

**CLARKSON LAW FIRM, P.C.**  
Ryan J. Clarkson (SBN 257074)  
rclarkson@clarksonlawfirm.com  
Shireen M. Clarkson (SBN 237882)  
sclarkson@clarksonlawfirm.com  
9255 Sunset Blvd., Ste. 804  
Los Angeles, CA 90069  
Telephone: (213) 788-4050  
Facsimile: (213) 788-4070

*Attorneys for Plaintiff Thomas Iglesias*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS IGLESIAS, individually and  
on behalf of all others similarly  
situated,

Plaintiff,

vs.

FERRARA CANDY CO., and DOES 1  
through 10, inclusive,

Defendants.

Case No. 3:17-cv-00849-VC

**SECOND AMENDED COMPLAINT**

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS & PROFESSIONS CODE § 17500, *et. seq.*
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS & PROFESSIONS CODE § 17200, *et. seq.*
4. UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**

Plaintiff Thomas Iglesias, individually and on behalf of all others similarly situated, brings this Second Amended Complaint against Ferrara Candy Co. (“Defendant”) and Does 1 through 10, inclusive (collectively referred to herein as “Defendants”) and alleges as follows:

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

## SUMMARY OF THE ACTION

1  
2 1. California law recognizes that food packaging can be deceptive, even  
3 when the information on the label is truthful. For example, if packaging is  
4 substantially larger than necessary to contain the contents, consumers may be  
5 deceived into believing that they are buying more of a product than they actually are.

6 2. This is a class action lawsuit brought on behalf of all purchasers of  
7 Jujufruits® brand candy products (the “Product”) sold at retail outlets and movie  
8 theaters throughout California and the United States. A true and correct  
9 representation of the Product’s front label is set forth below.



20 3. Defendant intentionally misleads and shortchanges consumers by falsely  
21 and deceptively misrepresenting the amount of candy actually contained in each box  
22 of Product. Defendant uniformly and substantially under-fills the opaque boxes by  
23 41%. Every box is filled only 59% full with candy product. During Plaintiff’s  
24 investigation into the reason for Defendant’s under-filling of the boxes, which  
25 included consultation with an expert in packaging design and a survey of comparator  
26 boxed candy products available in the marketplace, Plaintiff discovered that nearly  
27 all of the 41% balance of empty space, or “slack-fill,” serves no legitimate or lawful  
28 function, as further described herein.

1 **PARTIES**

2 4. Plaintiff is, and at all times relevant hereto was, a citizen of California  
3 residing in the County of San Francisco. Plaintiff made a one-time purchase of  
4 Jujufruits® 5 oz. box at a San Francisco-based location of a nationwide movie chain  
5 in California in 2016. In making his purchase, Plaintiff relied upon the opaque  
6 packaging, including the size of the box, which was prepared and approved by  
7 Defendant and its agents and disseminated statewide and nationwide, as well as  
8 designed to encourage consumers to purchase the Product. If Plaintiff had known  
9 that the box contained nonfunctional slack-fill, he would not have purchased the  
10 Product, let alone paid for candy product he never received.

11 5. Ferrara Candy Company is a corporation headquartered in Oakbrook  
12 Terrace, Illinois. Ferrara maintains its principal business office at 1 Tower Lane  
13 #2700, Oakbrook Terrace, IL, 60181. Ferrara, directly and through its agents, has  
14 substantial contacts with and receives substantial benefits and income from and  
15 through the State of California. Ferrara is the owner, manufacturer, and distributor  
16 of the Product, and is the company that created and/or authorized the false,  
17 misleading, and deceptive packaging for the Product.

18 6. The true names and capacities, whether individual, corporate, associate,  
19 or otherwise of certain manufacturers, distributors, and/or their alter egos sued herein  
20 as DOES 1 through 10 inclusive are presently unknown to Plaintiff who therefore  
21 sues these individuals and/or entities by fictitious names. Plaintiff will seek leave of  
22 this Court to amend the Complaint to show their true names and capacities when the  
23 same have been ascertained. Plaintiff is informed and believes and based thereon  
24 alleges that DOES 1 through 10 were authorized to do and did business in Los  
25 Angeles County. Plaintiff is further informed and believes and based thereon alleges  
26 that DOES 1 through 10 were and/or are, in some manner or way, responsible for  
27 and liable to Plaintiff for the events, happenings, and damages hereinafter set forth  
28 below.

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over all causes of action asserted herein  
3 pursuant to the California Constitution, Article VI, Section 10, because this case is  
4 a cause not given by statute to other trial courts.

5 8. Plaintiff has standing to bring this action pursuant to the California  
6 Consumers Legal Remedies Act, Civil Code Section 1750, *et seq.*; California False  
7 Advertising Law, Business and Professions Code Section 17500, *et seq.*; and  
8 California Unfair Competition Law, Business and Professions Code Section 17200,  
9 *et seq.*

10 9. This lawsuit includes all candy products manufactured by Defendant  
11 and packaged for sale to consumers in an opaque cardboard box (including bag-in-  
12 a-box products), including Jujufruits®, Jujubes®, Now and Later®, Lemonhead®,  
13 Applehead®, Cherryhead®, Grapehead®, RedHots®, Trolli®, Chuckles®, Black  
14 Forest®, Jawbuster®, Jawbreaker®, Brach's®, Boston Baked Beans®, Super  
15 Bubble®, Rainblo®, Atomic Fireball®, and all flavors and varieties of those  
16 candies, except for products packaged in individual serving pouches and sold to  
17 consumers in opaque cardboard boxes that list the total number of pouches and the  
18 net weight of each pouch.

19 10. Out-of-state participants can be brought before this Court pursuant to  
20 the provisions of California Code of Civil Procedure Section 395.5.

21 11. Defendant is subject to personal jurisdiction in California based upon  
22 sufficient minimum contacts which exist between it and California.

23 12. Venue is proper in this Court because Defendant conducts business in  
24 this District, Defendant receives substantial compensation from sales in this District,  
25 and Defendant made numerous misrepresentations which had a substantial effect in  
26 this District, including, distribution and sale of the Product throughout this District's  
27 retail outlets, as well as distribution of print media and internet advertisements.

28 ///

**FACTUAL ALLEGATIONS**

13. The average consumer spends only 13 seconds to make an in-store purchasing decision.<sup>1</sup> 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.”<sup>2</sup>

14. Research has consistently demonstrated that consumers rarely read details beyond the final price of the product, and often, not even that.<sup>3</sup>

15. Container size impacts consumer perception and consumer purchase decision-making: “Packages that appear larger will be more likely to be purchased.”<sup>4</sup>

16. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein.

17. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons which are illegitimate or unlawful.

18. Defendant packages the Product in an opaque rectangular box with the following dimensions: 5.5 inches tall by 3 inches wide by .75 inches deep.

---

<sup>1</sup> <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”).

<sup>2</sup> <http://www.consumerreports.org/cro/magazinearchive/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).

<sup>3</sup> Dickson, P. & Sawyer, G., *Point of Purchase Behavior and price Perceptions of Supermarket Shoppers*, Marketing Science Institute Report No. 86-102, Cambridge, MA: Marketing Science Institute (1986).

<sup>4</sup> Raghubir, P. & Krishna, A., *Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?*, 36 *Journal of Marketing Research*, No. 3, 313-326 (1999).

1           19.     The size of the box in and of itself is a representation by Defendant as to  
2 the amount of candy contained in the box. Plaintiff and other consumers of the  
3 Product detrimentally and reasonably relied on this representation of quantity when  
4 they purchased the Product.

5           20.     Plaintiff and other consumers of the Product made their purchase  
6 decisions based upon a visual observation of the Product's packaging through the  
7 showcase window of a movie theater concession stand or retail outlet store shelf.

8           21.     Plaintiff and other consumers of the Product who purchased the Product  
9 at a movie theater did not have a reasonable opportunity to view any other  
10 representations of quantity contained on the Product's packaging, *e.g.*, net weight or  
11 serving disclosures.

12           22.     Even if Plaintiff and other consumers of the Product had a reasonable  
13 opportunity to review prior to the point of sale other representations of quantity like  
14 net weight or serving disclosures, such as consumers who purchased the Product at a  
15 retail outlet, they did not and would not have reasonably understood or expected it to  
16 translate to a quantity of candy product meaningfully different from their expectation  
17 of a quantity of candy product commensurate with the size of the box.

18           23.     Plaintiff made a one-time purchase of a box of Jujyfruits® 5 oz. candy  
19 product during a visit to a San Francisco-based location of nationwide movie theater  
20 chain in California in 2016.

21           24.     Plaintiff paid approximately \$4.00 for the Product.

22           25.     At the time Plaintiff purchased the Product, the Product was in a glass  
23 showcase, behind a concession counter.

24           26.     Glass showcases are uniformly used for the sale of the Product at all  
25 movie theater concession counters throughout California and the United States as a  
26 security measure and for customer convenience.

27           27.     Therefore, Plaintiff, like all purchasers of the Product from movie theater  
28 concession stands, did not have the opportunity to inspect the Product's packaging



1 for other representations of quantity of candy product contained therein other than  
2 the size of the box itself.

3 28. For example, Plaintiff did not have the opportunity to inspect any net  
4 weight or serving disclosures contained on the box. Instead, he observed the Product  
5 from a distance through the showcase window and pointed it out to the concession  
6 counter employee. Plaintiff then paid for the Product before he took physical  
7 possession of the Product.

8 29. Research indicates that 90% of consumers make a purchase after only  
9 visually examining the front of the packaging but without physically having the  
10 product in their hands, as in this case.<sup>5</sup>

11 30. Even if Plaintiff had been given the opportunity to review all parts of the  
12 packaging and observed other representations of quantity such as net weight or  
13 serving disclosures, Plaintiff would not have reasonably understood or expected it to  
14 translate to a quantity of candy product meaningfully different from his expectation  
15 of a quantity of candy product commensurate with the size of the box.

16 31. Plaintiff reasonably and detrimentally relied on the size of the box as a  
17 representation by Defendant of the quantity of candy product contained in the  
18 Product's containers.

19 32. Once Plaintiff took his seat in the movie theater, Plaintiff opened the top  
20 of the Product's box. Only then did he discover—to his disappointment—that the  
21 Product's box was only roughly half full, while the other half constituted  
22 nonfunctional slack-fill.

23 33. Prior to the point of sale, the Product's packaging does not allow for a  
24 visual or auidial confirmation of the contents of the Product. The Product's opaque  
25 packaging prevents a consumer from observing the contents before opening. Even if  
26

27 <sup>5</sup> Clement, J., Visual influence on in-store buying decisions: an eye-track experiment  
28 on the visual influence of packaging design, 23 Journal of Marketing Management,  
917–928 (2007).

1 a consumer were to “shake” the Product before opening, it is impossible for the  
2 consumer to discern the presence of any nonfunctional slack-fill.

3 34. The other information that Defendant provides about quantity of candy  
4 product on the front label and back label of the Product does not enable a consumer  
5 to form any meaningful understanding about how to gauge the quantity of contents  
6 of the Product as compared to the size of the box itself.

7 35. The front label of the Product indicates a net weight of 5.0 ounces (142  
8 grams). The nutritional panel on the back of the Product reports a serving size of 15  
9 pieces (40 grams) and total of 3.5 servings per container. True and correct  
10 representations of the Product’s front and back labels are set forth below.



18 36. Disclosures of net weight and serving sizes in a measurement of ounces  
19 or grams does not allow the reasonable California or American consumer to make  
20 any meaningful conclusion about the quantity of candy product contained in the  
21 Product’s boxes that would be different from the reasonable consumer’s expectation  
22 that the quantity of candy product is commensurate with the size of the box. Nor  
23 does a disclosure in terms of candy pieces where there is no “actual size” image  
24 pictured on the packaging, as is the case here.

25 37. Plaintiff would not have purchased the Product had he known the Product  
26 contained slack-fill which serves no functional or lawful purpose.

27 38. During Plaintiff’s investigation, Plaintiff confirmed that Defendant  
28 uniformly and substantially under-fills the Product’s boxes, rendering an



1 extraordinary 41% of each box slack-fill, nearly all of which serves no functional or  
2 lawful purpose. Plaintiff shall proffer expert testimony to establish this fact once this  
3 case reaches the merits. A true and correct representation of the inside of the  
4 Jujufruits® box is pictured below.



5  
6  
7  
8  
9  
10  
11 39. The Product is made, formed, and filled as to be misleading. The Product  
12 therefore is misbranded.

13 40. As described herein, the slack-fill contained in the Product does not serve  
14 a legitimate or lawful purpose.

15 41. As confirmed during Plaintiff's investigation, including consultation with  
16 an expert in packaging design, the slack-fill contained in the Product does not protect  
17 the contents of the packages. Plaintiff shall proffer expert testimony to establish this  
18 fact once this case reaches the merits.

19 42. In fact, the greater the slack-fill, the more room the contents have to  
20 bounce around during shipping and handling, and the more likely the contents are to  
21 break and sustain damage.

