

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LAHONEE HAWKINS, Individually and on
behalf of all others similarly situated in Missouri,

Plaintiff,

v.

NESTLE U.S.A., INC.,

Defendant.

Case No. 4:17-cv-205

[Circuit Court of Phelps County Case No.
16PH-CV01725]

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Nestlé USA, Inc. (“NUSA”), through undersigned counsel, hereby removes the above-captioned action from the Circuit Court of Phelps County, Missouri, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, on the grounds that federal jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2).

I. PAPERS FROM THE REMOVED ACTION

1. On August 21, 2014, plaintiff Lahonee Hawkins filed the removed case, *Hawkins v. Nestle U.S.A., Inc.*, No. 16PH-CV01725, in the Circuit Court of Phelps County, Missouri’s Twenty-fifth Judicial Circuit, which is within the United States District for the Eastern District of Missouri, Eastern Division. Plaintiff served the Petition on NUSA on December 14, 2016. *See Exhibit B.*

2. In accordance with 28 U.S.C. § 1446(a), true and correct copies of the Summons, a conformed copy of the Missouri Petition, Proof of Service on NUSA, and documents filed in the state court are attached hereto as Exhibits A-E.

3. NUSA did not answer plaintiff's Summons and Petition in the Circuit Court for Phelps County prior to removal and is not aware of any further proceedings or filings regarding this action in that court.

II. NATURE OF REMOVED ACTION

4. Plaintiff alleges she purchased NUSA's Raisinets candy. Plaintiff asserts that the packaging of the Raisinets violates the federal Food Drug & Cosmetic Act ("FDCA") and Missouri state law because it contains "non-functional" slack-fill. Pet., ¶¶ 3, 13-17.

5. Plaintiff asserts two causes of action: 1) violation of Missouri's Merchandising Practices Act and 2) unjust enrichment. Pet., ¶¶ 37-50.

6. Plaintiff seeks to represent the following putative class:

"All Missouri citizens who purchased the [Raisinets] Products in the five years preceding the filing of this Petition (the 'Class Period')."

Pet., ¶ 28.

7. Plaintiff seeks damages, disgorgement, injunctive relief, restitution, pre- and post-award interest, and attorney's fees and costs. Pet., ¶¶ 4, 31, 44, 50 & Prayer for Relief.

III. VENUE

8. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division embracing the place where the state court case was pending.

IV. THE REMOVAL IS TIMELY

9. The removal is timely under 28 U.S.C. § 1446(b).

10. Plaintiff filed her Petition on November 18, 2016. *See* Exhibit A. Plaintiff served the Petition on NUSA on December 14, 2016. *See* Exhibit B.

11. NUSA filed this Notice of Removal within thirty (30) days of service, as required by law. *See, e.g., Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

V. NOTICE TO ADVERSE PARTY AND STATE COURT

12. Pursuant to 28 U.S.C. § 1446(d), NUSA is filing with the Clerk of the Circuit Court for Phelps County, and serving on plaintiff, a Notice of Filing of Notice of Removal. A true and correct copy of the Notice of Filing Notice of Removal is being filed concurrently herewith.

VI. BASES FOR REMOVAL JURISDICTION

A. This Court Has Jurisdiction Under CAFA

13. CAFA confers federal jurisdiction over class actions involving: (a) minimal diversity (*i.e.*, diversity between any defendant and any putative class member); (b) at least 100 putative class members; and (c) at least \$5 million in controversy, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d). Although the burden rests on the removing party to demonstrate that CAFA's jurisdictional requirements are met, the party opposing jurisdiction under CAFA bears the burden of demonstrating that any exception to CAFA jurisdiction applies. *Westerfeld v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010). This case satisfies CAFA's requirements.

1. The Parties Are Minimally Diverse

14. Plaintiff is a citizen of Missouri. NUSA is a citizen of Delaware and California. This satisfies the minimal diversity requirement.

15. Plaintiff is and has been a Missouri resident. Pet., ¶ 5. She seeks to represent a class composed of other "Missouri citizens." Pet., ¶ 28. *See Dist. of Columbia v. Murphy*, 314

U.S. 441, 455 (1941) (while residence is not the equivalent of citizenship, residence is properly taken as domicile “until facts are adduced to the contrary”); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (residence prima facie evidence of domicile for purposes of determining citizenship).

16. A corporation is deemed to be a citizen of the state in which it has been incorporated and where it has its principal place of business. 28 U.S.C. § 1332(c)(1).

17. The phrase “principal place of business” “refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). This is the corporation’s “nerve center.” *Id.* at 81 (internal quotation marks omitted). This “should normally be the place where the corporation maintains its headquarters.” *Id.* at 93.

18. At the time of the filing of the Petition and this notice of removal, NUSA was organized under the laws of Delaware, and its headquarters were in California. Pet., ¶ 6. Accordingly, NUSA is not a citizen of Missouri.

19. Therefore, the parties are minimally diverse.

2. The Proposed Class Exceeds 100

20. For purposes of removal, the Court looks to a plaintiff’s allegations respecting class size. *See Brown v. Mortg. Elec. Registration Sys., Inc.*, 738 F.3d 926, 932-33 (8th Cir. 2013).

21. Plaintiff purports to bring a claim on behalf of herself and “[a]ll Missouri citizens who purchased the Products in the five years preceding the filing of this Petition.” Pet., ¶ 28. Plaintiff asserts that, “[u]pon information and belief, the Class consists of hundreds or thousands of purchasers.” Pet., ¶ 30. Thus, the proposed class well exceeds 100 members.

3. The Aggregate Amount in Controversy Exceeds Five Million

22. Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). “[T]he statute tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the definition of [the] proposed class and determine whether the resulting sum exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013).

23. To determine the amount in controversy, the Court must assume that the allegations in the operative pleading are true and that a jury will return a verdict for the plaintiff on all such claims. *See Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013) (internal citation and quotation marks omitted) (“[W]hen determining the amount in controversy, the question ‘is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.’”); *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (“The point is that a removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.”).

24. In a notice of removal, the defendant need “include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014); *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944–45 (8th Cir. 2012) (“The removing party’s ‘burden of describing how the controversy exceeds \$5 million’ constitutes ‘a pleading requirement, not a demand for proof. Discovery and trial come later.’”). The Court also may consider summary-judgment-type evidence relevant to the amount in controversy. *See Pretka*, 608 F.3d at 755 (“Defendants may introduce their own affidavits, declarations, or other documentation—provided of course that

removal is procedurally proper.”); *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111, 1120 (E.D. Ark. 2007) (same).

