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Attorneys for Defendant  
Mondelēz International, Inc.

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

VALORIE WINN, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

MONDELĒZ INTERNATIONAL, INC.  
and PAK 'N SAVE, INC.

Defendants.

Case No. 17-2524

**MONDELĒZ INTERNATIONAL,  
INC.'S NOTICE OF REMOVAL**

[Alameda County Superior Court  
Case No. RG17854671]

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF CALIFORNIA, ALL PARTIES, AND THEIR  
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that Defendant Mondelēz International, Inc. (“Mondelēz  
5 International”)<sup>1</sup> hereby effects the removal of this action from the Superior Court of the  
6 State of California for the County of Alameda (“Alameda County Superior Court”) to the  
7 United States District Court for the Northern District of California. Removal is proper  
8 under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), because this  
9 case is a class action in which the putative class exceeds 100 members, at least one  
10 plaintiff is diverse from at least one defendant, and the amount in controversy exceeds \$5  
11 million. Venue is proper in this Court because Plaintiff filed his complaint in Alameda  
12 County Superior Court. *See* 28 U.S.C. § 84(c)(3) (providing that Alameda County is part  
13 of the Northern District of California); 28 U.S.C. § 1391 (describing where venue is  
14 proper).

15 **FACTUAL BACKGROUND AND STATE COURT PROCEEDINGS**

16 1. Plaintiff filed this lawsuit in Alameda County Superior Court on March 28,  
17 2017. Defendant Mondelēz International received service on April 3, 2017. *See* Ex. A  
18 (State Court Complaint and Summons). No other documents have been filed.

19 2. Plaintiff alleges the phrases “Made with Real Ginger & Molasses” and  
20 “Sensible Solution” on the packaging of MDLZ’s Ginger Snaps cookie products falsely  
21 represents that the cookies are healthy, when the products actually contain purportedly  
22 unhealthy ingredients such as high fructose corn syrup and partially hydrogenated oil. *See*  
23 Ex. A, ¶¶ 69-70, 76, 80.

24 3. Plaintiff alleges nine causes of action for violations of California’s Unfair  
25

26 <sup>1</sup> Plaintiff incorrectly names as Defendant Mondelēz International, Inc., a global holding company.  
27 Mondelēz Global LLC (“MG LLC” and collectively with Mondelēz International, (“MDLZ”)) is the  
28 operating company for Mondelēz International, Inc. in the United States and the company that sold,  
marketed, and distributed the products in issue in the United States

1 Competition Law, False Advertising Law, and Consumer Legal Remedies Act, as well as  
2 for breach of express and implied warranties, against Mondelēz International and  
3 Defendant Pak ‘N Save, Inc. (“Pak ‘N Save”), a retail grocery store. *See* Ex. A, ¶¶ 125-  
4 186.

5 4. Plaintiff seeks compensatory damages, punitive damages, disgorgement,  
6 restitution, injunctive relief, and attorneys’ fees on behalf of herself and three classes of  
7 persons who purchased Ginger Snaps products in California since February 11, 2006. *See*  
8 Ex. A, ¶ 113; Prayer for Relief.

9 **REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(d)**

10 5. CAFA provides that federal courts have original jurisdiction over class  
11 actions in which (i) any plaintiff is diverse from any defendant, (ii) there are at least 100  
12 members in the putative class, and (iii) the amount in controversy exceeds \$5 million,  
13 exclusive of interest and costs. 28 U.S.C. § 1332(d). Under 28 U.S.C. § 1441(a), any  
14 such action may be removed to the district court for the district and division embracing  
15 the place where the action is pending.

16 **The Parties Are Sufficiently Numerous To Satisfy CAFA**

17 6. Plaintiff bring this action on behalf of “[a]ll persons who purchased in  
18 California, on or after February 11, 2006, for household or personal use, Ginger Snaps  
19 products in packaging containing one or more of the following phrases: ‘Made with Real  
20 Ginger & Molasses’ and ‘Sensible Solution.’” Ex. A, ¶ 113. Plaintiff also seeks to  
21 represent two additional subclasses of consumers: 1) a subclass consisting of “[a]ll  
22 persons who purchased ... Ginger Snaps products ... containing partially hydrogenated  
23 oil” in California during the relevant time period; and 2) a subclass consisting of “[a]ll  
24 persons who purchased ... Ginger Snaps products containing [the challenged phrases]  
25 from Pak ‘N Save” in California during the relevant time period. Ex. A, ¶ 113.

26 7. Plaintiff alleges that “[t]he Class ... including thousands of individuals who  
27 purchased Ginger Snaps throughout California during the Class Period.” Ex. A, ¶ 120.  
28

1 This satisfies CAFA’s numerosity requirement.

2 **The Parties Are Minimally Diverse**

3 8. CAFA’s minimal diversity standard is satisfied when “any member of a class  
4 of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. §  
5 1332(d)(2)(A). *Bridewell-Sledge v. Blue Cross of California*, 798 F.3d 923, 928 (9th Cir.  
6 2015) (“[U]nder CAFA, complete diversity is not required; ‘minimal diversity’  
7 suffices.”).

8 9. Plaintiff is a citizen and resident of California. *See* Ex. A, ¶ 15.

9 10. Plaintiff alleges that Defendant Pak N’ Save is a California corporation with  
10 its principal place of business in Pleasanton, California. Ex. A, ¶ 14.

11 11. Mondelēz International is incorporated in Virginia and maintains its  
12 corporate headquarters in Deerfield, Illinois. *See* Ex. A, ¶ 13; *see also* Mondelēz  
13 International Form 10-K Annual Report for 2016, available at  
14 [https://www.sec.gov/Archives/edgar/data/1103982/000119312517055858/0001193125-](https://www.sec.gov/Archives/edgar/data/1103982/000119312517055858/0001193125-17-055858-index.htm)  
15 [17-055858-index.htm](https://www.sec.gov/Archives/edgar/data/1103982/000119312517055858/0001193125-17-055858-index.htm). Accordingly, Mondelēz International is a citizen of Virginia and  
16 Illinois. *See* 28 U.S.C. § 1332(c)(1) (providing that a corporation is a “citizen of any  
17 State by which it has been incorporated and of the State where it has its principal place of  
18 business”); *see also Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (proving that a  
19 corporation’s principal place of business is the place where “a corporation’s officers  
20 direct, control, and coordinate the corporation’s activities,” which is typically “the place  
21 where the corporation maintains its headquarters”).

22 12. The minimal diversity requirement is satisfied here because Plaintiff is not a  
23 citizen of Virginia or Illinois. *See Aguilar v. Courtyard Mgmt. Corp.*, No. 13-07181, 2014  
24 WL 12597037, at \*2 (C.D. Cal. Jan. 13, 2014) (CAFA minimal diversity requirement  
25 satisfied where named plaintiff was “a citizen of California—a different state than at least  
26 one defendant.”).

**The “Local Controversy” and “Home State” Exceptions Do Not Apply**

13. Under the “local controversy” exception, a district court must decline to exercise jurisdiction under CAFA if: 1) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; 2) at least one defendant is a defendant from whom significant relief is sought by members of the plaintiff class, whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and, who is a citizen of the State in which the action was originally filed; and 3) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed. 28 U.S.C. § 1332(d)(4)(A). Under the “home state” exception, a district court must decline to exercise jurisdiction under CAFA if “two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(B).

14. These exceptions do not apply here because Pak ‘N Save – the only Defendant who is a citizen of California – is not the “primary defendant.” *Christmas v. Union Pac. R.R. Co.*, No. 15-02612, 2015 WL 5233983, at \*4 (C.D. Cal. Sept. 8, 2015) (“For California Defendants to fulfill the local defendant requirement of the ‘local controversy’ exception, California Defendants must be the *primary focus* of the claims.”) (emphasis added); *see also Phillips v. Kaiser Found. Health Plan, Inc.*, 953 F. Supp. 2d 1078, 1086 (N.D. Cal. 2011) (“home state” exception “requires that all ‘primary defendants’ be residents of the same state in which the action is filed.”).

15. The Complaint challenges several allegedly misleading statements on the packaging of Ginger Snaps cookie products and the use of partially hydrogenated oils as an ingredient in the products. But Plaintiff does not allege that Pak ‘N Save had any involvement in formulating or manufacturing the cookies, or in the design of its packaging. Rather, Plaintiff admits that Pak ‘N Save is a merely a “retail grocery store

1 that sells Ginger Snaps.” Ex. A., ¶ 11. As courts in this Circuit have recognized, in class  
2 action lawsuits challenging allegedly mislabeled consumer products, the manufacturer “is  
3 the real defendant.” *Clay v. Chobani LLC*, No. 14-2258, 2015 WL 4743891, at \*6 (S.D.  
4 Cal. Aug. 10, 2015) (holding that “local controversy” exception did not apply in class  
5 action brought on behalf of an in-state class against an out-of-state manufacturer and two  
6 in-state retailers). CAFA exceptions do not apply where “the great bulk of any damage  
7 award is sought from the manufacturer ... rather than from the local [retailers].” *Coleman*  
8 *v. Estes Exp. Lines, Inc.*, 631 F.3d 1010, 1018 (9th Cir. 2011) (explaining that “the  
9 determination whether the relief sought from a particular defendant is ‘small change’ can  
10 reasonably be made solely on the basis of the allegations in the complaint.”).

