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*Attorney for Plaintiff Anthony Bush and the
Plaintiff Class*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY BUSH, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

MONDELEZ INTERNATIONAL,
INC., MONDELEZ GLOBAL, LLC,
and DOES 1 through 10, inclusive

Defendants.

No. 3:16-cv-02460-RS

CLASS ACTION

SECOND AMENDED COMPLAINT

- 1. Cal. Bus. & Prof. Code § 17200
- 2. Cal. Bus. & Prof. Code § 17500
- 3. Cal. Civ. Code § 1750

JURY TRIAL DEMANDED

Plaintiff Anthony Bush, individually and on behalf of all others similarly situated, brings this class action complaint against Mondelez International, Inc. and Mondelez Global, LLC (collectively “Defendant”) and Does 1 through 10, inclusive (collectively referred to herein as “Defendants”) and alleges as follows:

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I.

NATURE OF THE ACTION

1. This is a class action lawsuit brought on behalf of all purchasers of certain Nabisco Go-Paks! products manufactured, advertised, labeled, distributed, and sold by Mondelez at retail outlets across California, including Mini Oreo, Golden Oreo Mini, Mini Chips Ahoy!, and Nutter Butter Bites (the “Product(s)”) (pictured below).



2. Defendant intentionally misleads and shortchanges consumers by falsely and deceptively misrepresenting the amount of food actually contained in each unit of Product to the tune of more than 25%, as follows: (1) providing less food than the amount actually stated on the containers; and (2) under-filling the containers, leaving a significant portion of the containers filled with empty headspace, or “slack-fill.” There is no functional purpose for the slack-fill and it actually can and does cause damage to the contents of the Products during shipping and handling.

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II.

FACTUAL ALLEGATIONS

3. The average consumer spends only 13 seconds to make an in-store purchasing decision.¹ That decision is heavily dependent on a product’s packaging, and particularly the package dimensions: “Most of our studies show that 75 to 80 percent of consumers don’t even bother to look at any label information, no less the net weight Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it’s a better value.”²

4. Defendant has packaged the Products in opaque, circular, cup-shaped containers with dimensions of 4 inches tall, by 3.5 inches topside diameter, by 2.5 inches bottom diameter.

5. The size of the containers in and of itself is a representation by Defendant as to the amount of food contained in the Products.

6. The Products’ contents are covered with a protective film and lid at the time of packaging. A true and accurate representation is set forth in images below.



¹ <http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-window.html> (citing the Ehrenberg-Bass Institute of Marketing Science’s report “Shopping Takes Only Seconds... In-Store and Online”).

²<http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/productpackaging/overview/product-packaging-ov.htm> (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers).

1 7. Plaintiff made a one-time purchase of the four Products during a single
2 visit to a grocery store in his hometown of San Francisco within the past three years.
3 He paid the full price of approximately \$2.00 for each of the four Products, for a total
4 of approximately \$8.00.

5 8. Plaintiff relied on the size of the containers as a representation by
6 Defendant of the amount of food contained in the Products' containers.

7 9. Subsequent to his purchase of the Products, Plaintiff took a snack break
8 while at home to eat the Products. It was not until that time that Plaintiff learned that
9 the Products' containers contained a significant amount of empty space which served
10 no functional purpose.

11 10. Prior to the point of sale, the Products' packaging did not allow for a
12 visual or audial confirmation of the contents of the Products.

13 11. Plaintiff would not have purchased the Products had he known that the
14 Products contained empty space which serves no functional purpose.

15 12. During Plaintiff's investigation, Plaintiff confirmed that Defendant
16 uniformly under-fills the Products' containers, leaving more than 25% of each
17 container empty headspace, or "slack-fill," which serves no functional purpose. A
18 true and accurate representation is set forth in images below.



1 13. The slack-fill present in the Products does not protect the contents of the
2 packages.

3 14. In fact, the greater the slack-fill, the more room the contents have to
4 bounce around during shipping and handling, and the more likely the contents are to
5 break and sustain damage.