25. Here, plaintiff alleges that “[t]he amount in controversy is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate.” Pet., ¶ 7. This conclusory assertion is irrelevant to the calculation of the amount in controversy for purposes of determining CAFA jurisdiction. As the Supreme Court clarified in *Standford Fire*, a named plaintiff cannot stipulate to limit the amount in controversy under CAFA “because a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified.” 133 S. Ct. at 1349.

26. Here, it is clear that the amount in controversy exceeds \$5 million.

27. Plaintiff seeks, among other things, damages and disgorgement or restitution that she admits would be “at most equal to the refund of the purchase price she paid for the Product” for the putative class for purchases made in the last five years. Pet., ¶¶ 7, 28. Thus, the amount in controversy in this case is at least the total price paid by all putative class members for the challenged products over the last five years. *See* 28 U.S.C. § 1332(d)(6); *see also Harrington Enterprises, Inc. v. Safety-Kleen Sys., Inc.*, 42 F. Supp. 3d 1197, 1199 (W.D. Mo. 2013) (compensatory damages properly included in amount in controversy).

28. Defendants may demonstrate the amount in controversy using the sales numbers for a challenged product. *Raskas*, 719 F. 3d at 888. Moreover, in cases involving alleged consumer fraud, estimates based on population percentages may be used in measuring the amount in controversy for CAFA jurisdiction. *See, e.g., McNamee v. Knudsen & Sons, Inc.*, 2016 WL 827942, at *2 (E.D. Mo. Mar. 3, 2016) (accepting estimate of juice sales in Missouri that calculated Missouri’s percentage of gross national juice sales based on Missouri’s

population); *Coleman-Anacleto v. Samsung Electronics Am., Inc.*, Case No. 16-cv-2941, ECF No. 40 (N.D. Cal. Sept. 12, 2016) (accepting defendant's allocation of 11% of national sales of televisions to California based on California's share of U.S. population); *Robinson v. Avanquest N. Am. Inc.*, 2015 WL 196343, at *4 (N.D. Ill. Jan. 13, 2015) (accepting defendant's "representative indicator" of damages calculated by using Illinois' percentage of population in the United States to estimate sales of software in Illinois).

29. NUSA does not track sales of Raisinets by state. However, as described in the concurrently filed Declaration of Tim Melvin ("Melvin Decl."), NUSA does track national sales of its Raisinets products by year. Melvin Decl. at ¶¶ 2-3. According to the U.S. Census, the national population in 2013 was approximately 315 million. The population of Missouri that year was approximately 6 million people, or roughly 1.9% of the national population. Applying that ratio to the nationwide sales of Raisinets during the class period, sales of Raisinets in Missouri totaled approximately \$6.4 million. *See* Melvin Decl. at ¶ 3 (Raisinets nationwide sales for the alleged class period exceed \$336,257,015). Thus, NUSA sales of the challenged products in Missouri during the class period well exceeded the \$5 million threshold.

30. Indeed, the amount in controversy is actually substantially greater than the total purchase price paid by the class because plaintiff seeks injunctive relief. *See Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977) (injunctive relief properly included in amount in controversy).

31. The value of injunctive relief is evaluated "not [based on] how a plaintiff subjectively values a right" but based on "the actual value of the object of the suit." *Usery v. Anadarko Petroleum Corp.*, 606 F.3d 1017, 1019 (8th Cir. 2010). When measuring the value of injunctive relief for CAFA jurisdictional purposes, courts in this Circuit consider the cost to a

defendant of complying with an injunction in determining the amount in controversy. *See Adams v. Am. Family Mut. Ins. Co.*, 981 F. Supp. 2d 837, 849-51 (S.D. Iowa 2013); *Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924, 930-31 (E.D. Ark. 2008).

32. Plaintiff alleges that NUSA's packages contain illegal non-functional slack fill and explicitly seeks injunctive relief, which is available under the MMPA. Pet., ¶¶ 4, 31, 44.

33. Injunctive relief that would address plaintiff's claims would likely entail: 1) destroying packaging currently in stores and held by NUSA; 2) redesigning the packaging of the product; and 3) corrective advertising. To ensure compliance with such injunctive relief, NUSA would need to change its packaging nationwide. The cost of taking these actions would well exceed several million dollars.

34. Plaintiff also seeks reasonable attorney's fees and costs, which are available under Mo. Rev. Stat. § 407.025.1. Pet., ¶ 8 & Prayer for Relief; *Harrington Enterprises, Inc. v. Safety-Kleen Sys., Inc.*, 42 F. Supp. 3d 1197, 1199 (W.D. Mo. 2013) (statutory attorney's fees properly included in amount in controversy). "While the Eighth Circuit has not yet addressed the issue, the majority of district courts within this circuit have held that attorney fees incurred post-removal are includable in the amount in controversy calculation so long as they are reasonable." *McNamee*, 2016 WL 827942, at *2 (internal quotation marks omitted).

35. The significant fees the firm representing the plaintiff in this case, Steelman, Gaunt & Horseman, has received in the past support a similar fee estimate in this case. In two cases that settled before any motion practice, Missouri courts awarded the Steelman, Gaunt & Horseman firm attorney's fees of \$650,000 in cases involving claims under the MMPA. The settlements in those cases covered injunctive and declaratory relief but did not include any monetary damages.

36. Based on these awards, attorney's fees incurred if this case were to progress to motion practice, discovery, and/or trial would likely be greatly in excess of those amounts.

37. Based on NUSA's potential liability for damages, injunctive relief, and attorney's fees, the amount in controversy exceeds \$5,000,000.

4. No Exception Applies to Defeat CAFA Jurisdiction

38. Neither CAFA's "local controversy" nor its "home state" exceptions apply to this case. The local controversy exception only applies if the case involves at least one in-state defendant from whom significant relief is sought. 28 U.S.C. § 1332(d)(4)(A)(ii); *see also O'Shaughnessy v. Cypress Media, L.L.C.*, 2014 WL 1791065, at *5 (W.D. Mo. May 6, 2014) (local controversy exception did not apply where only defendant was not a Missouri citizen).