11 16. Additionally, the “local controversy” exception does not apply where only a  
12 subset of the putative class is harmed by the local defendant. *Lima v. Deutsche Bank Nat.*  
13 *Trust Co.*, No. 12-00509, 2013 WL 1296757, at \*2 (D. Haw. Mar. 29, 2013) (holding that  
14 “local controversy” exception did not apply where only a subclass of plaintiffs sought  
15 relief from the local defendant). Here, only a small subset of the putative class – namely,  
16 the “Pak ‘N Save Subclass” – asserts claims against the retail grocery chain. *See* Ex. A. ¶.  
17 Since “most of the members of the putative classes” cannot seek relief from Pak ‘N Save,  
18 the “local controversy” exception does not apply. *Id.* at \*2.

### 19 **There Is at Least \$5,000,000 in Controversy**

20 17. “In measuring the amount in controversy, a court must assume that the  
21 allegations of the complaint are true and that a jury will return a verdict for the plaintiff on  
22 all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d  
23 1199, 1205 (E.D. Cal. 2008). It must then “add[] up the value of the claim of each person  
24 who falls within the definition of [the] proposed class.” *Std. Fire Ins. Co. v. Knowles*, 133  
25 S. Ct. 1345, 1348 (2013). In other words, “[t]he ultimate inquiry is what amount is put ‘in  
26 controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn*,  
27 536 F. Supp. 2d at 1205; *see also Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986  
28

1 (S.D. Cal. 2005) (“It’s not a question as to what you would owe. It’s a question as to what  
2 is in controversy.”).

3 18. “A defendant seeking removal of a putative class action must demonstrate,  
4 by a preponderance of the evidence, that the aggregate amount in controversy exceeds the  
5 jurisdictional minimum.” *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 981  
6 (9th Cir. 2013). The preponderance of the evidence standard is satisfied where “the  
7 potential damages could exceed the jurisdictional amount.” *Rea v. Michaels Stores Inc.*,  
8 742 F.3d 1234, 1239 (9th Cir. 2014) (*quoting Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d  
9 395, 397 (9th Cir. 2010)).

10 19. From 2009 through April 2017, gross sales of MDLZ’s Ginger Snaps cookie  
11 products to retailers and distributors totaled approximately \$94,642,654 nationwide. In  
12 his Complaint, Plaintiff asserts that the relevant class period begins on February 11, 2006.  
13 Ex. A, ¶ 113. At this time, however, MDLZ lacks access to gross sales data for Ginger  
14 Snaps cookie products prior to 2009. Ex. B, Decl. of Jason L. Levine, ¶ 3.

15 20. MDLZ is not able to track sales by state because, among other things, it sells  
16 to distributors and retailers, who may sell the product in various states. Based on  
17 population data from July 2016 population estimates from the U.S. Census Bureau,  
18 MDLZ estimates that approximately \$11,496,160 (or approximately 12.15%) of its  
19 national gross sales from 2009 through April 2017 were sold in California. *See* Ex. B,  
20 Decl. of Jason L. Levine, ¶¶ 4-6.

21 21. Plaintiff seeks “disgorgement and restitution of all revenue received by  
22 Defendants from the sale of Ginger Snaps.” *See, e.g.*, Ex. A, ¶¶ 131, 140, 160, 164.  
23 Because Plaintiff asserts that the class period begin in 2006, this demand places into  
24 controversy more than \$11,496,160 (as noted above, MDLZ does not have sales data prior  
25 to 2009, but the estimated gross sales of Ginger Snaps cookie products from 2009 to April  
26 2017 to retailers and distributors who sold the products in California was approximately  
27  
28

1 \$11,496,160).<sup>2</sup>

2 22. Plaintiff also seeks punitive damages under the CLRA, which are included in  
 3 calculating the amount in controversy. Ex. A, ¶ 177; *Bell-Sparrow v. Wiltz*, No. 12-2782,  
 4 2014 WL 2927354, at \*4-5 (N.D. Cal. June 27, 2014) (including punitive damages award  
 5 with 5.5 multiplier in amount-in-controversy in light of plaintiff’s request for punitive  
 6 damages in connection with claim for intentional misrepresentation); *Lee v. Equifax Info.*  
 7 *Servs., LLC*, No. 13-4302, 2013 WL 6627755, at \*4 (N.D. Cal. Dec. 16, 2013); *Hurd v.*  
 8 *Am. Income Life Ins.*, No. 13-5205, 2013 WL 5575073, at \*6-7 (C.D. Cal. Oct. 10, 2013);  
 9 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1032 (N.D. Cal. 2002). As recognized in  
 10 *Hurd*, punitive damages awards “can be substantial.” 2013 WL 5575073, at \*6-7. Even  
 11 “applying the ‘conservative’ estimate of a 1:1 ratio between compensatory damages and  
 12

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13 <sup>2</sup> MDLZ believes that California law precludes Plaintiff from seeking disgorgement and restitution of all  
 14 revenue received by MDLZ from the sale of Ginger Snaps cookie products because Plaintiff derived  
 15 significant value from the products and restitution would therefore amount to an unjustified windfall.  
 16 See *Brazil v. Dole Packaged Foods, LLC*, 660 F. App’x 531, 534 (9th Cir. 2016) (explaining that  
 17 damages in false advertising case were limited to “the difference between the prices customers paid and  
 the value of the [product] they bought—in other words, the ‘price premium’ attributable to [the  
 challenged] labels.”).

18 Moreover, MDLZ believes that Plaintiff’s proposed class period is overly broad because it far exceeds  
 19 the statute of limitations under the FAL, CLRA, and UCL, and because the delayed discovery rule does  
 20 not apply. See *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1134, 1140 (C.D. Cal. 2010) (“CLRA and  
 FAL claims are subject to a three-year statute of limitations, while UCL claims are subject to a four-year  
 statute of limitations.”).

21 For the purposes of removal, however, the “inquiry is what amount is put ‘in controversy’ by the  
 22 plaintiff’s complaint, not what a defendant will actually owe.” *Korn*, 536 F. Supp. 2d at 1205; see also  
 23 *Deutsche Bank Nat. Trust v. Heredia*, No. 12-04405, 2012 WL 4714539, at \*2 (N.D. Cal. Sept. 14,  
 24 2012), report and recommendation adopted, No. 2012 WL 4747157 (N.D. Cal. Oct. 3, 2012) (“[I]n  
 determining whether a challenged jurisdictional amount has been met, district courts are permitted only  
 25 to assess the allegations in a complaint and not the validity of any asserted defenses[.]” (internal  
 26 quotations omitted); *Riggins v. Riggins*, 415 F.2d 1259, 1261-62 (9th Cir. 1969) (noting that statute of  
 limitations defense that could bar portion of relief sought did not affect amount in controversy).  
 Accordingly, the full amount of MDLZ’s gross sales revenue during Plaintiff’s proposed class period is  
 27 properly included in the amount-in-controversy calculation. See also *Waller v. Hewlett-Packard Co.*,  
 28 No. 11-454, 2011 WL 8601207, at \*2 n.3 (S.D. Cal. May 10, 2011) (calculating amount in controversy  
 based on the full purchase price even though plaintiff argued it would be “unrealistic” to expect the  
 putative class members to receive a “100% reimbursement,” since the inquiry is based on “the relief a  
 plaintiff seeks, not what the plaintiff may reasonably or ultimately obtain”).

1 punitive damages” adds more than \$11,496,160 to the amount in controversy. *Tompkins*  
2 *v. Basic Research LL*, No. 08-244, 2008 WL 1808316, at \*4 (E.D. Cal. Apr. 22, 2008)  
3 (including potential punitive damages in analyzing amount in controversy).