22 43. If, on the other hand, the amount of candy product contained in each box  
23 were commensurate with the size of the box as consumers expect, then the candy  
24 product would have less room to move around during shipping and handling, and  
25 would be less likely to sustain damage.

26 44. As such, the slack-fill present in the Product makes the candy product  
27 more susceptible to damage.

28 ///

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

1           45.       The Product is packaged in a box and sealed with heated glue. A true and  
2 correct representation of the heated glue seal is shown in the image below.



7           46.       As confirmed by Plaintiff's expert in packaging design, the equipment  
8 used to seal the carton does not breach the inside of the Product's containers during  
9 the packaging process. The heated glue is applied to an exterior flap of the box,  
10 which is then sealed over the top by a second exterior flap.

11           47.       As confirmed during Plaintiff's survey of comparator boxed candy  
12 products available in the marketplace, neither the heated glue application nor the  
13 sealing equipment require slack-fill during the manufacturing process. Even if there  
14 were no slack-fill present in the Product's boxes, the machines used for enclosing the  
15 contents in the package would work without disrupting the packaging process.

16           48.       As confirmed by Plaintiff's expert in packaging design, the slack-fill  
17 present in the Product's container is not a result of the candy product settling during  
18 shipping and handling. Given the Product's density, shape, and composition, any  
19 settling occurs immediately at the point of filling the box. No additional product  
20 settling occurs during subsequent shipping and handling. Plaintiff shall proffer expert  
21 testimony to establish this fact once this case reaches the merits.

22           49.       Contrary to a powder product, for example, the contents of the Product  
23 are of a great enough density such that any slack-fill present at the point of sale was  
24 present at the time of filling the containers and packaging the contents.

25           50.       As confirmed by Plaintiff's expert in packaging design, the partially  
26 perforated side tab on the Product's packaging does not perform any specific  
27 function that is inherent to the nature of the contents. A reasonable consumer can  
28 easily dispense the Product from one of the ends of its packaging, without any side

1 tab. Therefore, the Product's packaging does not require any functional slack-fill to  
2 accommodate a perforated side tab.

3 51. At the side of the Product's box, at the very top, the Product's packaging  
4 bears a partially perforated tab approximately one inch in length with the word  
5 "OPEN" beneath it. A true and correct representation of the side of the box  
6 containing the partially perforated dispensing tab is shown in the image below.



10 52. Defendant ostensibly places the partially perforated tab on the side of the  
11 Product as a method to dispense the contents of the Product. However, the placement  
12 and perforation pattern of the tab, *inter alia*, evidence Defendant knows or should  
13 know that the reasonable consumer does not actually use said perforated tabs to  
14 dispense the candy product. The true purpose behind Defendant's inclusion of the  
15 partially perforated tab is to conceal the nonfunctional slack-fill contained in the  
16 Product.

17 53. The tab of each Product's box is not completely perforated. Therefore,  
18 when a consumer tears along the perforated line, he has obstructed access to the  
19 candy content. Given the size of the candy content in comparison to the opening of  
20 the Product's tab, a consumer encounters difficulty when trying to dispense the  
21 Product. Undoubtedly, a reasonable consumer will opt against using the Product's  
22 partially perforated tab while watching a movie in a dark theater, as was the case for  
23 Plaintiff.

24 54. Reasonable consumers instinctually open the Product by tearing open the  
25 Product's glued seal, as Plaintiff did. Defendant's inconvenient design of the  
26 Product's side tab further incentivizes consumers to open the Product by breaking  
27 one of its glued seals, as was the case with Plaintiff.

1 55. Defendant can reasonably foresee that consumers open the Product by  
2 undoing one of the glued seals of the packaging. Thus, Defendant knows that any  
3 perforated side tab it places on the Product's packaging must create an opening that  
4 accounts for the size of the Product's candy contents. The fact that Defendant fails to  
5 do this, instead of designing the tab with total perforation, demonstrates that  
6 Defendant does not genuinely intend for the side tab to be used, and that the  
7 reasonable consumer does not actually use it, as in Plaintiff's case.

8 56. A simple review of the Product's packaging establishes that the box is  
9 not part of a reusable container with any significant value to the Product independent  
10 of its function to hold the candy product.

11 57. For example, the Product's container is not a commemorative item.

12 58. The Product's container is a box intended to be discarded into the  
13 recycling bin immediately after the contents have been completely consumed.

14 59. As confirmed by Plaintiff's expert in packaging design and Plaintiff's  
15 survey of comparator boxed candy products available in the marketplace, Defendant  
16 can easily increase the quantity of candy product contained in each Product container  
17 or, alternatively, decrease the size of the containers, by 41%. Plaintiff shall proffer  
18 expert testimony to establish this fact once this case reaches the merits.

19 60. The "Nutrition Facts" panel on the back of each box states "Servings Per  
20 Container about 3.5." By arithmetic, each serving would be the equivalent of: 100%  
21 expected total fill, divided by 3.5 servings, yielding a value of 28.6% of volume per  
22 serving. Given the Product can accommodate an additional 41% of candy product,  
23 consumers are being shortchanged roughly 1.4 servings per box.

24 61. Contrast Defendant's packaging of the Product with a comparator  
25 product like "Boston Baked Beans" ("Boston Beans"), a candy product also  
26 manufactured by Defendant and similarly sold at movie theaters and retail outlets  
27 located throughout California and the United States. A true and correct  
28 representation of the front of the BBB product is shown in the image below.

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



62. Boston Beans are sold in identical packaging to that of the Product, *i.e.*, opaque boxes of identical size, shape, volume, and material.

63. Boston Beans are packaged using nearly identical fill and heated glue enclosing machines to those of the Product.

64. Boston Beans are coated candies of nearly identical size, shape, and density of that of the Product.

65. However, contrary to the Product, Boston Beans have very little slack-fill and negligible nonfunctional slack-fill. A true and correct representation is pictured in the image below.



66. Boston Beans' packaging provides additional evidence that the slack-fill present in the Product is nonfunctional to the tune of 41%.

67. Boston Beans' packaging provides additional evidence that the slack-fill present in the Product is not necessary to protect and in fact does not protect the contents of the Product.

68. Boston Beans' packaging provides additional evidence that the slack-fill present in the Product is not a requirement of the machines used for enclosing the contents of the Product.



1 69. Boston Beans’ packaging provides additional evidence that the slack-fill  
2 present in the Product is not a result of unavoidable product settling during shipping  
3 and handling.

4 70. Boston Beans’ packaging provides additional evidence that the slack-fill  
5 present in the Product is not needed to perform a specific function.

6 71. Boston Beans’ packaging provides additional evidence that the slack-fill  
7 present in the Product is not part of a legitimate reusable container.