39. For the home state exception to apply, all primary defendants must be citizens of the state in which the case is filed. 28 U.S.C. § 1332(d)(B); *see also Sundy v. Renewable Envtl. Sols., L.L.C.*, 2007 WL 2994348, at *4 (W.D. Mo. Oct. 10, 2007). As discussed *infra*, NUSA, the sole defendant, is not a citizen of Missouri, and therefore this exception does not apply either.

VII. RESERVATION OF RIGHTS AND REQUEST FOR ADDITIONAL BRIEFING IF NECESSARY

40. By removing this matter, NUSA does not waive and, to the contrary, reserves any rights it may have, including, without limitation, all available arguments and affirmative defenses. NUSA does not concede that class certification is appropriate or that plaintiff is entitled to any recovery whatsoever. However, the question is not whether class certification is appropriate or whether plaintiff will recover any amount for any particular time period.

"[W]hen determining the amount in controversy, the question 'is not whether the damages *are*

greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.’” *Raskas*, 719 F.3d at 887 (internal citation and quotation marks omitted).

41. In the event that plaintiff files a request to remand, or the Court considers remand *sua sponte*, NUSA respectfully requests the opportunity to submit additional argument and/or evidence in support of removal.

VIII. CONCLUSION

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, NUSA hereby removes the above-captioned action from the Circuit Court for Phelps County, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated: January 12, 2017

Respectfully submitted,

/s/Carmine R. Zarlenga

Carmin R. Zarlenga 386244DC
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
Telephone: (202) 263-3227
Facsimile: (202) 263-5227
czarlenga@mayerbrown.com

David A. Roodman 38109MO
BRYAN CAVE LLP
211 North Broadway #3600
St. Louis, MO 63102
Telephone: (314) 259-2000
Facsimile: (314) 259-2020
daroodman@bryancave.com

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2017, the foregoing document was served upon the following via overnight mail and electronic mail:

David L. Steelman
Stephen F. Gaunt
Patrick J. Horsefield
Steelman, Gaunt & Horsefield
901 Pine Street, Suite 110
Rolla, Missouri 65401
dsteelman@steelmanandgaunt.com
sgaunt@steelmanandgaunt.com
phorsefield@steelmanandgaunt.com

Attorneys for Plaintiff

By: /s/Carmine R. Zarlenga
Attorney for Nestlé USA, Inc.

EXHIBIT A

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

LAHONEE HAWKINS,)	
Individually and on behalf of all)	
others similarly situated in)	
Missouri,)	
)	
Plaintiff,)	No. _____
v.)	
)	
NESTLE U.S.A., INC.,)	
)	
Defendant.)	

PETITION AND JURY DEMAND

Plaintiff Lahonee Hawkins, individually and on behalf of all others similarly situated in Missouri (“Class Members” or the “Class”), alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

1. “Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages . . . should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.” 15 U.S.C.A. § 1451.

2. The average consumer spends a mere 13 seconds making 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

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”) (last accessed Nov. 17, 2016).

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

3. Plaintiff brings this class-action lawsuit based on Defendant's misleading, deceptive and unlawful conduct in packaging its Raisinets candy (“Products”) in non-transparent, cardboard boxes, which are substantially under-filled or “slack-filled.” The slack-fill serves no functional purpose. Consumers paid a premium for the Products, which they would not have purchased had they known that the containers were substantially empty, or would have purchased them on different terms.

4. Accordingly, Plaintiff brings this action on behalf of herself and all others similarly situated to recover damages and injunctive relief for Defendant's false, deceptive, and misleading conduct in violation of the Missouri Merchandising Practices Act (“MMPA”) and Missouri common law, and for disgorgement of Defendant's unjust enrichment.

PARTIES

5. Plaintiff, Lahonee Hawkins, is a resident of Rolla, Missouri. On at least one occasion during the Class Period (as defined below), Plaintiff purchased Raisinets candy at a Walgreens store in Rolla, Missouri, for personal, family, or household purposes. The purchase price of the Product was \$1.59. Plaintiff's claim is typical of all Class Members in this regard. In addition, the non-functional slack-fill contained in the Product purchased by Plaintiff is typical of, and identical to, the slack-fill contained in the Products purchased by Class Members.

6. Defendant Nestle U.S.A., Inc. is a Delaware corporation with its corporate headquarters located at 800 North Brand Blvd., Glendale, California 91203 and with The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington,

² <http://www.consumerreports.org/cro/magazine-archive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm> (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers) (last accessed Nov. 17, 2016).

Delaware 19801 designated as its agent for service of process. Defendant and its agents manufacture, market, distribute, label, promote, advertise and sell the Products.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. The amount in controversy is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate. Plaintiff believes and alleges that the total value of her individual claims is at most equal to the refund of the purchase price she paid for the Product.

8. Moreover, because the value of Plaintiff's claims is typical of the claim value of each Class Member, the total damages to Plaintiff and Class Members, inclusive of costs and attorneys' fees, will not exceed \$4,999,999 and is less than the five million dollar (\$5,000,000) minimum threshold necessary to create federal court jurisdiction.

9. Defendant cannot plausibly allege it has sold sufficient Products in Missouri during the Class Period to satisfy CAFA's jurisdictional minimum amount in controversy.

10. Based on the allegations of the foregoing paragraphs, there is no diversity or CAFA jurisdiction for this case.

11. This Court has personal jurisdiction over Defendant pursuant to § 506.500, RSMo., as Defendant has had more than sufficient minimum contact with the State of Missouri and has availed itself of the privilege of conducting business in this state. Additionally, and as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that give rise to civil liability, including distributing and selling the misbranded Products throughout the State of Missouri.

12. Venue is proper in this forum pursuant to §§ 508.010 and 407.025.1, RSMo., because the transactions complained of occurred in Phelps County, Missouri and Plaintiff was injured in Phelps County, Missouri.

ALLEGATIONS OF FACT

Federal and Missouri State Law Prohibit Non-Functional Slack-Fill

13. Defendant's deceptive and misleading conduct, as described herein, violates the Federal Food, Drug and Cosmetic Act ("FDCA") Section 403 (21 U.S.C. § 343); Section 403(d) (21 U.S.C. § 343(d)); and the Code of Federal Regulations Title 21 part 100, *et seq.*, as well as parallel Missouri statutes. As described in detail below, these violations contravene Missouri's Merchandising Practices Act, which prohibits deceptive, fraudulent, misleading and unfair conduct in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020.43, RSMo.