6 15. If, on the other hand, the amount of food contained in each container is
7 commensurate with the size of the container, as consumers expect, the cookies have
8 less room to move around during shipping and handling, and would be less likely to
9 break.

10 16. As such, the slack-fill present in the Products makes the cookies more
11 susceptible to damage, and in fact causes the cookies to often sustain damage.

12 17. The Products are packaged with a protective seal and lid.

13 18. The equipment used to provide the protective seal and the lid does not
14 breach the inside of the Products' containers during the packaging process.

15 19. These protective components of the Products' packaging do not require
16 any empty space to be applied during the manufacturing process.

17 20. Even if there was no slack-fill present in the Products' containers, the
18 packaging equipment would still apply the protective seal and lid without disruption
19 to the packaging equipment or the contents of the Products.

20 21. The slack-fill present in the Products' container is not a result of the
21 cookies settling during shipping and handling.

22 22. Each of the Products' contents, unlike in the case of a powder product,
23 for example, is of a great enough density such that any slack-fill present at the point
24 of sale was present at the time of filling the containers and packaging the contents.

25 23. The Products' do not use packaging that is part of a reusable container
26 with any significant value to the Products independent of its function to hold the
27 cookies.

28 24. For example, the Products' containers are not commemorative items.

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1 25. The Products' containers are plastic cups intended to be discarded into
2 the recycling bin immediately after the contents have been completely consumed.

3 26. Defendant can easily increase the number of cookies contained in each
4 Product container (or, alternatively, decrease the size of the containers) by at least
5 25%.

6 27. In fact, each Product can accommodate the equivalent of one additional
7 full serving.

8 28. Golden Oreo Mini containers can comfortably fit about 10 more cookies,
9 the equivalent of more than one full serving.

10 29. Oreo Mini containers can comfortably fit 10 more cookies, the equivalent
11 of more than one full serving.

12 30. Nutter Butter Bites containers can comfortably fit 11 more cookies, the
13 equivalent of more than one full serving.

14 31. Mini Chips Ahoy! containers can comfortably fit 18 more cookies, the
15 equivalent of more than one full serving.

16 32. Accordingly, because it serves no functional purpose, the slack-fill
17 present in the Products' containers constitutes non-functional slack-fill.

18 33. Plaintiff did not expect that the Products would contain non-functional
19 empty space, especially given that non-functional slack-fill, as opposed to functional
20 slack-fill, is prohibited by federal law and California law.

21 34. Each Product container also contains a statement of the amount of food
22 allegedly contained within each container in the form of cookies per serving, servings
23 per container, and net weight.

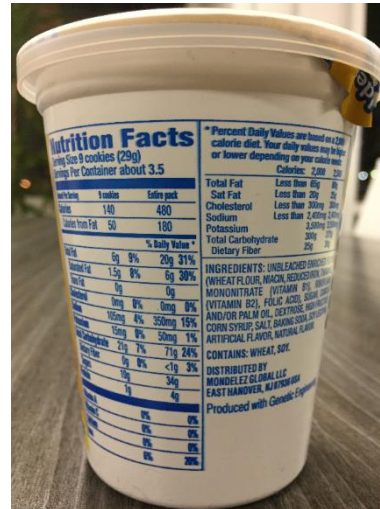
24 35. Defendant states Golden Oreo Mini containers hold about 3.5 servings
25 per container, times 9 cookies per serving, for a total of about 32 cookies. A true and
26 accurate representation is set forth in images below.