8 72. Boston Beans’ packaging provides additional evidence that Defendant is  
9 able to increase the level of fill.

10 73. Boston Beans’ packaging provides additional evidence that Defendant  
11 has reasonable alternative designs available to package its Products.

12 74. Plaintiff did not expect that the Product would contain nonfunctional  
13 slack-fill, especially given that nonfunctional slack-fill, as opposed to functional  
14 slack-fill, is prohibited by California law and federal law.

15 75. Defendant’s conduct threatens California consumers by using  
16 intentionally deceptive and misleading slack-filled containers. Defendant’s conduct  
17 also threatens other companies, large and small, who “play by the rules.”  
18 Defendant’s conduct stifles competition and has a negative impact on the  
19 marketplace, and reduces consumer choice.

20 76. There is no practical reason for the nonfunctional slack-fill present in the  
21 Product other than to mislead consumers as to the actual volume of the Product being  
22 purchased by consumers while simultaneously providing Defendant with a financial  
23 windfall as a result of money saved from lower supply costs.

24 77. Plaintiff makes the allegations herein upon personal knowledge as to  
25 himself and his own acts and experiences, and as to all other matters, upon  
26 information and belief, including investigation conducted by his attorneys.

27 ///

28 ///

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

**CLASS ALLEGATIONS**

1  
2 78. Plaintiff brings this action on his own behalf and on behalf of all other  
3 persons similarly situated. Plaintiff seeks to represent a Class consisting of “All  
4 persons who purchased the Product in United States for personal use and not for  
5 resale during the time period February 21, 2013, through the present. Excluded  
6 from the Class are Defendants’ officers, directors, and employees, and any  
7 individual who received remuneration from Defendants in connection with that  
8 individual’s use or endorsement of the Product.”

9 79. In the alternative, Plaintiff seeks to represent a Class consisting of “All  
10 persons who purchased the Product in the State of California for personal use and  
11 not for resale during the time period February 21, 2013, through the present.  
12 Excluded from the Class are Defendants’ officers, directors, and employees, and  
13 any individual who received remuneration from Defendants in connection with that  
14 individual’s use or endorsement of the Product.”

15 80. The Class meets all prerequisites under Federal Rule of Civil Procedure  
16 23(a).

17 81. The Class is so numerous that their individual joinder herein is  
18 impracticable. On information and belief, the Class numbers in the hundreds of  
19 thousands or more throughout the United States and California. The Class is  
20 sufficiently numerous because hundreds of thousands of units of the Product have  
21 been sold in California during the time period February 21, 2013, through the  
22 present (the “Class Period”).

23 82. The questions of law and fact common to the Class predominate over  
24 questions which may affect individual Class members. Common questions of law  
25 and fact include, but are not limited to, the following:

26 a. Whether Defendant’s conduct constitutes an unfair method of  
27 competition, or unfair or deceptive act or practice, in violation of Civil Code Section  
28 1750, *et seq.*;

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

1           b. Whether Defendant misrepresented the approval of the FDA,  
2 United States Congress, and California Legislature that the Product's packaging  
3 complied with federal and California slack-fill regulations and statutes in violation of  
4 Civil Code Section 1750, *et seq.*;

5           c. Whether Defendant used deceptive representations in connection  
6 with the sale of the Product in violation of Civil Code Section 1750, *et seq.*;

7           d. Whether Defendant represented the Product has characteristics or  
8 quantities that it does not have in violation of Civil Code Section 1750, *et seq.*;

9           e. Whether Defendant advertised the Product with intent not to sell it  
10 as advertised in violation of Civil Code Section 1750, *et seq.*;

11           f. Whether Defendant represented that the Product has been supplied  
12 in accordance with a previous representation of quantity of candy product contained  
13 therein by way of its packaging when it has not, in violation of Civil Code Section  
14 1750, *et seq.*;

15           g. Whether Defendant's packaging is untrue or misleading in  
16 violation of Business and Professions Code Section 17500, *et seq.*;

17           h. Whether Defendant knew or by the exercise of reasonable care  
18 should have known its packaging was and is untrue or misleading in violation of  
19 Business and Professions Code Section 17500, *et seq.*;

20           i. Whether Defendant's conduct is an unfair business practice within  
21 the meaning of Business and Professions Code Section 17200, *et seq.*;

22           j. Whether Defendant's conduct is a fraudulent business practice  
23 within the meaning of Business and Professions Code Section 17200, *et seq.*;

24           k. Whether Defendant's conduct is an unlawful business practice  
25 within the meaning of Business and Professions Code Section 17200, *et seq.*;

26           l. Whether Defendant's packaging is false or misleading and  
27 therefore misbranded in violation of California Health and Safety Code sections  
28 110660, 110665, or 110670;

1 m. Whether the Product contain nonfunctional slack-fill in violation of  
2 21 C.F.R. 100.100, *et seq.*;

3 n. Whether the Product contains nonfunctional slack-fill in violation  
4 of California Business and Professions Code Section 12606.2, *et seq.*;

5 o. Whether Plaintiff and the Class paid more money for the Product  
6 than they actually received; and

7 p. How much money Plaintiff and the Class paid for the Product than  
8 they actually received.

9 83. Plaintiff's claims are typical of the claims of the Class, as the  
10 representations made by Defendant are uniform and consistent and are made through  
11 packaging that was seen and relied on by Plaintiff and the Class. Further, Plaintiff is  
12 a member of the Class he seeks to represent.

13 84. Plaintiff and his counsel will fairly and adequately represent and protect  
14 the interests of the Class. Plaintiff has retained competent and experienced counsel  
15 in class action and other complex litigation. Neither Plaintiff nor his counsel have  
16 any conflict of interest with other members of the Class.

17 85. Prosecuting separate actions by individual class members would create a  
18 risk of inconsistent or varying adjudications with respect to individual class members  
19 that would establish incompatible standards of conduct for the party opposing the  
20 Class.

21 86. Prosecuting separate actions by individual class members would create a  
22 risk of adjudications with respect to individual class members that, as a practical  
23 matter, would be dispositive of the interests of the other members not parties to the  
24 individual adjudications or would substantially impair or impede their ability to  
25 protect their interests.

26 87. Defendant has acted on grounds generally applicable to the entire Class,  
27 thereby making final injunctive relief and/or corresponding declaratory relief  
28 appropriate with respect to the Class as a whole.

1 88. Plaintiff and the Class have suffered injury in fact and have lost money as  
2 a result of Defendant's false representations. Plaintiff purchased the Product under  
3 the false belief that the Product contained an amount of candy product commensurate  
4 with the size of the box. Plaintiff relied on Defendant's packaging and would not  
5 have purchased the Product if he had known that the Product contained  
6 nonfunctional slack-fill.