4 23. Plaintiff also seeks attorneys’ fees. *See, e.g.*, Ex. A, ¶¶ 12, Prayer for Relief.  
5 Attorneys’ fees are properly considered as part of the amount in controversy for the  
6 purposes of determining federal jurisdiction. *Bayol*, 2015 WL 4931756, at \*7 (“The  
7 amount in controversy can include...attorneys’ fees[.]”); *see also Mejia v. Prologix*  
8 *Distribution Servs. (W.), LLC*, No. 12-4840, 2012 WL 5522309, at \*2 (N.D. Cal. Nov. 14,  
9 2012) (explaining that “attorneys’ fees are included in the calculation” of CAFA’s amount  
10 in controversy requirement); *see also Guglielmino v. McKee Foods Corp.*, 506 F.3d 696,  
11 700 (9th Cir. 2007). Fee requests in consumer class actions, such as this lawsuit, are  
12 typically significant. *See, e.g., Wilson v. Airborne, Inc.*, No. 07-770, 2008 WL 3854963,  
13 at \*12 (C.D. Cal. Aug. 13, 2008) (awarding \$3,459,946 in attorneys’ fees in deceptive  
14 advertising class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 46 (2008)  
15 (awarding attorneys’ fees of \$2.04 million as part of the settlement of consumer class  
16 action); *In re Sony SXRDRear Projection Television Class Action Litig.*, No. 06-5173,  
17 2008 WL 1956267, at \*16 (S.D.N.Y. May 1, 2008) (class counsel incurred \$1,279,405 in  
18 breach-of-warranty class action).

19 24. When aggregated, the actual damages, restitution and disgorgement, punitive  
20 damages demanded by Plaintiff, and the amount of attorneys’ fees that class counsel may  
21 recover exceed CAFA’s \$5 million threshold.

22 25. Plaintiff attempts to evade removal by alleging that damages will be less than  
23 \$5 million. *See* Ex. A, at 34. The U.S. Supreme Court, however, held that a party cannot  
24 avoid removal by pleading damages less than \$5 million. *See Standard Fire Ins. Co. v.*  
25 *Knowles*, 133 S. Ct. 1345 (2013) (stipulation to damages less than \$5 million does not bar  
26 CAFA removal).

**REMOVAL IS TIMELY**

26. Under 28 U.S.C. § 1446(b), notice of removal of a civil action must be filed within thirty (30) days of the defendant’s receipt of service of the summons and the Complaint. Mondelēz International was served on April 3, 2017. *See* Ex. A. This Notice of Removal is accordingly timely.

**OTHER REQUIREMENTS FOR REMOVAL ARE MET**

27. MDLZ has not had any attorneys enter an appearance, file any responsive pleadings, or file any papers responding to the Complaint in the state court.

28. MDLZ will promptly give written notice of the filing of this Notice of Removal to all parties, and a copy of this Notice will be filed with the Clerk of Alameda County Superior Court as required by 28 U.S.C. § 1446(d).

**CONCLUSION**

WHEREFORE, Notice is given that this action is removed from Alameda County Superior Court to the United States District Court for the Norther District of California.

Dated: May 3, 2017

JENNER & BLOCK LLP

/s/ Kenneth K. Lee  
Kenneth K. Lee

Attorneys for Defendant  
Mondelēz International, Inc.

# Exhibit A



**Service of Process  
Transmittal**

04/03/2017  
CT Log Number 530971681

**TO:** John Verscaj, Private Litigation Counsel  
Kraft Heinz Foods Company  
218 Exmoor Ave.  
Glen Ellyn, IL 60137

**RE: Process Served in Virginia**

**FOR:** Mondelez International Inc. (Domestic State: VA)

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

**TITLE OF ACTION:** VALORIE WINN, on behalf of herself and all others similarly situated,  
Pltf. vs. MONDELEZ INTERNATIONAL, INC. and PAK 'N SAVE, INC., Dfts.

**DOCUMENT(S) SERVED:** Summons, Attachment(s), Notice, Complaint, Attachment(s)

**COURT/AGENCY:** Superior Court of California, Alameda, CA  
Case # RG17854671

**NATURE OF ACTION:** Product Liability Litigation - Manufacturing Defect - Partially hydrogenated oil

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Glen Allen, VA

**DATE AND HOUR OF SERVICE:** By Process Server on 04/03/2017 at 09:45

**JURISDICTION SERVED :** Virginia

**APPEARANCE OR ANSWER DUE:** Within 30 days after service

**ATTORNEY(S) / SENDER(S):** Gregory S. Weston  
The Weston Firm  
1405 Morena Blvd  
Suite 201  
San Diego, CA 92110  
619) 798-2006

**ACTION ITEMS:** CT has retained the current log, Retain Date: 04/03/2017, Expected Purge Date:  
04/08/2017

Image SOP

Email Notification, John Verscaj john.verscaj@verscajlaw.com

Email Notification, Ellen Smith ellen.smith@mdlz.com

Email Notification, Kevin Brennan Kevin.Brennan@mdlz.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 4701 Cox Road  
Suite 285  
Glen Allen, VA 23060  
**TELEPHONE:** 804-217-7255

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

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

Mondelez International, Inc. and Pak 'N Save, Inc.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Valorie Winn

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

**ENDORSED  
FILED  
ALAMEDA COUNTY  
MAR 28 2017**

CLERK OF THE SUPERIOR COURT  
By MICHELLE BANKS Deputy

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

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

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

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California, Alameda  
Rene C. Davidson Courthouse,  
1125 Fallon St., Oakland, CA 94612

CASE NUMBER:  
(Número del Caso) **RG17854671**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Gregory S. Weston, The Weston Firm, 1405 Morena Blvd., Suite 201, San Diego, CA 92110/ (619) 798-2006

DATE:  
(Fecha)

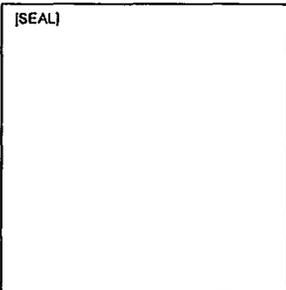
**MAR 28 2017**

Clerk, by  
(Secretario)

**MICHELLE BANKS**

Deputy  
(Adjunto)

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**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory S. Weston (239944) The Weston Firm 1405 Morena Blvd., Suite 201 San Diego, CA 92110 TELEPHONE NO.: (619) 798-2006 FAX NO.: (313) 293-7071 ATTORNEY FOR (Name):		FOR COURT USE ONLY  <div style="text-align: center;"> <b>ENDORSED FILED ALAMEDA COUNTY</b>   <b>MAR 28 2017</b> </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1125 Fallon St. MAILING ADDRESS: 1125 Fallon St. CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		CLERK OF THE SUPERIOR COURT By <u>CASE NUMBER: LLE BANKS</u> <div style="text-align: center;">                       JUDGE: <b>17854611</b>                      DEPT:                 </div>
CASE NAME: Winn v. Mondelez International, Inc. and Pak 'N Save, Inc.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

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

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) <b>Non-PI/PD/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> <b>Fraud (16)</b> <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence  | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): Nine
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 3/24/2017  
 Andrew C. Hamilton

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

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



<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 30.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 30 by e-mail at [Dept.30@alameda.courts.ca.gov](mailto:Dept.30@alameda.courts.ca.gov) or by phone at (510) 268-5104.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 03/29/2017

Chad Finke Executive Officer / Clerk of the Superior Court

By  digital

Deputy Clerk

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**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 03/30/2017.

By  digital

Deputy Clerk

1 **THE WESTON FIRM**  
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7 *Counsel for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 28 2017

CLERK OF THE SUPERIOR COURT  
By MICHELLE BANKS  
Deputy

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9  
10 FOR THE COUNTY OF ALAMEDA

11  
12 Case No: **RG17854671**

13 VALORIE WINN, on behalf of herself and  
all others similarly situated,

14 Plaintiff,

15 v.

16  
17 MONDELEZ INTERNATIONAL, INC. and  
PAK 'N SAVE, INC.

18 Defendants.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CLASS ACTION COMPLAINT FOR VIOLATIONS OF:  
CAL. BUS. & PROF. CODE §§17200 *et seq.*;  
CAL. BUS. & PROF. CODE §§17500 *et seq.*;  
CAL. CIV. CODE §§ 1750 *et seq.*; and  
BREACH OF EXPRESS AND IMPLIED WARRANTIES

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Valorie Winn, on behalf of herself, all others similarly situated, and the general public,  
2 by and through her undersigned counsel, hereby sues Defendants Mondelez International, Inc.  
3 (“Mondelez”) and Pak ‘N Save, Inc. (Pak ‘N Save) (collectively “Defendants”) and, upon information  
4 and belief and investigation of counsel, alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. Jurisdiction is proper in the Superior Court of Alameda because Plaintiff is a citizen of  
7 California and because all claims are asserted under the laws of California.

8 2. Venue is proper in the Superior Court for the County of Alameda because the cause of  
9 action accrued in Alameda County, Plaintiff is a resident of Alameda County, and one defendant’s  
10 principal places of business is in Alameda County.

11 **II. NATURE OF THE ACTION**

12 3. Mondelez manufactures, markets, distributes and sells Ginger Snaps, a cookie product  
13 that contained partially hydrogenated oil (“PHO”) until as recently as December 28, 2014.

14 4. PHO is a food additive banned in the United States and many parts of the world due to  
15 its artificial trans fat content.

16 5. Artificial trans fat is a toxin and carcinogen for which there are many safe and  
17 commercially viable substitutes.