14. 21 C.F.R. § 100.100 prohibits nonfunctional slack-fill:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

15. In addition, pursuant to 21 C.F.R. § 100.100, a container is presumptively misleading if it does not allow the consumer to fully view its contents and if it contains nonfunctional slack-fill.

16. Missouri state law also prohibits non-functional slack-fill and incorporates language identical to the C.F.R.: “[F]ood shall be deemed to be misbranded: . . . (4) If its container is so made, formed or filled as to be misleading.” § 196.075, RSMo.

17. None of the enumerated safe-harbor provisions described above applies to the Products, thereby rendering the Products’ slack-fill “nonfunctional” and unlawful. Defendant intentionally incorporated non-functional slack-fill in its packaging of the Products in order to mislead consumers, including Plaintiff and Members of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) (“Misleading consumers is not a valid reason to package a product with slack-fill. See 21 C.F.R. § 100.100(a)(1-6).”).

Defendant’s Products Contain Substantial Non-Functional Slack-Fill

18. Defendant manufactures, markets, promotes, labels, advertises, and sells a variety of food products, including frozen foods, baking products, confectionery, and the Products at issue.

19. The Products are chocolate-covered raisins that are sold in several varieties, including but not limited to Milk Chocolate Raisinets and Dark Chocolate Raisinets.



20. The Products are sold throughout the State of Missouri, and are regularly sold at grocery stores, convenience stores, supermarkets and other food retail outlets.

21. Defendant's Products are packaged in non-transparent cardboard containers, which contain substantial, non-functional slack-fill, as depicted below.



22. The Product containers are an implicit representation of the amount of product contained therein, because consumers reasonably assume that the Products will contain a full complement of product.

23. Reasonable consumers, such as Plaintiff, attached importance to the Products' size as a basis for their purchasing decisions.

24. Defendant's Products are misleading because they contain non-functional slack-fill and the Products' non-transparent cardboard containers prevented Plaintiff and Class Members from viewing the amount of product contained therein. Moreover, the slack-fill cannot be legally justified under any of the enumerated safe-harbor provisions of 21 C.F.R. § 100.100.

25. Plaintiff and Class Members did not know, and had no reason to know, that the Product packaging contained non-functional slack-fill.

26. Defendant's Product packaging was a material factor in Plaintiff's decision to purchase the Products. Based on the Product packaging, Plaintiff and the Class Members believed that they were getting more Product than was actually being sold. Had Plaintiff and

Class Members known Defendant's packaging was slack-filled, they would not have purchased the Products, or would not have paid a premium to purchase them.

27. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct, including the percentage of non-functional slack-fill relative to the purchase price paid.

CLASS ALLEGATIONS

28. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons consisting of:

All Missouri citizens who purchased the Products in the five years preceding the filing of this Petition (the "Class Period").

29. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

30. Upon information and belief, the Class consists of hundreds or thousands of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

31. There are numerous and substantial questions of law or fact common to all of the members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

- a. Whether the Products' container or packaging is so made, formed, or filled as to be misleading;
- b. Whether the Products contained non-functional slack-fill;
- c. Whether Defendant violated the MMPA by selling the Products in containers with non-functional slack-fill;
- d. Whether, and to what extent, injunctive relief should be granted to prevent such conduct in the future;
- e. Whether Defendant has been unjustly enriched by the sale of the Products to the Plaintiff and Class;
- f. Whether Plaintiff and Class Members have sustained damages as a result of Defendant's unlawful conduct; and
- g. The proper measure of damages sustained by Plaintiff and Class Members.

32. The claims of the Plaintiff are typical of the claims of Class Members, in that she shares the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting Class Members, and Plaintiff has no interests adverse to the interests of other Class Members.

33. Plaintiff will fairly and adequately protect the interests of Class Members and has retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

34. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the court as a class action which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

35. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

36. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications

with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

COUNT I:

Violation of Missouri's Merchandising Practices Act

37. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

38. Plaintiff brings this claim individually and on behalf of the Class for Defendant's violations of the MMPA. The MMPA "is designed to regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power as well as those who may fall victim to unfair practices." *Huch v. Charter Commc'ns Inc.*, 290 S.W. 3d 721, 725 (Mo. banc. 2009). The MMPA provides that it is unlawful to "act, use or employ . . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce" § 407.020.1, RSMo.

39. Defendant's conduct as described above constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant incorporates substantial non-functional slack-fill into the Products' non-transparent packaging. As such, the Product containers are made, formed, or filled as to be misleading.

40. Defendants' misrepresentations and omissions as set forth in this Petition are material in that they relate to matters that are important to consumers and/or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members.

41. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its sale and advertisement of the Products.

42. Plaintiff and Class Members purchased the Products for personal, family, or household purposes.

43. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the purchased Products and the value of the Products if they had been as represented. Had Plaintiff and Class Members known the truth about the Products, they would not have purchased the Products, or would have purchased the Products on different terms.

44. In addition, Defendant's conduct has caused Plaintiff and Class Members irreparable injury. As described herein, Defendant has engaged in unlawful and misleading conduct on a routine and automated basis, harming Missouri consumers in a uniform manner. Unless restrained and enjoined, Defendant will continue such conduct. As authorized under § 407.025.2, RSMo., Plaintiff requests injunctive relief, and such other equitable relief as the Court deems just and proper.

COUNT II:
Unjust Enrichment

45. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

46. By purchasing the Products, Plaintiff and Class Members conferred a benefit on Defendant in the form of the purchase price of the slack-filled Products.

47. Defendant had knowledge of such benefits.

48. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

49. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations and omissions.

50. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at the Plaintiff's and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons in Missouri, prays the Court:

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or, alternatively, require Defendant to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

- d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and
- f. For all such other and further relief as may be just and proper.

Dated this 18th day of November 2016.

Lahonee Hawkins, Individually, and on Behalf of a Class of
Similarly Situated Individuals, Plaintiff
By: /s/ David L. Steelman
David L. Steelman, #27334
dsteelman@steelmanandgaunt.com
Stephen F. Gaunt, #33183
sgaunt@steelmanandgaunt.com
Patrick J. Horsefield, #50380
phorsefield@steelmanandgaunt.com
STEELMAN, GAUNT & HORSEFIELD
901 Pine Street, Suite 110
Rolla, Missouri 65401
Tel: (573) 458-5231
Fax: (573) 341-8548

Attorneys for Plaintiff and the Putative Class

EXHIBIT B



**Service of Process
Transmittal**

12/14/2016

CT Log Number 530339458

TO: Douglas Besman, Attorney
Nestle USA, Inc.
30003 Bainbridge Rd
Solon, OH 44139-2290

RE: Process Served in Delaware

FOR: Nestle USA, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: LAHONEE HAWKINS Individually and on behalf of all others similarly situated in Missouri, Pltf. vs. Nestle U.S.A., Inc., Dft.