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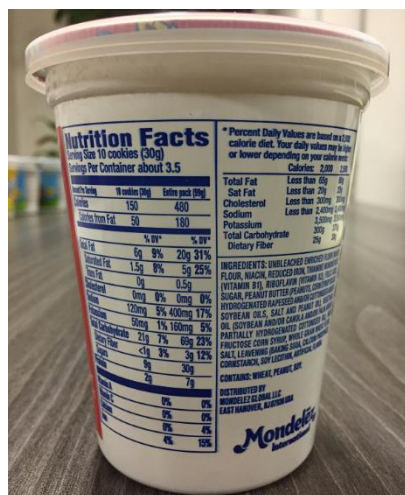
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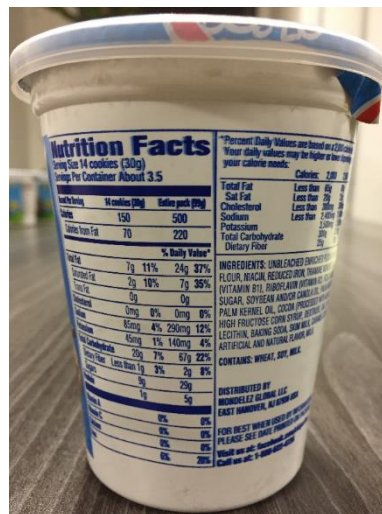
36. However, the Golden Oreo Mini containers contain fewer than 32 cookies. Moreover, the containers can comfortably hold 10 more cookies.

37. Defendant makes the exact same statements with regard to Oreo Mini as Golden Oreo Mini—that is, the containers allegedly hold about 3.5 servings per container, times 9 cookies per serving, for a total of about 32 cookies. However, the Oreo Mini containers contain fewer than 32 cookies. Moreover, the containers can comfortably hold 10 more cookies.

38. Defendant states Nutter Butter Bites containers hold about 3.5 servings per container, times 10 cookies per serving, for a total of about 35 cookies. However, the Nutter Butter Bites containers contain fewer than 35 cookies. Moreover, the containers can comfortably hold 14 more cookies. A true and accurate representation is set forth in images below.



1 39. Defendant states Mini Chips Ahoy! containers hold about 3.5 servings
 2 per container, times 14 cookies per serving, for a total of about 49 cookies. However,
 3 the Mini Chips Ahoy! containers contain fewer than 32 cookies. Moreover, the
 4 containers can comfortably hold 18 more cookies. A true and accurate representation
 5 is set forth in images below.



26 40. Plaintiff viewed these statements of the amount of food allegedly
 27 contained within each container prior to purchasing the Products. However, Plaintiff
 28 could not, from viewing these statements, understand in any meaningful that the
 actual amount of food contained in the Product was less than the amount
 commensurate with the Product's container, let alone that it constituted more than
 25% slack-fill.

29 41. Plaintiff did not know and could not know the density of the cookies
 30 contained in each Product prior to the point of sale. Plaintiff simply expected that the
 net weight was reflective of an amount of food commensurate with the size of the
 containers, not a net weight that rendered more than 25% of the Products' contents
 non-functional empty space.

31 42. Even someone who had purchased the full-size version of the Products
 32 before would not know the true size of the cookies contained in the Products'
 33 containers.

1 43. The size of the cookies contained in the Products—roughly 15/16 of an
2 inch—is only a fraction (approximately 25%) of the size of the cookies contained in
3 the Products’ full-size versions—roughly 1 7/8 inches. A true and accurate
4 representation is set forth in images below.



19 44. Plaintiff naturally understood the mini version of the cookies contained
20 in each Product would be smaller than the full-size version of the cookies. However,
21 Plaintiff expected the cookies would be smaller only to the extent that the number of
22 cookies included in each container would be commensurate with the size of the
23 containers, not leave more than 25% non-functional empty space.

24 45. Moreover, the Products actually contain less food than the amount
25 expressly stated.

26 46. Defendant falsely and deceptively inflated the net weight and the number
27 of servings per container on each of the Products, and Defendant continues to inflate
28 these numbers.

1 47. In short, Defendant misleads and shortchanges consumers who purchased
2 the Products by not only providing less food than the amount stated on the containers,
3 but also by including a significant amount of non-functional empty slack-fill—to the
4 tune of more than 25%.

5 48. There is no functional reason for including slack-fill in the Product, let
6 alone more than 25% slack-fill.