18 6. Mondelez used various marketing methods to falsely represent Ginger Snaps as  
19 healthful, made with traditional natural ingredients, and not harmful to the cardiovascular system.

20 7. Contrary to these claims, Ginger Snaps contained dangerous levels of PHO, and thus  
21 trans fat.

22 8. Pak ‘N Save sells Ginger Snaps and other prohibited, adulterated foods to California  
23 citizens, including to Plaintiff.

24 9. On June 17, 2015, the FDA determined that PHO is unsafe for use in food. *See* 80 Fed.  
25 Reg. 34650 (June 17, 2015) (hereinafter “FDA Final PHO Determination”). Although safe, low-cost,  
26 and commercially acceptable alternatives to PHO have always been available, with many companies  
27 switching in the early 1990’s, Mondelez unfairly elected *not* to use these safe alternatives in Ginger  
28 Snaps in order to increase profit at the expense of the health of consumers.

1 10. Additionally, Mondelez misleadingly markets Ginger Snaps with health claims. This  
2 false advertising deceives consumers into purchasing a product that is harmful to their health.

3 11. Plaintiff Valorie Winn repeatedly purchased and consumed Ginger Snaps manufactured  
4 by Mondelez during the Class Period defined herein, including from Defendant Pak 'N Save, a retail  
5 grocery store that sells Ginger Snaps.

6 12. This action is brought to remedy Mondelez's unfair, deceptive, immoral, and unlawful  
7 conduct. On behalf of the class defined herein, Plaintiff seeks an order compelling Mondelez to, *inter*  
8 *alia*: (1) cease marketing and selling Ginger Snaps using the false, misleading, deceptive, and  
9 unconscionable tactics complained of herein; (2) conduct a corrective advertising campaign; (3) destroy  
10 all misleading and deceptive materials and products; (4) award Plaintiff and the Class members  
11 restitution, actual damages, and punitive damages to the extent permitted under the law; and (6) pay  
12 costs, expenses, and reasonable attorneys' fees. Plaintiff further seeks an order requiring Pak 'N Save to  
13 cease selling products with PHO and pay restitution to buyers of Ginger Snaps.

14 **III. PARTIES**

15 13. Defendant Mondelez International, Inc. is a Virginia corporation with its principal place  
16 of business in Deerfield, Illinois. Mondelez International, Inc. owns, manufactures, and sells Ginger  
17 Snaps.

18 14. Defendant Pak 'N Save, Inc. is a California corporation with its principal place of  
19 business in Pleasanton, California. Pak 'N Save sells Ginger Snaps to the public.

20 15. Plaintiff Valorie Winn is a resident of Alameda County, California who repeatedly  
21 purchased Ginger Snaps for personal and household consumption.

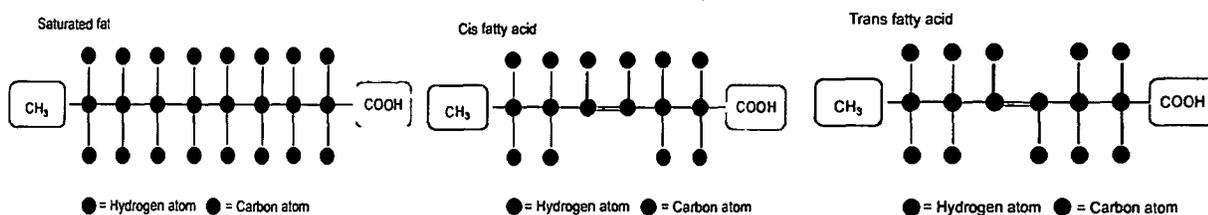
22 **IV. NATURE OF TRANS FAT**

23 16. Artificial trans fat is a toxic, unlawful food additive manufactured via an industrial  
24 process called partial hydrogenation, in which hydrogen atoms are added to normal vegetable oil by  
25 heating the oil to temperatures above 400°F in the presence of ion donor catalyst metals such as  
26  
27  
28

1 rhodium, ruthenium, and nickel.<sup>1</sup> The resulting product is known as partially hydrogenated oil, or PHO,  
2 and it was used in dangerous quantities in Ginger Snaps.

3 17. PHO was invented in 1901 and patented in 1902 by German chemist Wilhelm Normann.  
4 Artificial trans fat molecules differ chemically from the natural fat molecules in other food products.<sup>2</sup>

5 18. Natural fat, except the trace amounts of natural trans fat from ruminant animal sources  
6 like beef, milk, and mutton, comes in two varieties: (1) fats that lack carbon double bonds (“saturated  
7 fat”) and (2) fats that have carbon double bonds with contiguous hydrogen atoms (“cis fat”). Trans fat,  
8 in contrast to cis fat, has carbon double bonds with hydrogen atoms on opposite sides of the carbon  
9 chain.



14 19. PHO is attractive to the processed food industry because it combines the very low cost  
15 of unsaturated cis fat with the “mouth feel” and long shelf life of saturated fat. Like processed cis fat,  
16 PHO is manufactured from low-cost oil seeds,<sup>3</sup> while the saturated fat it replaces in processed food is  
17 derived from relatively expensive animal and tropical plant sources.<sup>4</sup> Given its versatility, ten years ago  
18 PHO was used in 40% of processed packaged foods.<sup>5</sup> Now that its toxic properties are known, few food  
19 companies continue to use PHO. Mondelez, however, has decided not to follow its more responsible  
20

21 <sup>1</sup> See Alice H. Lichtenstein, *Trans Fatty Acids, Plasma Lipid Levels, and Risk of Developing Cardiovascular Disease*, 95 CIRCULATION 2588, 2588-90 (1997).

22 <sup>2</sup> See Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J. MED. 94,  
23 94-8 (1999). See also Walter Willett, *The Scientific Case for Banning Trans Fats*, Scientific American,  
24 available at [www.scientificamerican.com/article/the-scientific-case-for-banning-trans-fats/](http://www.scientificamerican.com/article/the-scientific-case-for-banning-trans-fats/) (last visited  
January 24, 2017).

25 <sup>3</sup> e.g., corn oil, soybean oil, cottonseed oil

26 <sup>4</sup> e.g., butter, cream, palm oil, coconut oil

27 <sup>5</sup> Mary Carmichael, *The Skinny on Bad Fat*, Newsweek, Dec. 1, 2003, at 66. See also Kim Severson,  
28 *Hidden Killer. It's Trans Fat. It's Dangerous. And It's In Food You Eat Every Day*, S.F. CHRON., Jan.  
30, 2002.

1 peers and cease using PHO during the Class Period, instead unfairly placing its profits over public  
2 health.

3 **A. There is a Scientific Consensus That Trans Fat is Extremely Harmful**

4 20. PHO causes cardiovascular heart disease, diabetes, cancer, and Alzheimer's disease, and  
5 accelerates memory damage and cognitive decline.

6 21. There is "no safe level" of PHO or artificial trans fat intake.<sup>6</sup>

7 22. In addition, "trans fatty acids are not essential and provide no known benefit to human  
8 health."<sup>7</sup> Thus, while "the [Institute of Medicine] sets tolerable upper intake levels (UL) for the highest  
9 level of daily nutrient intake that is likely to pose no risk of adverse health effects to almost all  
10 individuals in the general population[,] . . . the IOM does **not** set a UL for trans fatty acid because **any**  
11 incremental increase in trans fatty acid intake increases the risk of CHD."<sup>8</sup>

12 23. Dr. Julie Louise Gerberding, who served for both of President Bush's two terms as head  
13 of the United States Centers for Disease Control and Prevention, summarized the issues:

14 The scientific rationale for eliminating exposure to artificial trans fatty acids in foods  
15 is rock solid. There is no evidence that they provide any health benefit, and they are  
16 certainly harmful. These compounds adversely affect both low- and high-density  
17 lipoprotein cholesterol levels and increase the risk for coronary heart disease, even at  
18 relatively low levels of dietary intake. Gram for gram, trans fats are far more potent  
19 than saturated fats in increasing the risk for heart disease, perhaps because they also  
20 have pro-inflammatory properties and other adverse effects on vascular  
21 endothelium . . . Eliminating exposure to these dangerous fats could have a powerful  
22 population impact—potentially protecting 30,000 to 100,000 Americans from death

24 \_\_\_\_\_  
25 <sup>6</sup> Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2005).

26 <sup>7</sup> Food Labeling; Health Claim; Phytosterols and Risk of Coronary Heart Disease, Proposed Rule, 75  
27 Fed. Reg. 76526, 76542 (Dec. 8, 2010).

28 <sup>8</sup> *Id.* (emphasis added).