DOCUMENT(S) SERVED: Summons, Petition

COURT/AGENCY: 25TH JUDICIAL CIRCUIT COURT, PHELPS COUNTY, MO
Case # 16PHCV01725

NATURE OF ACTION: Class Action - Plaintiff and all others similarly situated to recover damages and injunctive relief for Defendant's false, deceptive and misleading conduct in violation

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 12/14/2016 at 12:30

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Within 30 days after service of this summons upon you, exclusive of the day of service

ATTORNEY(S) / SENDER(S): David L. Steelman
STEELMAN, GAUNT & HORSEFIELD
901 Pine Street, Suite 110
Rolla, MO 65401
(573) 458-5231

ACTION ITEMS: CT has retained the current log, Retain Date: 12/14/2016, Expected Purge Date: 12/19/2016

Image SOP

Email Notification, Susan Denigan susan.denigan@purina.nestle.com

Email Notification, Yun Au Yun.Au@us.nestle.com

Email Notification, Diane Hughes diane.hughes@us.nestle.com

Email Notification, Douglas Besman Douglas.Besman@us.nestle.com

Email Notification, Princeton Kim Princeton.Kim@us.nestle.com

Email Notification, Lori Gray lori.gray@us.nestle.com



**Service of Process
Transmittal**

12/14/2016

CT Log Number 530339458

TO: Douglas Besman, Attorney
Nestle USA, Inc.
30003 Bainbridge Rd
Solon, OH 44139-2290

RE: Process Served in Delaware

FOR: Nestle USA, Inc. (Domestic State: DE)

Email Notification, Douglas Keaton douglas.keaton@us.nestle.com

Email Notification, David Herman david.herman@us.nestle.com

SIGNED:

ADDRESS:

TELEPHONE:

The Corporation Trust Company
1209 N Orange St
Wilmington, DE 19801-1120
302-658-7581



IN THE 25TH JUDICIAL CIRCUIT COURT, PHELPS COUNTY, MISSOURI

Judge or Division: WILLIAM EARL HICKLE	Case Number: 16PH-CV01725	FILED November 18, 2016 <i>Sue Brown Circuit Clerk</i> Phelps County MO (Date File Stamp)
Plaintiff/Petitioner: LA HONEE MARIE HAWKINS	Plaintiff's/Petitioner's Attorney/Address: DAVID LEOYD STEELMAN 901 N. Pine Street SUITE 110 P.O. Box 1257 ROLLA, MO 65401	
Defendant/Respondent: NESTLE U.S.A., INC.	Court Address: 200 N MAIN, SUITE 201 COURTHOUSE 2ND FLOOR ROLLA, MO 65401	
Nature of Suit: CC Other Tort		

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

2016 DEC -7 AM 11:00
 SHERIFF'S OFFICE
 CASTLE ROCK

The State of Missouri to: NESTLE U.S.A., INC.

THE CORP TRUST CO
CORP TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DE 19801

COURT SEAL OF



PHELPS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

November 18, 2016
Date

/s/ Sue Brown by Maribel Velazquez-Contreras
Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other (describe) _____ (address)

Served at _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

16PH-CV01725

Electronically Filed - Phelps - November 18, 2016 - 11:13 AM

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

LAHONEE HAWKINS,
Individually and on behalf of all
others similarly situated in
Missouri,

Plaintiff,

v.

NESTLE U.S.A., INC.,

Defendant.

No. _____

2016 DEC -7 AM 11:00

IN SHERIFF'S HAND
BY CASTLE CCH

PETITION AND JURY DEMAND

Plaintiff Lahonee Hawkins, individually and on behalf of all others similarly situated in Missouri ("Class Members" or the "Class"), alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

1. "Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages . . . should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons." 15 U.S.C.A. § 1451.

2. The average consumer spends a mere 13 seconds making 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

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") (last accessed Nov. 17, 2016).

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

3. Plaintiff brings this class-action lawsuit based on Defendant's misleading, deceptive and unlawful conduct in packaging its Raisinets candy ("Products") in non-transparent, cardboard boxes, which are substantially under-filled or "slack-filled." The slack-fill serves no functional purpose. Consumers paid a premium for the Products, which they would not have purchased had they known that the containers were substantially empty, or would have purchased them on different terms.

4. Accordingly, Plaintiff brings this action on behalf of herself and all others similarly situated to recover damages and injunctive relief for Defendant's false, deceptive, and misleading conduct in violation of the Missouri Merchandising Practices Act ("MMPA") and Missouri common law, and for disgorgement of Defendant's unjust enrichment.

PARTIES

5. Plaintiff, Lahonee Hawkins, is a resident of Rolla, Missouri. On at least one occasion during the Class Period (as defined below), Plaintiff purchased Raisinets candy at a Walgreens store in Rolla, Missouri, for personal, family, or household purposes. The purchase price of the Product was \$1.59. Plaintiff's claim is typical of all Class Members in this regard. In addition, the non-functional slack-fill contained in the Product purchased by Plaintiff is typical of, and identical to, the slack-fill contained in the Products purchased by Class Members.

6. Defendant Nestle U.S.A., Inc. is a Delaware corporation with its corporate headquarters located at 800 North Brand Blvd., Glendale, California 91203 and with The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington,

² <http://www.consumerreports.org/cro/magazine-archive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm> (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers) (last accessed Nov. 17, 2016).

Delaware 19801 designated as its agent for service of process. Defendant and its agents manufacture, market, distribute, label, promote, advertise and sell the Products.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. The amount in controversy is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate. Plaintiff believes and alleges that the total value of her individual claims is at most equal to the refund of the purchase price she paid for the Product.

8. Moreover, because the value of Plaintiff's claims is typical of the claim value of each Class Member, the total damages to Plaintiff and Class Members, inclusive of costs and attorneys' fees, will not exceed \$4,999,999 and is less than the five million dollar (\$5,000,000) minimum threshold necessary to create federal court jurisdiction.