7 49. Defendant’s failure to provide less than the stated amount of food product
8 contained each the Products’ containers, plus inclusion of non-functional slack-fill,
9 allows Defendant to save a considerable amount of money on food production costs
10 to the detriment of unsuspecting consumers.

11 50. Defendant threatens California consumers by continuing to sell the
12 Products using these intentionally deceptive and misleading slack-filled containers.

13 51. Defendant’s packaging and advertising of the Product violates California
14 law against misbranding, which contains requirements that mirror the FDCA, as
15 described herein.

16 52. Plaintiffs and the Class Members (defined *infra*) did not know, and had
17 no reason to know, that the Products contained non-functional slack-fill.

18 53. There is no practical reason for the non-functional slack-fill used to
19 package the Products other than to mislead consumers as to the actual volume of the
20 Products being purchased by consumers.

21 54. Defendant’s Product packaging was a material factor in Plaintiff’s and the
22 Class Members’ decisions to purchase the Products. Based on Defendant’s Product
23 packaging, Plaintiff and the Class Members believed that they were getting more
24 Product than was actually being sold. Had known otherwise, Plaintiff and Class
25 Members would not have purchased the Products.

26 55. Plaintiff and the Class Members paid the full price of the Products and
27 received less Product than they expected due to the non-functional slack-fill in the
28 Products.

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1 income from and through the State of California. They are the owner, manufacturer,
2 and distributor of the Product, and are the companies that created and/or authorized
3 the false, misleading, and deceptive advertisements and/or packaging and labeling for
4 the Product.

5 66. The true names and capacities, whether individual, corporate, associate,
6 or otherwise of certain manufacturers, distributors, and/or their alter egos sued herein
7 as DOES 1 through 10 inclusive are presently unknown to Plaintiff who therefore
8 sues these individuals and/or entities by fictitious names. Plaintiff will seek leave of
9 this Court to amend the Complaint to show their true names and capacities when the
10 same have been ascertained. Plaintiff is informed and believes and based thereon
11 alleges that DOES 1 through 10 were authorized to do and did business in the
12 Northern District of California. Plaintiff is further informed and believes and based
13 thereon alleges that DOES 1 through 10 were and/or are, in some manner or way,
14 responsible for and liable to Plaintiff for the events, happenings, and damages
15 hereinafter set forth below.

16 67. Plaintiff is informed and believes, and based thereon alleges that at all
17 times relevant herein each of these individuals and/or entities was the agent, servant,
18 employee, subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or
19 other representative of each of the remaining defendants and was acting in such
20 capacity in doing the things herein complained of and alleged.

21 68. In committing the wrongful acts alleged herein, Defendants planned and
22 participated in and furthered a common scheme by means of false, misleading,
23 deceptive, and fraudulent representations to induce members of the public to purchase
24 the Products. Defendants participated in the making of such representations in that it
25 did disseminate or cause to be disseminated said misrepresentations.

26 69. Defendants, upon becoming involved with the manufacture, advertising,
27 and sale of the Products, knew or should have known that the Products were being
28 under-filled, and thus the packaging of the Product was misleading. Defendants

1 affirmatively misrepresented the quantity of the Products' contents in order to
2 convince the public and the Products' consumer to purchase and use the Products,
3 resulting in profits of millions of dollars or more to Defendants, all to the damage and
4 detriment of the consuming public.

5 **V.**

6 **CLASS ACTION ALLEGATIONS**

7 70. Plaintiff brings this action on his own behalf and on behalf of all other
8 persons similarly situated. The Class and Class Members which Plaintiff seeks to
9 represent are "All persons residing in the State of California who purchased the
10 Product for personal use and not for resale during the time period May 5, 2012,
11 through the present. Excluded from the Class are Defendants' officers, directors, and
12 employees, and any individual who received remuneration from Defendants in
13 connection with that individual's use or endorsement of the Product."