7 89. Notice can be provided to such purchasers in a form and manner that  
8 meets Due Process requirements, including by using techniques and a form of notice  
9 similar to those customarily used in class actions, and by internet publication, radio,  
10 newspaper, and magazine.

11 90. A class action is superior to other available methods for fair and efficient  
12 adjudication of this controversy. The expense and burden of individual litigation  
13 would make it impracticable or impossible for the Class to prosecute their claims  
14 individually.

15 91. The trial and litigation of Plaintiff's claims are manageable. Individual  
16 litigation of the legal and factual issues raised by Defendant's conduct would  
17 increase delay and expense to all parties and the court system. The class action  
18 device presents far fewer management difficulties and provides the benefits of a  
19 single, uniform adjudication, economies of scale, and comprehensive supervision by  
20 a single court.

21 92. Absent a class action, Defendant will likely retain the benefits of its  
22 wrongdoing. Because of the small size of the individual Class members' claims,  
23 few, if any, Class members could afford to seek legal redress for the wrongs  
24 complained of herein. Absent a representative action, the Class will continue to  
25 suffer losses and Defendant will be allowed to continue these violations of law and  
26 to retain the proceeds of their ill-gotten gains.

27 ///

28 ///



CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT ONE**

**Violation of California Consumers Legal Remedies Act,  
California Civil Code § 1750, et seq.**

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

94. Plaintiff brings this cause of action pursuant to Civil Code Section 1750, et seq., the Consumers Legal Remedies Act (“CLRA”), on his own behalf and on behalf of all other persons similarly situated. Plaintiff seeks to represent a Class consisting of “All persons who purchased the Product in United States for personal use and not for resale during the time period February 21, 2013, 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.”

95. In the alternative, Plaintiff seeks to represent 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 February 21, 2013, 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.”

96. The Class consists of thousands of persons, the joinder of whom is impracticable.

97. There are questions of law and fact common to the Class, which questions are substantially similar and predominate over questions affecting the individual Class members, including but not limited to those questions listed hereinabove.

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

99. The practices described herein, specifically Defendant’s packaging,

1 advertising, and sale of the Product, were intended to result in the sale of the  
2 Product to the consuming public and violated and continue to violate the CLRA by  
3 (1) misrepresenting the approval of the Product as compliant with 21 C.F.R Section  
4 100.100, California Business and Professions Code Section 12606.2, and the  
5 Sherman Law; (2) using deceptive representations in connection with the Product;  
6 (3) representing the Product has characteristics and quantities that it does not have;  
7 (4) advertising and packaging the Product with intent not to sell it as advertised and  
8 packaged; and (5) representing that the Product has been supplied in accordance  
9 with a previous representation as to the quantity of candy product contained within  
10 each box, when it has not.

11 100. Defendant fraudulently deceived Plaintiff and the Class by representing  
12 that the Product's packaging which includes 41% nonfunctional slack-fill actually  
13 conforms with federal and California slack-fill regulations and statutes including the  
14 Sherman Law, California Business and Professions Code Section 12606.2, and 21  
15 C.F.R. Section 100.100.

16 101. Pursuant to 21 C.F.R. Section 100.100 and California Business and  
17 Professions Code Section 12606.2: "A container that does not allow the consumer  
18 to fully view its contents shall be considered to be filled as to be misleading if it  
19 contains nonfunctional slack-fill."

20 102. Defendant packaged the Product in boxes which contain 41%  
21 nonfunctional slack-fill by making material misrepresentations to fraudulently  
22 deceive Plaintiff and the Class.

23 103. Defendant fraudulently deceived Plaintiff and the Class by  
24 misrepresenting the Product as having characteristics and quantities which it does  
25 not have, *e.g.*, that the Product is free of nonfunctional slack-fill when it is not. In  
26 doing so, Defendant intentionally misrepresented and concealed material facts from  
27 Plaintiff and the Class. Said misrepresentations and concealment were done with  
28 the intention of deceiving Plaintiff and the Class and depriving them of their legal

1 rights and money.

2 104. Defendant fraudulently deceived Plaintiff and the Class by packaging  
3 and advertising the Product with intent not to sell it as advertised, by intentionally  
4 under-filling the Product's containers and instead replacing candy product with  
5 nonfunctional slack-fill. In doing so, Defendant intentionally misrepresented and  
6 concealed material facts from Plaintiff and the Class. Said misrepresentations and  
7 concealment were done with the intention of deceiving Plaintiff and the Class and  
8 depriving them of their legal rights and money.

9 105. Defendant fraudulently deceived Plaintiff and the Class by representing  
10 that the Product was supplied in accordance with an accurate representation as the  
11 quantity of candy product contained therein when they were not. Defendant  
12 presented the physical dimensions of the Product's packaging to Plaintiff and the  
13 Class before the point of purchase and gave Plaintiff and the Class a reasonable  
14 expectation that the quantity of candy product contained therein commensurate with  
15 the size of packaging. In doing so, Defendant intentionally misrepresented and  
16 concealed material facts from Plaintiff and the Class. Said misrepresentations and  
17 concealment were done with the intention of deceiving Plaintiff and the Class and  
18 depriving them of their legal rights and money.

19 106. Defendant knew or should have known, through the exercise of  
20 reasonable care, that the Product's packaging was misleading.

21 107. Defendant's actions as described herein were done with conscious  
22 disregard of Plaintiff's rights, and Defendant was wanton and malicious in its  
23 concealment of the same.

24 108. Defendant's packaging of the Product was a material factor in Plaintiff's  
25 and the Class's decisions to purchase the Product. Based on Defendant's Product  
26 packaging, Plaintiff and the Class reasonably believed that they were getting more  
27 candy product than they actually received. Had they known the truth of the matter,  
28 Plaintiff and the Class would not have purchased the Product.

1 109. Plaintiff and the Class have suffered injury-in-fact and have lost money  
2 as a result of Defendant's unfair, unlawful, and fraudulent conduct. Specifically,  
3 Plaintiff paid for candy product he never received. Plaintiff would not have  
4 purchased the Product had he known the boxes contained nonfunctional slack-fill.

5 110. Plaintiff seeks injunctive relief against Defendant, including an order  
6 that prohibits Defendant from engaging in the misconduct described herein and  
7 requires Defendant to perform a corrective advertising campaign. Defendant's false  
8 and misleading packaging should be enjoined due to the false, misleading, and/or  
9 deceptive nature of Defendant's packaging.

10 111. By letter dated August 1, 2016, Plaintiff advised Defendant of its false  
11 and misleading claims pursuant to California Civil Code Section 1782(a).