9. Defendant cannot plausibly allege it has sold sufficient Products in Missouri during the Class Period to satisfy CAFA's jurisdictional minimum amount in controversy.

10. Based on the allegations of the foregoing paragraphs, there is no diversity or CAFA jurisdiction for this case.

11. This Court has personal jurisdiction over Defendant pursuant to § 506.500, RSMo., as Defendant has had more than sufficient minimum contact with the State of Missouri and has availed itself of the privilege of conducting business in this state. Additionally, and as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that give rise to civil liability, including distributing and selling the misbranded Products throughout the State of Missouri.

12. Venue is proper in this forum pursuant to §§ 508.010 and 407.025.1, RSMo., because the transactions complained of occurred in Phelps County, Missouri and Plaintiff was injured in Phelps County, Missouri.

ALLEGATIONS OF FACT

Federal and Missouri State Law Prohibit Non-Functional Slack-Fill

13. Defendant's deceptive and misleading conduct, as described herein, violates the Federal Food, Drug and Cosmetic Act ("FDCA") Section 403 (21 U.S.C. § 343); Section 403(d) (21 U.S.C. § 343(d)); and the Code of Federal Regulations Title 21 part 100, *et seq.*, as well as parallel Missouri statutes. As described in detail below, these violations contravene Missouri's Merchandising Practices Act, which prohibits deceptive, fraudulent, misleading and unfair conduct in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020.43, RSMo.

14. 21 C.F.R. § 100.100 prohibits nonfunctional slack-fill:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

15. In addition, pursuant to 21 C.F.R. § 100.100, a container is presumptively misleading if it does not allow the consumer to fully view its contents and if it contains nonfunctional slack-fill.

16. Missouri state law also prohibits non-functional slack-fill and incorporates language identical to the C.F.R.: “[F]ood shall be deemed to be misbranded: (4) If its container is so made, formed or filled as to be misleading.” § 196.075, RSMo.

17. None of the enumerated safe-harbor provisions described above applies to the Products, thereby rendering the Products’ slack-fill “nonfunctional” and unlawful. Defendant intentionally incorporated non-functional slack-fill in its packaging of the Products in order to mislead consumers, including Plaintiff and Members of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) (“Misleading consumers is not a valid reason to package a product with slack-fill. See 21 C.F.R. § 100.100(a)(1-6).”).

Defendant’s Products Contain Substantial Non-Functional Slack-Fill

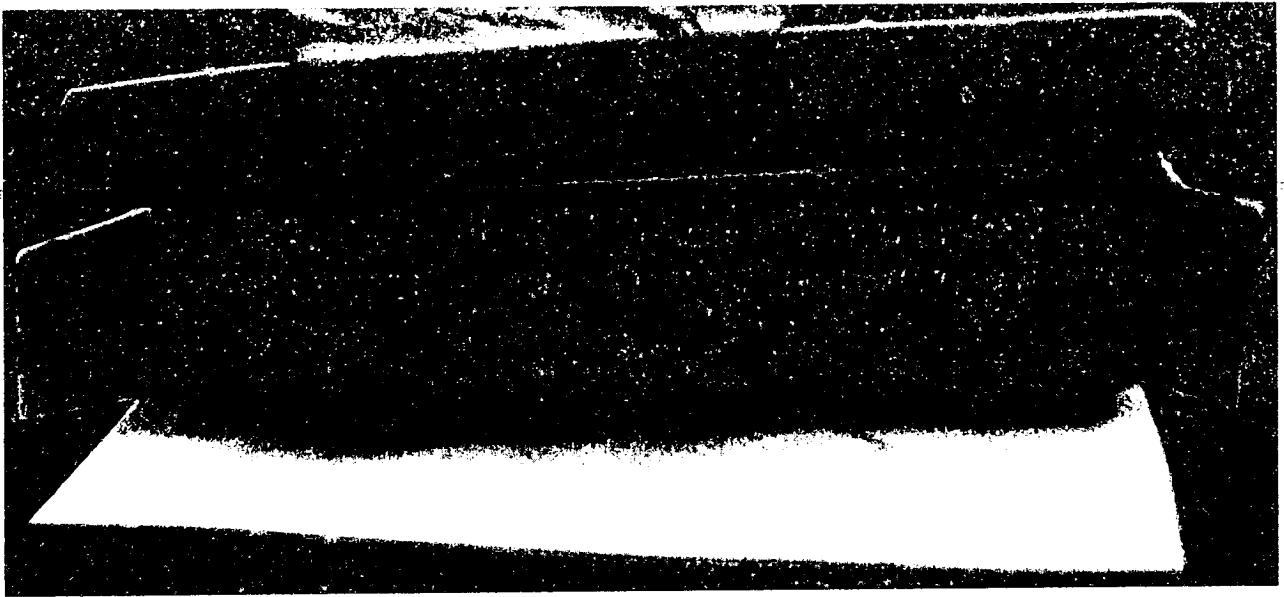
18. Defendant manufactures, markets, promotes, labels, advertises, and sells a variety of food products, including frozen foods, baking products, confectionery, and the Products at issue.

19. The Products are chocolate-covered raisins that are sold in several varieties, including but not limited to Milk Chocolate Raisinets and Dark Chocolate Raisinets.



20. The Products are sold throughout the State of Missouri, and are regularly sold at grocery stores, convenience stores, supermarkets and other food retail outlets.

21. Defendant's Products are packaged in non-transparent cardboard containers, which contain substantial, non-functional slack-fill, as depicted below.



22. The Product containers are an implicit representation of the amount of product contained therein, because consumers reasonably assume that the Products will contain a full complement of product.

23. Reasonable consumers, such as Plaintiff, attached importance to the Products' size as a basis for their purchasing decisions.

24. Defendant's Products are misleading because they contain non-functional slack-fill and the Products' non-transparent cardboard containers prevented Plaintiff and Class Members from viewing the amount of product contained therein. Moreover, the slack-fill cannot be legally justified under any of the enumerated safe-harbor provisions of 21 C.F.R. § 100.100.

25. Plaintiff and Class Members did not know, and had no reason to know, that the Product packaging contained non-functional slack-fill.