1 related to heart disease each year.<sup>9</sup>

2 24. Dr. Mozaffarian of Harvard Medical School writes in the New England Journal of  
3 Medicine:

4 Given the adverse effects of trans fatty acids on serum lipid levels, systemic  
5 inflammation, and possibly other risk factors for cardiovascular disease and the  
6 positive associations with the risk of CHD, sudden death from cardiac causes, and  
7 possibly diabetes, the potential for harm is clear. The evidence and the magnitude of  
8 adverse health effects of trans fatty acids are in fact far stronger on average than  
9 those of food contaminants or pesticide residues, which have in some cases received  
10 considerable attention.<sup>10</sup>

11 25. Given its nature as an artificial chemical not naturally found in any food and the  
12 considerable harm that it causes to human health, Dr. Walter Willett, also at Harvard Medical School,  
13 finds the most direct analogue of trans fat to be not any natural fat but contaminants such as pesticides.  
14 He states that the addition of artificial trans fat to food by companies like Mondelez “is a food safety  
15 issue . . . this is actually contamination.”<sup>11</sup>

16 **B. The Artificial Trans Fat in Ginger Snaps Causes Cardiovascular Disease**

17 26. Trans fat raises the risk of CHD more than any other known consumed substance.<sup>12</sup>

18 27. Removing trans fat equivalent to 2% of total calories from the American diet “would  
19 prevent approximately 30,000 premature coronary deaths per year, and epidemiologic evidence  
20 suggests this number is closer to 100,000 premature deaths annually.”<sup>13</sup>

21 28. By raising LDL levels and lowering HDL levels, trans fat causes a wide variety of

22 <sup>9</sup> Julie Louise Gerberding, *Safer Fats for Healthier Hearts: The Case for Eliminating Dietary Artificial*  
23 *Trans Fat Intake*, 151 ANN. INTERN. MED. 137-38 (2009)

24 <sup>10</sup> Dariush Mozaffarian et al., *Trans Fatty Acids and Cardiovascular Disease*, 354 N. ENG. J. MED.  
1601-13 (2006).

25 <sup>11</sup> Rebecca Coombes, *Trans fats: chasing a global ban*, 343 BRITISH MED. J. d5567 (2011).

26 <sup>12</sup> Mozaffarian, 354 NEW ENG. J. MED. at 1603.

27 <sup>13</sup> Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 NEW ENG. J. MED. 94, 94-  
28 8 (1999).

1 dangerous heart conditions, including vasodilation, coronary artery disease, and primary cardiac arrest.

2 29. In a joint Dietary Guidelines Advisory Committee Report, the Department of Health and  
3 Human Services and the U.S. Department of Agriculture recognized “[t]he relationship between trans  
4 fatty acid intake and LDL cholesterol is direct and progressive, increasing the risk of cardiovascular  
5 disease.”<sup>14</sup>

6 30. The American Heart Association warns, “trans fats raise your bad (LDL) cholesterol  
7 levels and lower your good (HDL) cholesterol levels. Eating trans fats increases your risk of developing  
8 heart disease.”<sup>15</sup>

9 31. After a review of literature on the connection between the consumption of artificial trans  
10 fat and coronary heart disease, the FDA concluded:

11 [B]ased on the consistent results across a number of the most persuasive types of  
12 study designs (i.e., intervention trials and prospective cohort studies) that were  
13 conducted using a range of test conditions and across different geographical regions  
14 and populations . . . the available evidence for an adverse relationship between trans  
15 fat intake and CHD risk is strong.<sup>16</sup>

16 32. The FDA further found “[t]o date, there have been no reports issued by authoritative  
17 sources that provide a level of trans fat in the diet . . . below which there is no risk of [Coronary Heart  
18 Disease].”<sup>17</sup> Rather, there “is a positive linear trend between trans fatty acid intake and LDL cholesterol  
19 concentration, and therefore there is a positive relationship between trans fatty acid intake and the risk  
20 of CHD.”<sup>18</sup>

21 33. This evidence of trans fat’s horrific impact on the health of Americans is more than 20

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22 <sup>14</sup> Dep’t of Health & Human Serv. & U.S. Dep’t of Agric., 2005 Dietary Guidelines Advisory  
23 Committee Report, Section 10 (2005).

24 <sup>15</sup> Am. Heart Ass’n., *Trans Fat Overview*, available at [tinyurl.com/TransFatOverview](http://tinyurl.com/TransFatOverview) (last visited  
25 January 12, 2017).

26 <sup>16</sup> Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., *Questions & Answers About  
Trans Fat Nutrition Labeling*.

27 <sup>17</sup> 75 Fed. Reg. 76526, 76542 (Dec. 8, 2010).

28 <sup>18</sup> *Id.*

1 years old. Dr. Walter Willett of Harvard Medical School found in 1994:

2 [E]ven the lower estimates from the effects [of PHO] on blood lipids would suggest  
3 that more than 30,000 deaths per year may be due to the consumption of partially  
4 hydrogenated vegetable fat. Furthermore, the number of attributable cases of  
5 nonfatal coronary heart disease will be even larger.<sup>19</sup>

6 34. By taking blood samples from 179 survivors of cardiac arrest and 285 randomly-selected  
7 control patients and comparing the top fifth with the bottom fifth of participants by trans fat intake,  
8 another study published in the American Heart Association's *Circulation* found that the largest  
9 consumers of trans fat have three times the risk of suffering primary cardiac arrest, even after  
10 controlling for a variety of medical and lifestyle risk factors.<sup>20</sup>

11 35. Australian researchers observed that heart attack patients possess elevated amounts of  
12 trans fat in their adipose tissue compared to controls, strongly linking heart disease with long-term  
13 consumption of trans fat.<sup>21</sup>

14 36. While cholesterol dysregulation and pro-inflammatory effects are the best-documented  
15 pathways through which trans fat causes heart disease and death, another study isolated an additional  
16 method by which trans fat causes atherosclerosis, namely by degrading the function of TGF- $\beta$ , a protein  
17 responsible for preventing the development of atherosclerotic lesions.<sup>22</sup>

18 37. TGF- $\beta$  also functions to suppress cancerous tumors. The same scientists suggest that the  
19 degradation of TGF- $\beta$  may be the reason that trans fat consumption is strongly linked to multiple forms  
20 of cancer.<sup>23</sup>

21 \_\_\_\_\_  
22 <sup>19</sup> W.C. Willett et al., *Trans Fatty Acids: Are the Effects only Marginal?* 84 AM. J. PUB. HEALTH 722,  
723 (1994).

23 <sup>20</sup> Rozenn N. Lemaitre et al., *Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac*  
24 *Arrest*, 105 CIRCULATION 697, 697-701 (2002).

25 <sup>21</sup> Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated*  
26 *With Myocardial Infarction*. 134 J. NUTR. 874, 874-79 (2004).

27 <sup>22</sup> Chen, C.L. et al., *A mechanism by which dietary trans fats cause atherosclerosis*, J. NUTR.  
BIOCHEMISTRY 22(7) 649-655 (2011).

28 <sup>23</sup> *Id.*

1           **C.    The Artificial Trans Fat in Ginger Snaps Causes Type-2 Diabetes**

2           38.    Artificial trans fat also causes type-2 diabetes.<sup>24</sup>

3           39.    In particular, trans fat disrupts the body's glucose and insulin regulation system by  
4 incorporating itself into cell membranes, causing the insulin receptors on cell walls to malfunction, and  
5 in turn elevating blood glucose levels and stimulating further release of insulin.

6           40.    Researchers at Northwestern University's medical school found that mice show multiple  
7 markers of type-2 diabetes after eating a high trans fat diet for only four weeks.<sup>25</sup>

8           41.    By the eighth week of the study, mice fed the diet high in trans fat showed a 500%  
9 increase compared to the control group in hepatic interleukin-1 $\beta$  gene expression, one such marker of  
10 diabetes, indicating the extreme stress even short-term exposure to artificial trans fat places on the  
11 body.<sup>26</sup>

12          42.    A 14-year study of 84,204 women found that for every 2 percent increase in energy  
13 intake from artificial trans fat, the relative risk of type-2 diabetes was increased by 39 percent.<sup>27</sup>

14           **D.    The Artificial Trans Fat in Ginger Snaps Causes Breast, Prostate, and Colorectal Cancer**

15          43.    Trans fat is a carcinogen which causes breast, prostate, and colorectal cancer.

16          44.    A 13-year study of 19,934 French women showed 75 percent more women contracted  
17 breast cancer in the highest quintile of trans fat consumption than did those in the lowest.<sup>28</sup>

18          45.    In a 25-year study of 14,916 American physicians, those in the highest quintile of trans  
19 fat consumption had more than double the risk of developing prostate cancer than the doctors in the  
20

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21 <sup>24</sup> Am. Heart Ass'n., *Trans Fat Overview*, available at [tinyurl.com/TransFatOverview](http://tinyurl.com/TransFatOverview) (last visited  
22 January 12, 2017).

23 <sup>25</sup> Sean W. P. Koppe et al., *Trans fat feeding results in higher serum alanine aminotransferase and*  
24 *increased insulin resistance compared with a standard murine high-fat diet*, 297 AM. J. PHYSIOL.  
GASTROINTEST LIVER PHYSIOL. 378 (2009).