## 12 **COUNT TWO**

### 13 **Violation of California False Advertising Law,**

### 14 **Business & Professions Code § 17500, *et seq.***

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

17 113. Plaintiff brings this cause of action pursuant to Business and Professions  
18 Code Section 17500, *et seq.*, on his own behalf and on behalf of all other persons  
19 similarly situated. Plaintiff seeks to represent a Class consisting of "All persons  
20 who purchased the Product in United States for personal use and not for resale  
21 during the time period February 21, 2013, through the present. Excluded from the  
22 Class are Defendants' officers, directors, and employees, and any individual who  
23 received remuneration from Defendants in connection with that individual's use or  
24 endorsement of the Product."

25 114. In the alternative, Plaintiff seeks to represent a Class consisting of "All  
26 persons who purchased the Product in the State of California for personal use and  
27 not for resale during the time period February 21, 2013, through the present.  
28 Excluded from the Class are Defendants' officers, directors, and employees, and

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

3 115. California's False Advertising Law, California Business and Professions  
4 Code Section 17500, *et seq.*, makes it "unlawful for any person to make or  
5 disseminate or cause to be made or disseminated before the public in this state, in  
6 any advertising device or in any other manner or means whatever, including over  
7 the Internet, any statement, concerning personal property or services, professional  
8 or otherwise, or performance or disposition thereof, which is untrue or misleading  
9 and which is known, or which by the exercise of reasonable care should be known,  
10 to be untrue or misleading."

11 116. Defendant knowingly manipulated the physical dimensions of the  
12 Product's box, or stated another way, under-filled the amount of candy product in  
13 the Product, by including 41% nonfunctional slack-fill as a means to mislead the  
14 public about the amount of candy product contained in each package.

15 117. Defendant controlled the packaging of the Product. It knew or should  
16 have known, through the exercise of reasonable care that its representations about  
17 the quantity of candy product contained in the Product were untrue and misleading.

18 118. The general public bases its purchasing decisions on the dimensions of a  
19 product's packaging. Consumers generally do not look at any label information, such  
20 as net weight or serving disclosures. Instead, the general public chooses a larger box  
21 because it leads them to believe they are receiving a better value.

22 119. Defendant's packaging with 41% nonfunctional slack-fill instead of  
23 including more candy product or smaller boxes is likely deceive the general public.

24 120. Defendant's actions in violation of Section 17500 were false and  
25 misleading such that the general public is and was likely to be deceived.

26 121. Plaintiff and the Class have suffered injury-in-fact and have lost money  
27 as a result of Defendant's false representations. Plaintiff purchased the Product in  
28 reliance upon the claims by Defendant that the Product was of the quantity



1 represented by Defendant's packaging and advertising. Plaintiff would not have  
2 purchased the Product if she had known that the claims and advertising as described  
3 herein were false.

4 122. Pursuant to Business and Professions Code Section 17535, Plaintiff and  
5 the Class seek an order of this Court enjoining Defendant from continuing to  
6 engage, use, or employ their practice of under-filling the Product's containers.  
7 Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such  
8 misrepresentations.

9 123. Plaintiff and the Class have suffered injury in fact and have lost money  
10 as a result of Defendant's false representations. Plaintiff purchased the Product in  
11 reliance upon the claims by Defendant that the Product was of the quantity  
12 represented by Defendant's packaging and advertising. Plaintiff would not have  
13 purchased the Product if he had known that the claims and advertising as described  
14 herein were false.

### 15 **COUNT THREE**

#### 16 **Violation of California Unfair Competition Law,**

#### 17 **Business & Professions Code § 17200, *et seq.***

18 124. Plaintiff repeats and realleges the allegations set forth above, and  
19 incorporate the same as if set forth herein at length.

20 125. Plaintiff brings this cause of action pursuant to Business and Professions  
21 Code Section 17200, *et seq.*, on his own behalf and on behalf of all other persons  
22 similarly situated. Plaintiff seeks to represent a Class consisting of "All persons  
23 who purchased the Product in United States for personal use and not for resale  
24 during the time period February 21, 2013, through the present. Excluded from the  
25 Class are Defendants' officers, directors, and employees, and any individual who  
26 received remuneration from Defendants in connection with that individual's use or  
27 endorsement of the Product."

28 126. In the alternative, Plaintiff seeks to represent a Class consisting of "All

1 persons who purchased the Product in the State of California for personal use and  
2 not for resale during the time period February 21, 2013, through the present.  
3 Excluded from the Class are Defendants’ officers, directors, and employees, and  
4 any individual who received remuneration from Defendants in connection with that  
5 individual’s use or endorsement of the Product.”

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

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

12 129. The legislature of California has incorporated 21 C.F.R. Section  
13 100.100, which prohibits nonfunctional slack-fill, into California’s Business and  
14 Professions Code Section 12606.2, *et seq.*

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

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

22 132. Plaintiff is not suing under the FDCA, but under California state law.

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

27 134. The Sherman Law declares any food to be misbranded if it is false or  
28 misleading in any particular, if the labeling does not conform with the requirements

1 for nutrition labeling set forth in certain provisions of the NLEA. Cal. Health &  
2 Safety Code §§ 110660, 110665, 110670.

3 135. Business and Professions Code Section 12601 through 12615.5 are  
4 “designed to protect purchasers of any commodity within its provisions against  
5 deception or misrepresentation.” Bus. & Prof. Code §12601. In order to achieve that  
6 goal, Business and Professions Code Section 12602 make it unlawful for any person  
7 engaged in the packaging or labeling of any commodity to distribute that  
8 commodity, or cause it to be distributed, if its packaging or labeling does not  
9 conform to the provisions set forth in Sections 12601-12615.5.

10 136. Business and Professions Code Section 12606.2 specifically addresses  
11 the packaging requirements for food. The statute prohibits food containers which  
12 are “made, formed, or filled as to be misleading.” Bus. & Prof. Code §12602.2(b).  
13 Further, the statute specifically defines as misleading and, therefore, unlawful, food  
14 containers which do not allow consumers to view their contents and which contain  
15 “nonfunctional slack fill.” Bus. & Prof. Code § 12606.2(c).

16 137. Business and Professions Code Section 12602.2(c) explains:  
17 “Nonfunctional slack fill is the empty space in a package that is filled to  
18 substantially less than its capacity for reasons other than any one or more of the  
19 following:

- 20 (1) Protection of the contents of the package.
- 21 (2) The requirements of the machines used for enclosing the contents in the  
22 package.
- 23 (3) Unavoidable product settling during shipping and handling.
- 24 (4) The need for the package to perform a specific function, such as where  
25 packaging plays a role in the preparation or consumption of a food, if that is  
26 inherent to the nature of the food and is clearly communicated to consumers.
- 27 (5) The fact that the product consists of a food packaged in a reusable container  
28 where the container is part of the presentation of the food and has value that is

1 both significant in proportion to the value of the product and independent of its  
2 function to hold the food, such as a gift product consisting of a food or foods  
3 combined with a container that is intended for further use after the food is  
4 consumed or durable commemorative or promotional packages.