26. Defendant's Product packaging was a material factor in Plaintiff's decision to purchase the Products. Based on the Product packaging, Plaintiff and the Class Members believed that they were getting more Product than was actually being sold. Had Plaintiff and

Class Members known Defendant's packaging was slack-filled, they would not have purchased the Products, or would not have paid a premium to purchase them.

27. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct, including the percentage of non-functional slack-fill relative to the purchase price paid.

CLASS ALLEGATIONS

28. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons consisting of:

All Missouri citizens who purchased the Products in the five years preceding the filing of this Petition (the "Class Period").

29. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

30. Upon information and belief, the Class consists of hundreds or thousands of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

31. There are numerous and substantial questions of law or fact common to all of the members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

- a. Whether the Products' container or packaging is so made, formed, or filled as to be misleading;
- b. Whether the Products contained non-functional slack-fill;
- c. Whether Defendant violated the MMPA by selling the Products in containers with non-functional slack-fill;
- d. Whether, and to what extent, injunctive relief should be granted to prevent such conduct in the future;
- e. Whether Defendant has been unjustly enriched by the sale of the Products to the Plaintiff and Class;
- f. Whether Plaintiff and Class Members have sustained damages as a result of Defendant's unlawful conduct; and
- g. The proper measure of damages sustained by Plaintiff and Class Members.

32. The claims of the Plaintiff are typical of the claims of Class Members, in that she shares the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting Class Members, and Plaintiff has no interests adverse to the interests of other Class Members.

33. Plaintiff will fairly and adequately protect the interests of Class Members and has retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

34. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the court as a class action which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

35. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

36. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications

with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

COUNT I:

Violation of Missouri's Merchandising Practices Act

37. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

38. Plaintiff brings this claim individually and on behalf of the Class for Defendant's violations of the MMPA. The MMPA "is designed to regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power as well as those who may fall victim to unfair practices." *Huch v. Charter Commc'ns Inc.*, 290 S.W. 3d 721, 725 (Mo. banc. 2009). The MMPA provides that it is unlawful to "act, use or employ . . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce" § 407.020.1, RSMo.

39. Defendant's conduct as described above constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant incorporates substantial non-functional slack-fill into the Products' non-transparent packaging. As such, the Product containers are made, formed, or filled as to be misleading.

40. Defendants' misrepresentations and omissions as set forth in this Petition are material in that they relate to matters that are important to consumers and/or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members.

41. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its sale and advertisement of the Products.

42. Plaintiff and Class Members purchased the Products for personal, family, or household purposes.

43. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the purchased Products and the value of the Products if they had been as represented. Had Plaintiff and Class Members known the truth about the Products, they would not have purchased the Products, or would have purchased the Products on different terms.

44. In addition, Defendant's conduct has caused Plaintiff and Class Members irreparable injury. As described herein, Defendant has engaged in unlawful and misleading conduct on a routine and automated basis, harming Missouri consumers in a uniform manner. Unless restrained and enjoined, Defendant will continue such conduct. As authorized under § 407.025.2, RSMo., Plaintiff requests injunctive relief, and such other equitable relief as the Court deems just and proper.

COUNT II:
Unjust Enrichment

45. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

46. By purchasing the Products, Plaintiff and Class Members conferred a benefit on Defendant in the form of the purchase price of the slack-filled Products.

47. Defendant had knowledge of such benefits.

48. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

49. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations and omissions.

50. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at the Plaintiff's and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons in Missouri, prays the Court:

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or, alternatively, require Defendant to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

- d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and
- f. For all such other and further relief as may be just and proper.

Dated this 18th day of November 2016.

Lahonee Hawkins, Individually, and on Behalf of a Class of
Similarly Situated Individuals, Plaintiff
By: /s/ David L. Steelman
David L. Steelman, #27334
dstelman@steelmanandgaunt.com
Stephen F. Gaunt, #33183
sgaunt@steelmanandgaunt.com
Patrick J. Horsefield, #50380
phorsefield@steelmanandgaunt.com
STEELMAN, GAUNT & HORSEFIELD
901 Pine Street, Suite 110
Rolla, Missouri 65401
Tel: (573) 458-5231
Fax: (573) 341-8548

Attorneys for Plaintiff and the Putative Class

EXHIBIT C

David L. Steelman
Stephen F. Gaunt
Patrick J. Horsefield

Attorneys at Law

Ryan D. Seelke *
*ALSO ADMITTED IN ILLINOIS

Staff:
Mary Ann Jessen
Jessica S. Guinn
Dacia Holt
Whittley Rawlins
Janelle Goss

November 18, 2016

Phelps County Circuit Clerk
200 N. Main Street
Rolla, MO 65401

Re: Lahonee Hawkins v. Nestle U.S.A., Inc.
Case No.: To Be Assigned

Dear Clerk,

Please generate a summons for Defendant Nestle U.S.A., Inc. for service on its Registered Agent, The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

Thank you for your assistance in this matter.

Very Truly Yours,

/s/ David L. Steelman
David L. Steelman #27334

EXHIBIT D



IN THE 25TH JUDICIAL CIRCUIT COURT, PHELPS COUNTY, MISSOURI

Judge or Division: WILLIAM EARL HICKLE	Case Number: 16PH-CV01725	FILED November 18, 2016 <i>Sue Brown Circuit Clerk</i> Phelps County MO (Date File Stamp)
Plaintiff/Petitioner: LA HONEE MARIE HAWKINS	Plaintiff's/Petitioner's Attorney/Address: DAVID LLOYD STEELMAN 901 N. Pine Street SUITE 110 P.O. Box 1257 ROLLA, MO 65401	
Defendant/Respondent: NESTLE U.S.A., INC.	Court Address: 200 N MAIN, SUITE 201 COURTHOUSE 2ND FLOOR ROLLA, MO 65401	
Nature of Suit: CC Other Tort		

Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)

The State of Missouri to: NESTLE U.S.A., INC.

THE CORP TRUST CO
CORP TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DE 19801

COURT SEAL OF



PHELPS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

November 18, 2016

Date

/s/ Sue Brown by Maribel Velazquez-Contreras

Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other (describe) _____.