14 71. The Class comprises many thousands of persons throughout California,
15 the joinder of whom is impracticable, and the disposition of their claims in a Class
16 Action will benefit the parties and the Court. The Class is sufficiently numerous
17 because millions of units of the Products have been sold in California during the time
18 period May 5, 2012, through the present (the "Class Period").

19 72. There is a well-defined community of interest in the questions of law and
20 fact involved affecting the parties to be represented. The questions of law and fact
21 common to the Class predominate over questions which may affect individual Class
22 Members. Common questions of law and fact include, but are not limited to, the
23 following:

- 24 a. Whether Defendants' conduct is an unlawful business act or practice
25 within the meaning of Business and Professions Code section 17200, *et*
26 *seq.*;
- 27 b. Whether Defendants' conduct is an unfair business act or practice within
28 the meaning of Business and Professions Code section 17200, *et seq.*;

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- 1 c. Whether Defendants' conduct is a fraudulent business act or practice
- 2 within the meaning of Business and Professions Code section 17200, *et*
- 3 *seq.*;
- 4 d. Whether Defendants' advertising is untrue or misleading within the
- 5 meaning of Business and Professions Code section 17500, *et seq.*;
- 6 e. Whether Defendants made false and misleading representations in their
- 7 advertising and packaging of the Products;
- 8 f. Whether Defendants knew or should have known that the representations
- 9 were false;
- 10 g. Whether Defendants represented that the Products have characteristics,
- 11 benefits, uses, or quantities which the Product does not have; and
- 12 h. Whether Defendants warranted that the Products contained an adequate
- 13 amount of cookies for a container of its size.

14 73. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will
15 fairly and adequately represent and protect the interests of the Class. Plaintiff has
16 retained competent and experienced counsel in class action and other complex
17 litigation.

18 74. Plaintiff and the Class have suffered injury in fact and have lost money as
19 a result of Defendants' false representations. Plaintiff purchased units of the Products
20 under the belief that they content an amount of cookies commensurate with its
21 representations and the size of the containers. Plaintiff relied on Defendants'
22 packaging and would not have purchased the Product if he had known that the
23 Product did not have the characteristics, ingredients, uses, benefits, or quantities as
24 represented.

25 75. A class action is superior to other available methods for fair and efficient
26 adjudication of this controversy. The expense and burden of individual litigation
27 would make it impracticable or impossible for Class Members to prosecute their
28 claims individually.

1 directors, and employees, and any individual who received remuneration from
2 Defendants in connection with that individual's use or endorsement of the Product.

3 81. Defendant is subject to California's Unfair Competition Law, Cal. Bus.
4 & Prof. Code 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition
5 shall mean and include unlawful, unfair or fraudulent business practices and unfair,
6 deceptive, untrue or misleading advertising..."

7 82. Congress passed the Federal Food, Drug, and Cosmetic Act ("FDCA"),
8 and in so doing established the Federal Food and Drug Administration ("FDA") to
9 "promote the public health" by ensuring that "foods are safe, wholesome, sanitary,
10 and properly labeled." 21 U.S.C. § 393.

11 83. The FDA has implemented regulations to achieve this objective. *See,*
12 *e.g.,* 21 C.F.R. § 101.1 *et seq.*

13 84. The FDA enforces the FDCA and accompanying regulations; "[t]here is
14 no private right of action under the FDCA." *Ivie v. Kraft Foods Global, Inc.*, 2013
15 U.S. Dist. LEXIS 25615, 2013 WL 685372, at *1 (internal citations omitted).

16 85. In 1990, Congress passed an amendment to the FDCA, the Nutrition
17 Labeling and Education Act ("NLEA"), which imposed a number of requirements
18 specifically governing food nutritional content labeling. *See, e.g.,* 21 U.S.C. § 343 *et*
19 *seq.*

20 86. Plaintiff is not suing under the FDCA, but under California state law.

21 87. The California Sherman Food, Drug, and Cosmetic Act ("Sherman
22 Law"), Cal. Health & Safety Code § 109875 *et seq.*, has adopted wholesale the food
23 labeling requirements of the FDCA and NLEA as the food regulations of
24 California. Cal. Health & Safety Code § 110100.