5 (6) Inability to increase the level of fill or to further reduce the size of the  
6 package, such as where minimum package size is necessary to accommodate  
7 required food labeling exclusive of any vignettes or other nonmandatory designs  
8 or label information, discourage pilfering, facilitate handling, or accommodate  
9 tamper-resistant devices.”

10 138. The UCL prohibits “any unlawful, unfair... or fraudulent business act or  
11 practice.” Cal. Bus & Prof. Code § 17200.

12 **A. “Unfair” Prong**

13 139. Under California’s False Advertising Law, California Business and  
14 Professions Code Section 17200, *et seq.*, a challenged activity is “unfair” when  
15 “any injury it causes outweighs any benefits provided to consumers and the injury is  
16 one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto*  
17 *Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

18 140. Defendant’s action of leaving 41% nonfunctional slack-fill in its Product  
19 does not confer any benefit to consumers.

20 141. Defendant’s action of leaving 41% nonfunctional slack-fill in its Product  
21 causes injuries to consumers because they do not receive a quantity of candy  
22 commensurate with their reasonable expectation.

23 142. Defendant’s action of leaving 41% nonfunctional slack-fill in its Product  
24 causes injuries to consumers because they do not receive a level of hunger satiety  
25 commensurate with their reasonable expectation.

26 143. Defendant’s action of leaving 41% nonfunctional slack-fill in its Product  
27 causes injuries to consumers because they end up overpaying for the Product and  
28 receiving a quantity of candy less than what they expected to receive.

1 144. Consumers cannot avoid any of the injuries caused by the 41%  
2 nonfunctional slack-fill in Defendant’s Product.

3 145. Accordingly, the injuries caused by Defendant’s activity of including  
4 41% nonfunctional slack-fill in the Product outweighs any benefits.

5 146. Some courts conduct a balancing test to decide if a challenged activity  
6 amounts to unfair conduct under California Business and Professions Code Section  
7 17200. They “weigh the utility of the defendant’s conduct against the gravity of the  
8 harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152,  
9 1169 (9th Cir. 2012).

10 147. Here, Defendant’s conduct of including 41% nonfunctional slack-fill in  
11 the Product’s packaging has no utility and financially harms purchasers. Thus, the  
12 utility of Defendant’s conduct is vastly outweighed by the gravity of harm.

13 148. Some courts require that “unfairness must be tethered to some  
14 legislative declared policy or proof of some actual or threatened impact on  
15 competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir.  
16 2007).

17 149. The California legislature maintains a declared policy of prohibiting  
18 nonfunctional slack-fill in consumer goods, as reflected in California’s Business  
19 and Professions Code Section 12606.2 and California Health and Safety Code  
20 Section 110100.

21 150. The 41% of nonfunctional slack-fill contained in the Product is tethered  
22 to a legislative policy declared in California according to California Business and  
23 Professions Code Section 12606.2 and California Health and Safety Code Section  
24 110100.

25 151. Defendant’s packaging of the Product, as alleged in the preceding  
26 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair  
27 conduct.

28 152. Defendant knew or should have known of its unfair conduct.

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069



1 153. As alleged in the preceding paragraphs, the misrepresentations by  
2 Defendant detailed above constitute an unfair business practice within the meaning  
3 of California Business and Professions Code Section 17200.

4 154. There were reasonably available alternatives to further Defendant's  
5 legitimate business interests, other than the conduct described herein. Defendant  
6 could have used packaging appropriate for the amount of candy product contained  
7 within the Product.

8 155. All of the conduct alleged herein occurs and continues to occur in  
9 Defendant's business. Defendant's wrongful conduct is part of a pattern or  
10 generalized course of conduct repeated on thousands of occasions daily.

11 156. Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
12 the Class seek an order of this Court enjoining Defendant from continuing to  
13 engage, use, or employ its practice of under-filling the Product's box. Likewise,  
14 Plaintiff and the Class seek an order requiring Defendant to disclose such  
15 misrepresentations, and perform a corrective advertising campaign.

16 157. Plaintiff and the Class have suffered injury in fact and have lost money  
17 as a result of Defendant's unfair conduct. Plaintiff paid an unwarranted premium for  
18 these products. Specifically, Plaintiff paid for 41% of candy product he never  
19 received. Plaintiff would not have purchased the Product if he had known that the  
20 Product's packaging contained nonfunctional slack-fill.

21 **B. "Fraudulent" Prong**

22 158. California Business and Professions Code Section 17200, *et seq.*,  
23 considers conduct fraudulent and prohibits said conduct if it is likely to deceive  
24 members of the public. *Bank of Wes v. Superior Court*, 2 Cal. 4th 1254, 553 (1992).

25 159. Members of the public base their purchasing decisions on the dimensions  
26 of a product's packaging. They generally do not view label information or net weight  
27 and serving disclosures. Members of the public choose a larger box because they  
28 automatically assume it has better value.

1 160. Defendant's conduct of packaging the Product with 41% nonfunctional  
2 slack-fill is likely to deceive members of the public.

3 161. Defendant's packaging of the Product, as alleged in the preceding  
4 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes  
5 fraudulent conduct.

6 162. Defendant knew or should have known of its fraudulent conduct.

7 163. As alleged in the preceding paragraphs, the misrepresentations by  
8 Defendant detailed above constitute a fraudulent business practice in violation of  
9 California Business & Professions Code Section 17200.

10 164. There were reasonable available alternatives to further Defendant's  
11 legitimate business interests other than the conduct described herein. Defendant  
12 could have used packaging appropriate for the amount of Product contained therein.

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

16 166. Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
17 the Class seek an order of this Court enjoining Defendant from continuing to  
18 engage, use, or employ their practice of under-filling the Product's container.  
19 Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such  
20 misrepresentations, and perform a corrective advertising campaign.

21 167. Plaintiff and the Class have suffered injury in fact and have lost money  
22 as a result of Defendant's fraudulent conduct. Plaintiff paid an unwarranted  
23 premium for these products. Specifically, Plaintiff paid for 41% of candy product  
24 he never received. Plaintiff would not have purchased the Product if he had known  
25 that the boxes contained nonfunctional slack-fill.