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

EXHIBIT E



**Office of the Sheriff
New Castle County, Delaware**

Trinidad Navarro
Sheriff

Louis L. Redding City/County Bldg.
800 N. French Street
Wilmington, DE 19801
Office: 302-395-8450, Fax: 302-395-8460

12/22/2016

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
NEW CASTLE COUNTY) SS

Court Case # 16PH-CV01725
Sheriff # 16-011286

LAHONEE HAWKINS
VS
NESTLE U.S.A., INC

Ronald Fioravanti, being duly sworn, deposes that he/she is a Deputy Sheriff and avers that he/she served upon and left personally upon Registered Agent Representative **Amy McLaren** at **CORPORATION TRUST COMPANY 1209 N. ORANGE STREET WILMINGTON, DE 19801** on 12/14/2016 at 12:30 PM a copy of SUMMONS AND PETITION for **NESTLE USA INC.**

The Deponent further avers that he/she knew the person so served to be the same person as mentioned in the Out of State document.

[Signature]

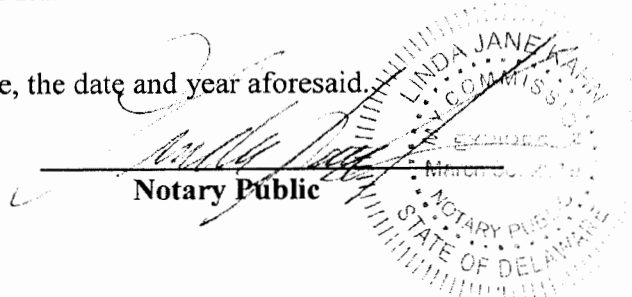
Ronald Fioravanti, Deputy Sheriff

STATE OF DELAWARE)
NEW CASTLE COUNTY) SS

BE IT REMEMBERED that on 12/22/2016 personally came before me, the Subscriber, a Notary Public of the State of Delaware, Ronald Fioravanti, a Deputy Sheriff of New Castle County and State of Delaware, and stated that the facts stated above are true and correct.

SWORN AND SUBSCRIBED before me, the date and year aforesaid.

Notary Public





IN THE 25TH JUDICIAL CIRCUIT COURT, PHELPS COUNTY, MISSOURI

Judge or Division: WILLIAM EARL HICKLE	Case Number: 16PH-CV01725
Plaintiff/Petitioner: LA HONEE MARIE HAWKINS	Plaintiff's/Petitioner's Attorney/Address: DAVID LLOYD STEELMAN 901 N. Pine Street SUITE 110 P.O. Box 1257 ROLLA, MO 65401
Defendant/Respondent: NESTLE U.S.A., INC.	Court Address: 200 N MAIN, SUITE 201 COURTHOUSE 2ND FLOOR ROLLA, MO 65401
Nature of Suit: CC Other Tort	

FILED
November 18, 2016
Sue Brown Circuit Clerk
Phelps County MO
(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: NESTLE U.S.A., INC.	
THE CORP TRUST CO CORP TRUST CENTER 1209 ORANGE STREET WILMINGTON, DE 19801	
<p align="center">COURT SEAL OF PHELPS COUNTY</p>	You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.
November 18, 2016 Date	<i>/s/ Sue Brown by Maribel Velazquez-Contreras</i> Clerk
Officer's or Server's Affidavit of Service	
I certify that:	
1. I am authorized to serve process in civil actions within the state or territory where the above summons was served.	
2. My official title is _____ of _____ County, _____ (state).	
3. I have served the above summons by: (check one)	
<input type="checkbox"/> delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.	
<input type="checkbox"/> leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.	
<input type="checkbox"/> (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).	
<input type="checkbox"/> other (describe) _____ (address)	
Served at _____ in _____ County, _____ (state), on _____ (date) at _____ (time).	
Printed Name of Sheriff or Server	Signature of Sheriff or Server
Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)	
I am: (check one) <input type="checkbox"/> the clerk of the court of which affiant is an officer.	
<input type="checkbox"/> the judge of the court of which affiant is an officer.	
<input type="checkbox"/> authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)	
<input type="checkbox"/> authorized to administer oaths. (use for court-appointed server)	
(Seal)	Signature and Title
Service Fees, if applicable Summons \$ _____ Non Est \$ _____ Mileage \$ _____ (_____ miles @ \$ _____ per mile) Total \$ _____	
See the following page for directions to clerk and to officer making return on service of summons.	

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LAHONEE HAWKINS, individually and on
behalf of all others similarly situated in
Missouri,

Plaintiff,

v.

NESTLÉ U.S.A., INC.,

Defendant.

Case No. 4:17-cv-205

[Circuit Court of Phelps County Case
No. 16PH-CV01725]

DECLARATION OF TIM MELVIN IN SUPPORT OF NOTICE OF REMOVAL

I, Tim Melvin, declare under penalty of perjury as follows:

1. I am a Category and Shopper Development Sales Director for Nestlé USA, Inc. (“NUSA”). I have worked for NUSA for 30 years. I submit this declaration in support of NUSA’s Notice of Removal filed in this case. I am over the age of eighteen and am competent to make this declaration. I am further authorized to execute this declaration on behalf of NUSA. This declaration is based on my general knowledge and experience at NUSA and on my specific knowledge by virtue of the duties, responsibilities, and obligations of my current position at NUSA. It is on this basis that I have personal knowledge of the facts set forth below and make this declaration.

2. In my position as a Category and Shopper Development Sales Director at NUSA, and as part of my duties and responsibilities, I am generally familiar with and have access to records that are obtained and maintained in the ordinary course of NUSA’s business, including records of NUSA’s revenues. Records of NUSA’s revenues are obtained from third-party consumer measurement companies, such as Nielsen Holdings N.V. (“Nielsen”). These records

are used in the operation of NUSA's business and relied on in making business strategy decisions. As part of my duties, I have personal knowledge, or have acquired personal knowledge from my personal review of business records from Nielsen kept in the course of regularly conducted business activities by NUSA, of NUSA's national revenues on a yearly basis from its Raisinets products.

3. Based on my review of those records, NUSA's revenues from the sale of Raisinets in the US were approximately \$72,464,054 in 2012, \$69,018,472 in 2013, \$67,468,006 in 2014, \$65,135,720 in 2015, and \$62,170,763 in 2016.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 11th day of January in 2017, _____.

By: Tina M. [Signature]

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) _____

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

)	
)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

**THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY
WHEN INITIATING A NEW CASE.**

☐ THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS
PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____
AND ASSIGNED TO THE HONORABLE JUDGE _____.

☐ THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY
PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND
THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY,
THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

☐ NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT
COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE
MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: _____

Signature of Filing Party