25 88. The Sherman Law declares any food to be misbranded if it is false or
26 misleading in any particular, if the labeling does not conform with the requirements
27 for nutrition labeling set forth in certain provisions of the NLEA. Cal. Health &
28 Safety Code §§ 110660, 110665, 110670.

1 89. The UCL prohibits “any unlawful, unfair... or fraudulent business act or
2 practice.” Cal. Bus & Prof. Code § 17200.

3 90. Defendants’ packaging of the Product, as alleged in the preceding
4 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes
5 unlawful, unfair, and fraudulent conduct.

6 91. Defendants are aware of its unlawful, unfair, and fraudulent conduct.

7 92. As alleged in the preceding paragraphs, the misrepresentations by
8 Defendants detailed above constitutes an unlawful, unfair, and fraudulent business
9 practice within the meaning of California Business & Professions Code § 17200.

10 93. There were reasonably available alternatives to further Defendants’
11 legitimate business interests, other than the conduct described herein. Defendants
12 could have used packaging appropriate for the amount of Product contained therein.

13 94. All of the conduct alleged herein occurs and continues to occur in
14 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
15 generalized course of conduct repeated on thousands of occasions daily.

16 95. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff
17 and the Class Members seek an order of this Court enjoining Defendants from
18 continuing to engage, use, or employ their practice of under filling the Product’s
19 containers. Likewise, Plaintiff and the Class Members seek an order requiring
20 Defendants to disclose such misrepresentations, and additionally request an order
21 awarding Plaintiff restitution of the money wrongfully acquired by Defendants by
22 means of responsibility attached to Defendants’ failure to disclose the existence and
23 significance of said misrepresentations in an amount to be determined at trial.

24 96. Plaintiff and the Class have suffered injury in fact and have lost money as
25 a result of Defendants’ unlawful, unfair, and fraudulent conduct. Plaintiff paid an
26 unwarranted premium for these products. Specifically, Plaintiff paid for Product her
27 never received. Plaintiff would not have purchased the Product if he had known that
28 the containers were not adequately filled.

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VII.

SECOND CAUSE OF ACTION

**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF
BUSINESS & PROFESSIONS CODE § 17500, et seq.**

(By Plaintiff against all Defendants)

97. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

98. This cause of action is brought pursuant to Business and Professions Code § 17200, *et seq.*, on behalf of a Class consisting of all persons who purchased the Product in the State of California for personal use and not for resale during the time period May 5, 2012 through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or endorsement of the Product.

99. California’s False Advertising Law, Cal. Bus. & Prof. Code 17500, *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

100. Defendant knew or should have known, through the exercise of reasonable care that their representations about the Product were untrue and misleading.

101. Defendant’s actions in violation of §17500 were false and misleading such that the general public is and was likely to be deceived.

102. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the Class Members seek an order of this Court enjoining Defendants from

1 continuing to engage, use, or employ their practice of under filling the Product's
 2 containers. Likewise, Plaintiff and the Class Members seek an order requiring
 3 Defendants to disclose such misrepresentations, and additionally request an order
 4 awarding Plaintiff restitution of the money wrongfully acquired by Defendants by
 5 means of responsibility attached to Defendants' failure to disclose the existence and
 6 significance of said misrepresentations in an amount to be determined at trial.

7 103. Plaintiff and the Class have suffered injury in fact and have lost money as
 8 a result of Defendants' false representations. Plaintiff purchased the Product in
 9 reliance of the claims by Defendants that the Product was of the quality represented
 10 by Defendants' packaging and advertising. Plaintiff would not have purchased the
 11 Product if he had known that the claims and advertising as described herein were
 12 false.

13 VIII.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.**

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

17 104. Plaintiff repeats and realleges the allegations of the previous paragraphs,
 18 and incorporates the same as if set forth herein at length.