25 <sup>26</sup> *Id.*

26 <sup>27</sup> Jorge Salmeron et al., *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*, 73 AM. J. CLINICAL  
NUTRITION 1019, 1023 (2001).

27 <sup>28</sup> Véronique Chajès et al., *Association between Serum Trans-Monounsaturated Fatty Acids and Breast*  
28 *Cancer Risk in the E3N-EPIC Study*. 167 AM. J. EPIDEMIOLOGY 1312, 1316 (2008).

1 lowest quintile.<sup>29</sup>

2 46. A study of 1,012 American males observing trans fat intake and the risk of prostate  
3 cancer found “[c]ompared with the lowest quartile of total trans-fatty acid consumption, the higher  
4 quartiles gave odds ratios (ORs) equal to 1.58,” meaning those in the highest quartile are 58% more  
5 likely to contract prostate cancer than those in the lowest.<sup>30</sup>

6 47. A 600-person study found an 86 percent greater risk of colorectal cancer in the highest  
7 trans fat consumption quartile.<sup>31</sup>

8 48. A 2,910-person study found “trans-monounsaturated fatty acids . . . were dose-  
9 dependently associated with colorectal cancer risk,” which showed “the importance of type of fat in the  
10 etiology and prevention of colorectal cancer.”<sup>32</sup>

11 **E. The Artificial Trans Fat in Ginger Snaps Causes Alzheimer’s Disease**  
12 **and Cognitive Decline**

13 49. Trans fat causes Alzheimer’s disease and cognitive decline.

14 50. In a study examining 815 Chicago area seniors, researchers found “increased risk of  
15 incident Alzheimer disease among persons with high intakes of . . . trans-unsaturated fats.”<sup>33</sup>

16 51. The study “observed a strong increased risk of Alzheimer disease with consumption of  
17 trans-unsaturated fat.”<sup>34</sup>

18 52. In a study of 1,486 women with type-2 diabetes, researchers found “[h]igher intakes of .  
19

20 \_\_\_\_\_  
21 <sup>29</sup> Jorge Chavarro et al., *A Prospective Study of Blood Trans Fatty Acid Levels and Risk of Prostate Cancer*, 47 PROC. AM. ASSOC. CANCER RESEARCH 95, 99 (2006).

22 <sup>30</sup> Xin Liu et al., *Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate Cancer: Modification by RNASEL R462Q Variant*, 28 CARCINOGENESIS 1232, 1232 (2007).

23 <sup>31</sup> L.C. Vinikoor et al., *Consumption of Trans-Fatty Acid and its Association with Colorectal Adenomas*, 168 AM. J. EPIDEMIOLOGY 289, 294 (2008).

24 <sup>32</sup> Evropi Theodoratou et al., *Dietary Fatty Acids and Colorectal Cancer: A Case-Control Study*, 166 AM. J. EPIDEMIOLOGY 181 (2007).

25 <sup>33</sup> Martha Clare Morris et al., *Dietary Fats and the Risk of Incident Alzheimer Disease*, 60 ARCH. NEUROL. 194, 198-99 (2003).

26 <sup>34</sup> *Id.*  
27

28

1 . . . trans fat since midlife . . . were [] highly associated with worse cognitive decline . . . .”<sup>35</sup>

2 53. The study cautioned “[d]ietary fat intake can alter glucose and lipid metabolism and is  
3 related to cardiovascular disease risk in individuals with type 2 diabetes. Because insulin, cholesterol,  
4 and vascular disease all appear to play important roles in brain aging and cognitive impairments,  
5 dietary fat modification may be a particularly effective strategy for preventing cognitive decline,  
6 especially in individuals with diabetes.”<sup>36</sup> (citations omitted).

7 54. Artificial trans fat also damages the brains of those who consume it. A study conducted  
8 by UCSD School of Medicine of 1,018 men, mostly younger men, found trans fat consumption to be  
9 strongly correlated with impaired memory.<sup>37</sup> The authors of the study, appearing in *Circulation*, the  
10 American Heart Association’s peer-reviewed journal, conclude that “Greater dTFA [dietary trans fatty  
11 acid] was significantly associated with worse word memory in adults aged 20-45 years, often critical  
12 years for career building.”

13 55. Performing a word memory test, each additional gram per day of trans fat consumed was  
14 associated with 0.76 fewer words correctly recalled. The authors suggest trans fat’s well-established  
15 pro-oxidant effect and its damage to cell energy processes is the pathway by which trans fat  
16 consumption damages memory ability. The young men with the highest trans fat consumption scored  
17 12 fewer recalled words on the 104-word test.<sup>38</sup>

18 **F. The Artificial Trans Fat in Ginger Snaps Causes Organ Damage**

19 56. Artificial trans fat molecules are readily incorporated into blood and organ cells in place  
20 of natural fat molecules, which damages vital organs, including the heart, brain, and reproductive system.  
21 Further, changing the chemical composition of cells induces systemic inflammation, where the immune  
22 system fails to recognize such cells as native to the body and becomes persistently overactive, leading to

23 \_\_\_\_\_  
24 <sup>35</sup> Elizabeth E. Devore et al., *Dietary Fat Intake and Cognitive Decline in Women with Type 2 Diabetes*,  
32 DIABETES CARE 635 (2009).

25 <sup>36</sup> *Id.*

26 <sup>37</sup> Golomb, B. et al., *Trans Fat Consumption is Adversely Linked to Memory in Working-Age Adults*,  
27 CIRCULATION. 130:A15572 (2014).

28 <sup>38</sup> *Id.*

1 further organ damage.<sup>39</sup>

2 **G. Artificial Trans Fat Is Banned in Many American and European Jurisdictions**

3 57. In 2008, California became the first state to ban all restaurant food with artificial trans fat.  
4 Trans fats now may not be served in California's schools or restaurants in an amount greater than half a  
5 gram per serving, nor contain any ingredient with more than this amount.<sup>40</sup>

6 58. New York City banned trans fat in restaurants in 2006. Similar laws exist in Philadelphia;  
7 Baltimore; Stamford, Connecticut; and Montgomery County, Maryland.

8 59. A 2004 Danish law restricted all foods to fewer than 2 percent of calories from artificial  
9 trans fat. Switzerland made the same restriction in 2008.<sup>41</sup>

10 60. After conducting a surveillance study of Denmark's 2004 trans fat ban, researchers  
11 concluded the change "did not appreciably affect the quality, cost or availability of food" and did not  
12 have "any noticeable effect for the consumers."<sup>42</sup>

13 61. Similar bans have been introduced in Austria and Hungary. Brazil, Argentina, Chile, and  
14 South Africa have all taken steps to reduce or eliminate artificial trans fats from food.<sup>43</sup>

15 62. In 2006, a trans fat task force co-chaired by Health Canada and the Heart and Stroke  
16 Foundation of Canada recommended capping trans fat content at 2 percent of calories for tub margarines  
17 and spreads and 5 percent for all other foods. On September 30, 2009, British Columbia became the first  
18

19 \_\_\_\_\_  
20 <sup>39</sup> See Lopez-Garcia et al., *Consumption of Trans Fat is Related to Plasma Markers of Inflammation and*  
21 *Endothelial Dysfunction*, 135 J. NUTR. 562-66 (2005); see also Baer et al., *Dietary fatty acids affect*  
22 *plasma markers of inflammation in healthy men fed controlled diets; a randomized crossover study*, 79  
23 *AM. J. CLIN. NUTR.* 969-73 (2004); Mozaffarian & Clarke, *Quantitative effects on cardiovascular risk*  
*factors and coronary heart disease risk of replacing partially hydrogenated vegetable oils with other*  
*fats and oils*, 63 *EURO. J. CLIN. NUTR.* S22-33 (2009); Mozaffarian et al., *Trans Fatty acids and systemic*  
*inflammation in heart failure* 80 *AM. J. CLIN. NUTR.* 1521-25 (2004).

24 <sup>40</sup> Cal. Educ. Code § 49431.7; Cal. Health & Saf. Code § 114377.

25 <sup>41</sup> Andrew Collier, *Deadly Fats: Why Are We still Eating Them?*, *The Independent (UK)*, June 10,  
26 2008.

27 <sup>42</sup> Mozaffarian, 354 *NEW ENG. J. MED.* at 1610; see also Steen, Stender, *High Levels of Industrially*  
*Produced Trans Fat in Popular Fast Food*, 354 *NEW ENG. J. MED.* 1650, 1652 (2006).

28 <sup>43</sup> Coombes, *Trans fats: chasing a global ban*, 343 *BRITISH MED. J.* 5567 (2011).

