEMENT;
6. STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)

Attached List of Documents to POS for Summons & Complaint #1236390KS

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 1/1

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) STANLEY LAW GROUP Matthew J. Zevin, Esq. (SBN 170736) 10021 Willow Creek Road, Suite 200 San Diego, California 92131 TELEPHONE NO. (619) 235-5306 FAX NO. (Optional) E-MAIL ADDRESS (Optional) ATTORNEY FOR (Name): Plaintiffs Michelle Gyorke-Takatri; et al.	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Francisco 07/31/2015 Clerk of the Court BY: MICHAEL RAYRAY Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, California 94102 BRANCH NAME:	
PLAINTIFF/PETITIONER: MICHELLE GYORKE-TAKATRI, etc.; et al. DEFENDANT/RESPONDENT: NESTLE USA, INC.; et al.	CASE NUMBER CGC 15-546850
PROOF OF SERVICE OF SUMMONS	Ref No or File No. 1236394B

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): **SEE ATTACHED LIST OF DOCUMENTS**
3. a. Party served (specify name of party as shown on documents served):
GERBER PRODUCTS COMPANY
 - b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Nicole Chambers, CSC Lawyers Incorporating Service, Inc., Agent for Service of Process
4. Address where the party was served:
2710 Gateway Oaks Drive, Suite 150N. Sacramento, California 95833
5. I served the party (check proper box)
 - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **07/17/2015** (2) at (time): **2:15 p.m.**
 - b. ☐ **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20) I mailed the documents on (date): _____ from (city): _____ or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: MICHELLE GYORKE-TAKATRI, etc.; et al.	CASE NUMBER
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5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): GERBER PRODUCTS COMPANY

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Kerry Hink, Ace Attorney Service, Inc.
- b. Address: 901 F Street, Suite 150, Sacramento, California 95814
- c. Telephone number: (916) 47-4000
- d. The fee for service was: \$
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☒ employee ☐ independent contractor.
- (ii) Registration No.: 2009-33
- (iii) County: SACRAMENTO

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

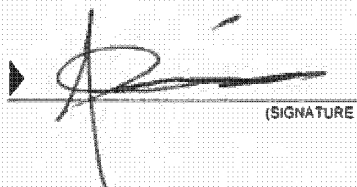
or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: July 22, 2015

KERRY HINK

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

SHORT TITLE MICHELLE GYORKE-TAKATRI, etc.; et al.
v. NESTLE USA, INC.; et al.

CASE NUMBER

CGC 15-546850

1 ATTACHED LIST OF DOCUMENTS

- 2
- 3 1. [BLANK] CASE MANAGEMENT STATEMENT;
- 4 2. EXPEDITED JURY TRIAL INFORMATION SHEET;
- 5 3. NOTICE TO PLAINTIFF
- 6
- 7
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24 Attached List of Documents to POS of Summons and Complaint

25 #1236394B

26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

27 This page may be used with any Judicial Council form or any other paper filed with the court.

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EXHIBIT E

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Matthew J. Zevin, Esq. (SBN: 170736) STANLEY LAW GROUP 10021 Willow Creek Road, Suite 200, San Diego, CA 92131 TELEPHONE NO. (619) 235-5306 FAX NO. (Optional) (815) 377-8419 E-MAIL ADDRESS (Optional) mzevin@aol.com ATTORNEY FOR (Name) Plaintiffs	FOR COURT USE ONLY DISMISSAL ENTERED ELECTRONICALLY FILED <i>Superior Court of California, County of San Francisco</i> 08/10/2015 Clerk of the Court BY: ALISON AGBAY Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS 400 McAllister Street MAILING ADDRESS CITY AND ZIP CODE San Francisco, CA 94102-4514 BRANCH NAME	
PLAINTIFF/PETITIONER: MICHELLE GYORKE-TAKATRI and KATIE SILVER DEFENDANT/RESPONDENT: NESTLE USA, INC. and GERBER PRODUCTS CO	
REQUEST FOR DISMISSAL	CASE NUMBER CCF 15-546850
A conformed copy will not be returned by the clerk unless a method of return is provided with the document.	
This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)	

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name): _____ on (date): _____
- (4) ☐ Cross-complaint filed by (name): _____ on (date): _____
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☒ Other (specify):* as to Defendant Nestle USA, Inc. ONLY

2. (Complete in all cases except family law cases.)

The court ☐ did ☒ did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: August 4, 2015

Matthew J. Zevin

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
- ☐ Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: _____

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
- ☐ Cross-Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on (date): _____
5. ☐ Dismissal entered on (date): _____ as to only (name): _____
6. ☐ Dismissal not entered as requested for the following reasons (specify): _____
7. a. ☐ Attorney or party without attorney notified on (date): _____
- b. ☐ Attorney or party without attorney not notified. Filing party failed to provide ☐ a copy to be conformed ☐ means to return conformed copy

Date: _____

Clerk, by _____, Deputy

CIV-110

PLAINTIFF/PETITIONER: MICHELLE GYORKE-TAKATRI and KATIE SILVER	CASE NUMBER:
DEFENDANT/RESPONDENT: NESTLE USA, INC. and GERBER PRODUCTS CO	CGC 15-546850

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for (name):
2. The person named in item 1 is (check one below):
 - a. ☐ not recovering anything of value by this action.
 - b. ☐ recovering less than \$10,000 in value by this action.
 - c. ☐ recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3. ☐ All court fees and court costs that were waived in this action have been paid to the court (check one): ☐ Yes ☐ No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY MAKING DECLARATION)

(SIGNATURE)

PROOF OF SERVICE

Gyorke-Takatri and Silver, et al. v. Nestle USA, Inc. and Gerber Products Co.
CASE NO. CGC 15-546850

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is: 10021 Willow Creek Road, Suite 200, San Diego, CA 92131.

That on August 10, 2015, I served the following document(s) entitled: **REQUEST FOR DISMISSAL [NESTLE USA, INC.]** on all parties in this action:

Bryan A. Merryman, Esq.
White & Case
633 W 5th Street, Suite 1900
Los Angeles, CA 90071-2007
Tel: 213 620 7802
Fax: 213 620 7700
Email: bmerryman@whitecase.com

Attorneys for Defendants

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be contained in an overnight envelope and to be deposited in a **Federal Express/Overnite Express** box located at _____ for delivery to the above address(es).

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2015, at San Diego, California.


Patricia S. Donnelly