19 105. This cause of action is brought pursuant to Civil Code § 1750, *et seq.*, the
 20 Consumers Legal Remedies Act ("CLRA"), on behalf of a Class consisting of all
 21 persons who purchased the Product in the State of California for personal use and not
 22 for resale during the time period May 5, 2012, through the present. Excluded from
 23 the Class are Defendants' officers, directors, and employees, and any individual who
 24 received remuneration from Defendants in connection with that individual's use or
 25 endorsement of the Product.

26 106. The Class consists of thousands of persons, the joinder of whom is
 27 impracticable.

28 107. There are questions of law and fact common to the class, which questions

1 are substantially similar and predominate over questions affecting the individual
2 Class Members, including but not limited to: (a) Whether Defendants represented that
3 the Product has characteristics, benefits, uses or quantities which it does not have; (b)
4 Whether the existence, extent and significance of the major misrepresentations
5 regarding the purported benefits, characteristics and efficacy of the Product violates
6 the Act; and (c) Whether Defendants knew of the existence of these
7 misrepresentations.

8 108. The CLRA prohibits certain “unfair methods of competition and unfair or
9 deceptive acts or practices” in connection with a sale of goods.

10 109. The policies, acts, and practices heretofore described were intended to
11 result in the sale of the Product to the consuming public and violated and continue to
12 violate § 1770(a)(5) and (9), of the CLRA, respectively, by representing that the
13 Product: (1) has characteristics, ingredients, uses, benefits, and quantities which it
14 does not have and (2) advertising the Product with intent not to sell it as advertised.

15 110. Defendants fraudulently deceived Plaintiff and the Class by representing
16 that the Product has certain characteristics, benefits, uses, and quantities which they
17 do not have (e.g., that the Product was adequately filled with cookies). In doing so,
18 Defendants intentionally misrepresented and concealed material facts from Plaintiff
19 and the Class. Said misrepresentations and concealment were done with the intention
20 of deceiving Plaintiff and the Class and depriving them of their legal rights and
21 money.

22 111. Defendants fraudulently deceived Plaintiff and the Class by advertising
23 the Product with intent not to sell it as advertised (e.g., by intentionally under-filling
24 the Product’s containers). In doing so, Defendants intentionally misrepresented and
25 concealed material facts from Plaintiff and the Class. Said misrepresentations and
26 concealment were done with the intention of deceiving Plaintiff and the Class and
27 depriving them of their legal rights and money.

28 112. Defendants knew or should have known, through the exercise of

1 reasonable care that the Product’s packaging was misleading.

2 113. Defendants’ actions as described hereinabove were done with conscious
3 disregard of Plaintiff’s rights and Defendants were wanton and malicious in its
4 concealment of the same.

5 114. Plaintiff and the Class have suffered injury in fact and have lost money as
6 a result of Defendants’ false representations in an amount to be determined at trial.

7 **IX.**

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the members
10 of the Class defined herein, prays for judgment and relief on all Causes of Action as
11 follows:

- 12 A. For an order certifying the Class pursuant to Federal Rule of Civil
13 Procedure 23, appointing Plaintiff as class representative, and designating
14 Plaintiff’s counsel as counsel for the Class;
- 15 B. For an order certifying the California Subclass pursuant to Federal Rule
16 of Civil Procedure 23, appointing Plaintiff as class representative of the
17 California Subclass, and designating Plaintiff’s counsel as counsel for the
18 California Subclass;
- 19 C. For an order declaring that Defendant’s conduct violated the CLRA,
20 California Civil Code Section 1750, *et seq.*, and awarding (i) injunctive
21 relief, (ii) costs of suit, and (iii) reasonable attorney fees;
- 22 D. For an order declaring that Defendant’s conduct violated California’s
23 Unfair Competition Law, California Business and Professions Code
24 Section 17200, *et seq.*, California’s False Advertising Law, California
25 Business and Professions Code Section 17500, *et seq.*, and California’s
26 Consumers Legal Remedies Act, Civil Code Section 1750, *et seq.*,
27 awarding: (i) injunctive relief, (ii) actual damages, (iii) prejudgment and
28 post judgment interest, (iv) exemplary and/or punitive damages pursuant