1 province to impose these rules on all restaurants, schools, hospitals, and special events.<sup>44</sup>

2 63. In its European Food and Nutrition Action Plan 2015-2020, the World Health  
3 Organization identified one of its goals as “making the European Region trans fat-free.”<sup>45</sup> The  
4 European Commission is preparing legislation to ban the use of trans fats in 28 nations in the European  
5 Union.<sup>46</sup>

6 64. On June 17, 2015, the FDA released its Final Determination Regarding Partially  
7 Hydrogenated Oils, in which it declared “PHOs are not GRAS [Generally Recognized as Safe] for any  
8 use in human food.”<sup>47</sup>

9 65. The FDA will begin filing its own enforcement actions against companies that use PHOs  
10 in 2018. However, as an unsafe food additive, PHO was never lawful to add to food in California during  
11 the Class Period.

#### 12 V. PLAINTIFF’S PURCHASES OF GINGER SNAPS

13 66. Plaintiff Valorie Winn purchased Ginger Snaps during the Class Period defined herein.

14 67. Ms. Winn purchased Ginger Snaps approximately 6-8 times annually for many years.

15 68. The most frequent location of Ms. Winn’s purchases of Ginger Snaps was the Pak ‘N  
16 Save located at 3889 San Pablo Ave., Emeryville, California 94608. Her most recent purchase was in in  
17 the middle of 2016.

18 69. Plaintiff first discovered Mondelez’s unlawful acts described herein in July 2016 when  
19 she learned that Ginger Snaps had been unlawfully using an unsafe food additive for years and are  
20 fraudulently marketed.

21 70. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier  
22 Mondelez’s unlawful acts described herein because the dangers of artificial trans fats were known to

23 <sup>44</sup> *Province Restricts Trans Fat in B.C.*, British Columbia Ministry of Healthy Living and Sport Press  
24 Release (2009), available at [http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2009HLS0013-000315.htm](http://www2.news.gov.bc.ca/news_releases_2005-2009/2009HLS0013-000315.htm) (last visited January 30, 2017).

25 <sup>45</sup> Regional Committee for Europe, *European Food and Nutrition Action Plan 2015-2020*, 64th session.

26 <sup>46</sup> Basu, J. *European trans fat report ‘could lead to ban,’* available at [foodnavigator.com/Policy/Trans-fats-ban-in-Europe-possible-after-EU-debate](http://foodnavigator.com/Policy/Trans-fats-ban-in-Europe-possible-after-EU-debate) (last visited January 24, 2017).

27 <sup>47</sup> FDA Final PHO Determination, 80 Fed. Reg. 34650, 34651 (June 17, 2015).  
28

1 Defendant, but not to her, throughout the Class Period defined herein. Plaintiff is not a nutritionist, food  
2 expert, or food scientist, but rather a lay consumer who did not have the specialized human nutrition  
3 knowledge of Mondelez. Even today the nature and extensive utilization of artificial trans fats—  
4 including that they necessarily exist where partially hydrogenated oil is used an ingredient in a food  
5 product—is generally unknown to the average consumer. When purchasing Ginger Snaps during the  
6 Class Period, Plaintiff read and relied on various health and wellness claims appearing on its packaging  
7 (as further described herein), which individually and especially in the context of its packaging as a  
8 whole, misleadingly implied that Ginger Snaps are healthy. Plaintiff would not have purchased Ginger  
9 Snaps absent these advertisements.

10 71. Because Plaintiff expected these statements to be true and honest, but they were not, she  
11 did not receive the benefit of her purchases.

12 72. Plaintiff intends to, and desires to, and will purchase Ginger Snaps when she is able to  
13 do so with the assurance they will be free of misleading labeling claims.

14 **VI. SPECIFIC MISREPRESENTATIONS, MATERIAL OMISSIONS,**  
15 **AND DECEPTIVE ACTS**

16 73. During the Class Period, Ginger Snaps were made with PHO yet contained deceptive  
17 health and wellness claims.

18 74. Exemplars of front and back label of Ginger Snaps are as follows:  
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21  
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2009 Packaging with "Sensible Solutions" Claim



2012 Packaging without "Sensible Solutions" Claim



Current Packaging



75. Ginger Snaps contains the following health claims:

76. **Misleading “Ginger” and “Molasses” Claims:** During the Class Period, Mondelez marketed Ginger Snaps with the phrase, “Made with Real Ginger & Molasses!” The product’s name further implies that it is made with ginger. The implication of a reasonable consumer is that Ginger Snaps are flavored and sweetened with natural substances, and are therefore healthy. This is not true. Ginger Snaps contain more highly-refined, added sugar than molasses, and, during portions of the class period, contained more added high fructose corn syrup (“HFCS”) or refined sugar than molasses and more PHO than ginger.

77. Ginger is effective at alleviating the symptoms of gastrointestinal distress and possesses numerous therapeutic properties, including antioxidant effects, the ability to inhibit the formation of inflammatory compounds, and direct anti-inflammatory effects. It may also inhibit the growth of human colorectal cancer cells, and induces cell death in ovarian cancer cells. Molasses contains more vitamins, minerals, and trace elements (iron, potassium, calcium, and magnesium) than other sweeteners, like the highly-refined sugar and HFCS in Ginger Snaps.

78. By misleadingly labeling Ginger Snaps as “Made with Real Ginger & Molasses,” Mondelez implies that Ginger Snaps provide the benefits of ginger and molasses, rather than the detriments of high-processed, nutritionally empty sweeteners like added sugar, and other toxic

1 substances like PHO.<sup>48</sup>

2 79. This language was part of an intentional campaign to deceptively market Ginger Snaps  
3 as healthful.

4 80. **Misleading “Sensible Solution” claim:** Mondelez marketed Ginger Snaps with the  
5 phrase “Sensible Solutions” on the front of the product packaging. Further, the phrases “Low Saturated  
6 Fat” and “No Cholesterol” appeared below the “Sensible Solutions” claim. These statements were  
7 misleading because Ginger Snaps contained PHO, which damages heart health far more than dietary  
8 saturated fat. The claim is likewise false because it is not “sensible” for a reasonable consumer to  
9 purchase a cookie with ingredients that cause heart disease, cancer, cognitive decline, and damage to  
10 vital organs.

11 81. This language was part of an intentional campaign to deceptively market Ginger Snaps  
12 as healthful.

13 **VII. GINGER SNAPS UNNECESSARILY CONTAINED PHO**  
14 **AND ARTIFICIAL TRANS FAT**

15 82. Mondelez’s use of PHO in Ginger Snaps was unnecessary. There are several safe  
16 substitutes for PHO and artificial trans fat. Indeed, Mondelez uses “soybean and/or canola oil,” neither  
17 of which contain trans fat, as a substitute for PHO in the current formulation.

18 83. Most manufacturers of competing cookie products have responsibly decided to refrain  
19 from adding artificial trans fat to their products. Such brands sold in the United States include: Famous  
20 Amos Chocolate Chip Cookies, Keebler Simple Sandies, Loaker Quadratini Hazelnut Wafer Cookies,  
21 and Pepperidge Farm Milano Cookies.

22 84. Although commercially viable alternative formulations and substitutes for PHO were  
23 always available, Mondelez elected not to use them in Ginger Snaps in order to increase its profits at  
24 the expense of consumers’ health.

25  
26 <sup>48</sup> While Ginger Snaps do not currently include PHO or HFCS as ingredients, they contained PHO as  
27 recently as December 28, 2014. Mondelez replaced the HFCS in Ginger Snaps with added sugar. The  
28 added sugar currently used in Ginger Snaps has similar effects on the body as HFCS.

1 **VIII. DEFENDANTS' PRACTICES ARE "UNFAIR" WITHIN THE MEANING OF THE**  
2 **CALIFORNIA UNFAIR COMPETITION LAW**

3 85. Mondelez's practices as described herein are "unfair" within the meaning of the  
4 California Unfair Competition Law because its conduct is immoral, unethical, unscrupulous, and  
5 substantially injurious to consumers, and the utility of this conduct to Mondelez does not outweigh the  
6 gravity of the harm to Mondelez's victims.

7 86. Plaintiff's claims for unfair business practices are independent of her claims for false  
8 advertising. Even absent Ginger Snaps false advertising, the sale of Ginger Snaps violated the UCL and  
9 implied warranty of merchantability.

10 87. In particular, while Mondelez's use of PHO in Ginger Snaps may have had some utility  
11 to Mondelez in that it allows it to realize higher profit margins than if it used safer PHO substitutes, this  
12 utility is small and far outweighed by the gravity of the serious health harm Mondelez inflicts upon  
13 consumers.

14 88. Mondelez's conduct injured competing manufacturers of similar products that do not  
15 engage in its unfair behavior, especially given its large market share and limited retail shelf space.

16 89. Moreover, Mondelez's practices violated public policy as declared by specific  
17 constitutional, statutory, or regulatory provisions, including the California Health & Safety Code §  
18 114377 and California Education Code § 49431.7.