26 **C. "Unlawful" Prong**

27 168. California Business and Professions Code Section 17200, *et seq.*,  
28 identifies violations of other laws as "unlawful practices that the unfair competition

1 law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F.  
2 Supp. 2d 1049, 1068 (C.D. Cal. 2008).

3 169. Defendant’s packaging of the Product, as alleged in the preceding  
4 paragraphs, violates California Civil Code Section 1750, *et. seq.*, California  
5 Business and Professions Code Section 17500, *et. seq.*, California’s Sherman Law,  
6 California Business and Professions Code Section 12606.2, *et seq.*, the FDCA, and  
7 21 C.F.R Section 100.100.

8 170. Defendant’s packaging of the Product, as alleged in the preceding  
9 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes  
10 unlawful conduct.

11 171. Defendant knew or should have known of its unlawful conduct.

12 172. As alleged in the preceding paragraphs, the misrepresentations by  
13 Defendant detailed above constitute an unlawful business practice within the  
14 meaning of California Business and Professions Code Section 17200.

15 173. There were reasonable available alternatives to further Defendant’s  
16 legitimate business interests, other than the conduct described herein. Defendant  
17 could have used packaging appropriate for the amount of candy product contained  
18 therein.

19 174. All of the conduct alleged herein occurred and continues to occur in  
20 Defendant’s business. Defendant’s wrongful conduct is part of a pattern or  
21 generalized course of conduct repeated on thousands of occasions daily.

22 175. Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
23 the Class seek an order of this Court enjoining Defendant from continuing to  
24 engage, use, or employ their practice of under-filling the Product’s box. Likewise,  
25 Plaintiff and the Class seek an order requiring Defendant to disclose such  
26 misrepresentations, and perform a corrective advertising campaign.

27 176. Plaintiff and the Class have suffered injury in fact and have lost money  
28 as a result of Defendant’s unlawful conduct. Plaintiff paid an unwarranted premium

1 for these products. Specifically, Plaintiff paid for 41% candy product he never  
2 received. Plaintiff would not have purchased the Product if he had known that the  
3 Product contained nonfunctional slack-fill.

4 **COUNT FOUR**

5 **Unjust Enrichment**

6 177. Plaintiff repeats and realleges the allegations set forth above, and  
7 incorporate the same as if set forth herein at length.

8 178. By means of Defendant's wrongful conduct alleged herein, Defendant  
9 knowingly sold the Products to Plaintiff and members of the Class in a manner that  
10 was unfair, unconscionable, and oppressive.

11 179. Defendant knowingly received and retained wrongful benefits and funds  
12 from Plaintiff and members of the Class. In so doing, Defendant acted with  
13 conscious disregard for the rights of Plaintiff and members of the Class.

14 180. As a result of Defendant's wrongful conduct as alleged herein,  
15 Defendant has been unjustly enriched at the expense of, and to the detriment of,  
16 Plaintiff and members of the Class.

17 181. Defendant's unjust enrichment is traceable to, and resulted directly and  
18 proximately from, the conduct alleged herein.

19 182. Under the common law doctrine of unjust enrichment, it is inequitable  
20 for Defendant to be permitted to retain the benefits it received, without justification,  
21 from selling the Products to Plaintiff and members of the Class in an unfair,  
22 unconscionable, and oppressive manner. Defendant's retention of such funds under  
23 such circumstances making it inequitable to do so constitutes unjust enrichment.

24 183. The financial benefits derived by Defendant rightfully belong to  
25 Plaintiff and members of the Class. Defendant should be compelled to return in a  
26 common fund for the benefit of Plaintiff and members of the Class all wrongful or  
27 inequitable proceeds received by them.

28 184. Plaintiff and members of the Class have no adequate remedy at law.

CLARKSON LAW FIRM, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, CA 90069

**PRAYER FOR RELIEF**

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

A. For an order certifying the class and appointing Plaintiff as class representative pursuant to Rule 23 of the Federal Rules of Civil Procedure, and designating Plaintiff’s counsel as counsel for the Class;

B. For all forms of relief set forth above;

C. Damages against Defendant in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowable by law on any amounts awarded;

D. Restitution and/or disgorgement in an amount to be determined at trial;

E. Punitive damages;

F. An order enjoining Defendant from continuing to engage in the unlawful conduct and practices described herein;

D. An order awarding Plaintiff his costs of suit incurred herein, including expert witness fee and reasonable attorneys’ fees and pre and post-judgment interest, at the legal rate; and

E. For an order granting such other and further as may be just and proper.

**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial on all triable issues.

DATED: May 10, 2018

**CLARKSON LAW FIRM, P.C.**

/s/ Ryan J. Clarkson  
Ryan J. Clarkson, Esq.  
Shireen M. Clarkson, Esq.  
Bahar Sodaify, Esq.  
Attorneys for Plaintiff

**CLARKSON LAW FIRM, P.C.**  
Ryan J. Clarkson (SBN 257074)  
rclarkson@clarksonlawfirm.com  
Shireen M. Clarkson (SBN 237882)  
sclarkson@clarksonlawfirm.com  
Bahar Sodaify (SBN 289730)  
bsodaify@clarksonlawfirm.com  
9255 Sunset Blvd., Ste. 804  
Los Angeles, CA 90069  
Tel: (213) 788-4050  
Fax: (213) 788-4070

*Attorneys for Plaintiff Thomas Iglesias*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS IGLESIAS, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

FERRARA CANDY CO., and DOES 1  
through 10, inclusive,

Defendants.

) Case No. 3:17-cv-00849-VC

) **[CLASS ACTION]**

) **PROOF OF SERVICE**

) Hon. Judge Vince Chabbria

Clarkson Law Firm, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, California 90069

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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 **9255 Sunset Blvd., Suite 804, Los Angeles, CA 90069.**

On May 10, 2018, 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:

**HOGAN LOVELLS LLP**  
 Michael J. Shepard  
 Michael.shepard@hoganlovells.com  
 3 Embarcadero Center., Suite 1500  
 San Francisco, California 94111  
 Tel: (415) 374-2310  
 Fax: (415) 374-2499

**HOGAN LOVELLS LLP**  
 J. Christopher Mitchell  
 chris.mitchell@hoganlovells.com  
 80 South Eighth Street, Suite 1225  
 Minneapolis, Minnesota 55402  
 Tel: (612) 402-3000  
 Fax: (612) 339-5167

(BY ELECTRONIC SERVICE) I caused the document(s) to be sent to the offices of the addressees via CM/ECF Service.

(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 § 1013(a). 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.

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

Executed on May 10, 2018, at Los Angeles, California.

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

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

  
 Stephanie Satow

Clarkson Law Firm, P.C.  
9255 Sunset Blvd., Suite 804  
Los Angeles, California 90069

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28