CLARKSON LAW FIRM, P.C.
The Pershing Square Building
448 S. Hill St., Suite 701
Los Angeles, CA 90013

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to California Civil Code Section 3294, (v) costs of suit, and (vi) reasonable attorney fees pursuant to, inter alia, California Code of Civil Procedure Section 1021.5;

- E. For an order enjoining Defendants from pursuing the policies, acts, and practices complained of herein and requiring Defendants to pay restitution and all other forms of equitable relief to Plaintiff and all members of the Class in an amount to be determined at trial;
- F. For compensatory damages in an amount to be determined by the Court and/or jury;
- G. For injunctive relief as pleaded or as the Court may deem proper
- H. For punitive damages;
- I. For pre-judgment interest from the date of filing this suit;
- J. For reasonable attorney fees;
- K. For costs of this suit; and
- L. For such other and further relief as the Court may deem necessary or appropriate.

DATED: October 27, 2016

CLARKSON LAW FIRM, P.C.

 /s/ Ryan J. Clarkson
 Ryan J. Clarkson, Esq.
 Shireen M. Clarkson, Esq.
 Attorneys for Plaintiff and the Proposed
 Plaintiff Class

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Attorney for Plaintiff Anthony Bush and the Plaintiff Class

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY BUSH, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

MONDELEZ INTERNATIONAL,
INC., MONDELEZ GLOBAL, LLC,
and DOES 1 through 10, inclusive

Defendants.

No. 3:16-cv-02460-RS

PROOF OF SERVICE

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Los Angeles, California 90013

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PROOF OF SERVICE

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

I am employed in the County of LOS ANGELES, State of CALIFORNIA. I am over the age of 18 and not a party to within action; my business address is **448 S. Hill St., Ste. 701, Los Angeles, California 90013.**

On October 27, 2016, I served the foregoing documents described as **SECOND AMENDED COMPLAINT** on interested parties in this action by sending a true copy of the document to the following parties as follows:

JENNER & BLOCK LLP
Kenneth K. Lee (SBN 264296)
klee@jenner.com
Kate T. Spelman (SBN 269109)
kspelman@jenner.com
633 West 5th Street, Suite 3600
Los Angeles, CA 90071-2054

JENNER & BLOCK LLP
Dean N. Panos (admitted *pro hac vice*)
dpanos@jenner.com
353 N. Clark Street
Chicago, IL 60654-3456

___ (BY ELECTRONIC MAIL) I caused the document(s) to be successfully transmitted via electronic mail to the offices of the addressees.

X (BY ELECTRONIC SERVICE) I caused the document(s) to be sent to the offices of the addressees via Online Filing Service.

___ (BY FACSIMILE) I transmitted pursuant Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the attached listed fax number(s). The transmission originated from facsimile phone number (310) 396-9635 and was reported as complete and without error.

___ (BY OVER NIGHT DELIVERY) I caused such envelope(s) thereon fully prepaid to be placed in the Norco Overnite box at Santa Monica, California.

___ (BY PERSONAL SERVICE) I caused such envelope(s) to be hand delivered to the offices of the addressees.

___ (BY US MAIL) I caused such envelope(s) with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California, pursuant to California Code of Civil Procedure § 415.40. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

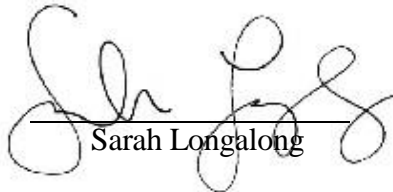
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448 S. Hill St., Suite 701
Los Angeles, California 90013

1 Executed on October 27, 2016, at Los Angeles, California

2 _____ (STATE) I declare under penalty of perjury under the laws of the State of California that the
3 above is true and correct.

4 (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at
5 whose direction the service was made.

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Sarah Longalong