19 90. Mondelez's actions also violated public policy by causing the United States and  
20 California to pay—via Medicare, Medicaid, Affordable Care Act Exchange subsidies, veterans' health  
21 programs, public employee and retiree health insurance—for treatment of trans fat-related illnesses.

22 91. Further, the injury to consumers from Mondelez's practices is substantial, not  
23 outweighed by benefits to consumers or competition, and not an injury consumers themselves could  
24 reasonably have avoided.

25 **IX. DEFENDANTS' PRACTICES ARE "UNLAWFUL" WITHIN THE MEANING**  
26 **OF THE CALIFORNIA UNFAIR COMPETITION LAW**

27 92. Mondelez's practices as described herein are "unlawful" within the meaning of the  
28 California Unfair Competition Law because PHO is not Generally Recognized as Safe (GRAS).

1 Therefore, Mondelez's use of PHO rendered its products adulterated within the meaning of 21 U.S.C. §  
2 342(a)(2)(C).

3 93. The PHO used in Ginger Snaps appears nowhere on the FDA's list of the hundreds of  
4 substances it considers GRAS.<sup>49</sup>

5 94. PHO also fails to meet the fundamental requirement for GRAS status—that the  
6 substance is safe. In fact, the FDA has explicitly recognized that there is no safe level of artificial trans  
7 fat consumption.

8 95. Under the Food Additives Amendment of 1958, which amended the FDCA, all food  
9 additives are unsafe unless they (1) fall within a specified exemption to the statute's definition of food  
10 additive, or (2) their use is pursuant to FDA approval. Because the PHO used in Ginger Snaps does not  
11 meet either of these exceptions, they are, and long have been, unsafe, and unlawful for use in food.

12 96. Mondelez's use of PHO in Ginger Snaps thus constituted adulteration under 21 U.S.C. §  
13 342 and Cal. Health & Safety Code § 110545.

14 97. On November 8, 2013, the FDA made its initial tentative determination that PHO is  
15 unsafe, and therefore is not GRAS.<sup>50</sup>

16 98. On June 17, 2015, after extensive public comment, the FDA determined trans fat is not  
17 GRAS.<sup>51</sup>

18 99. At no point during the class period was there a scientific consensus PHO was safe.  
19 Indeed, for more than two decades, the scientific consensus has been that it is unsafe.

#### 20 X. RELIANCE AND INJURY

21 100. When purchasing Ginger Snaps, Plaintiff was seeking products of particular qualities,  
22 including products that did not negatively affect blood cholesterol levels or the health of her  
23 cardiovascular system, and products made with safe, lawful ingredients.

24 101. Plaintiff read and relied on, for her Ginger Snaps purchases, the Product's packaging and  
25

26 <sup>49</sup> See 21 C.F.R. §§ 181, 182, 184 and 186.

27 <sup>50</sup> 78 Fed. Reg. 67169 (November 8, 2013).

28 <sup>51</sup> 80 Fed. Reg. 34650 (June 17, 2015).

1 the health and wellness message it conveyed, which was a substantial factor in each of her purchases.

2 102. Specifically, Plaintiff relied on statements that Ginger Snaps were a “Sensible Solution”  
3 and were “Made with Real Ginger & Molasses.”

4 103. Plaintiff was further injured by Mondelez’s omission of information that would have  
5 been important to her purchasing decisions.

6 104. Plaintiff purchased Ginger Snaps believing they had the qualities she sought based on the  
7 product’s deceptive labeling and the natural assumption that food sold in stores by large companies  
8 would not have unsafe and unlawful ingredients.

9 105. Instead, they were actually unsatisfactory to her for the reasons described herein.

10 106. Ginger Snaps costs more than similar products without false and misleading labeling, and  
11 would have cost less, for example demanded less in the marketplace, absent Mondelez’s false and  
12 misleading statements and material omissions. Plaintiff lost money as a result of Mondelez’s conduct  
13 because she purchased products that were detrimental to her health and were unfairly offered for sale in  
14 violation of federal and California law.

15 107. Plaintiff purchased Ginger Snaps instead of competing products based on the false  
16 statements and misrepresentations described herein.

17 108. Plaintiff suffered physical injury when she repeatedly consumed Ginger Snaps because  
18 consuming artificial trans fat in *any* quantity, including the quantity she actually consumed, inflames and  
19 damages vital organs and substantially increases the risk of heart disease, diabetes, cancer, and death.

20 109. Ginger Snaps contained an unsafe amount of artificial trans fat which rendered them unfit  
21 for human consumption.

22 **XI. DELAYED DISCOVERY**

23 110. Plaintiff did not discover that Mondelez’s behavior was unfair and unlawful and  
24 Defendant’s labeling was false, deceptive or misleading until July 2016, when she learned that Ginger  
25 Snaps were fraudulently marketed and for years contained an unsafe food additive. Until this time, she  
26 lacked the knowledge regarding the facts of her claims against Mondelez.

27 111. Plaintiff is a reasonably diligent consumer who exercised reasonable diligence in her  
28 purchase, use, and consumption of Ginger Snaps. Nevertheless, she would not have been able to

1 discover Mondelez's deceptive practices and lacked the means to discover them given that, like nearly  
 2 all consumers, she is not an expert on nutrition and does not typically read or have ready access to  
 3 scholarly journals such as *The Journal of Nutrition*,<sup>52</sup> *The European Journal of Clinical Nutrition*,<sup>53</sup> and  
 4 *The New England Journal of Medicine*,<sup>54</sup> where the scientific evidence of artificial trans fat's dangers  
 5 was published. Furthermore, Mondelez's labeling practices actively impeded Plaintiff's and Class  
 6 members' abilities to discover the dangerous effects of the Products throughout the Class Period.

## 7 **XII. CLASS ACTION ALLEGATIONS**

8 112. Plaintiff brings this action on behalf of herself and all others similarly situated (the  
 9 "Class"), excluding Defendants' officers, directors, and employees, and the Court, its officers and their  
 10 families.

11 113. The Class is defined as follows:

### 12 **Misleading Claims Class (All Causes of Action)**

13 All persons who purchased in California, on or after February 11, 2006, for  
 14 household or personal use, Ginger Snaps products in packaging containing one or  
 15 more of the following phrases: "Made with Real Ginger & Molasses" and "Sensible  
 16 Solution."

### 17 **Adulteration Subclass (Causes of Action 1-3)**

18 All persons who purchased in the California, on or after February 11, 2006, for  
 19 household or personal use, Ginger Snaps products manufactured or distributed by  
 20 Mondelez, Inc. and containing partially hydrogenated oil.

23 <sup>52</sup> Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated*  
 24 *With Myocardial Infarction*, 134 J. NUTR. 874, 874-79 (2004).

25 <sup>53</sup> A. Tavani et al., *Margarine Intake and Risk of Nonfatal Acute Myocardial Infarction in Italian*  
 26 *Women*, 51 EURO. J. CLIN. NUTR. 30-32 (1997) (estimating a 50 percent greater risk of heart attack in  
 27 women with high consumption of margarine, an association "independent of body mass index, history  
 28 of hypertension and hyperlipidemia").

<sup>54</sup> Mozaffarian, 354 NEW ENG. J. MED. at 1611 ("10 to 19 percent of CHD events in the United States  
 could be averted by reducing the intake of trans fat").

1           **Pak ‘N Save Subclass (All Causes of Action)**

2           All persons who purchased in California, on or after April 1, 2013, for household or  
3           personal use, Ginger Snaps products in packaging containing one or more of the  
4           following phrases: “Made with Real Ginger & Molasses” and “Sensible Solution”  
5           from Pak ‘N Save.

6  
7           114. Questions of law and fact common to Plaintiff and the Class include:

- 8           a. Whether Mondelez communicated a health and wellness message through  
9           Ginger Snaps packaging;
- 10           b. Whether that message was material, or likely to be material, to a  
11           reasonable consumer;
- 12           c. Whether that message was false, at variance with the truth, misleading,  
13           likely to deceive, and/or had the capacity to deceive the public and/or a  
14           reasonable consumer;
- 15           d. Whether Mondelez’s conduct was immoral, unethical, unscrupulous, or  
16           substantially injurious to consumers;
- 17           e. Whether the slight utility Mondelez realizes as a result of its conduct  
18           outweighs the gravity of the harm the conduct causes to its victims;
- 19           f. Whether Mondelez’s conduct violated public policy as declared by  
20           specific constitutional, statutory, or regulatory provisions;
- 21           g. Whether the injury to consumers from Defendants’ practices is substantial;
- 22           h. Whether Mondelez fraudulently omitted material information in  
23           advertising Ginger Snaps as healthy;
- 24           i. Whether Pak ‘N Save sold and distributed Ginger Snaps to the public in  
25           misleading packaging that was likely to deceive the public;
- 26           j. Whether the class is entitled to actual damages, restitution, rescission,  
27           punitive damages, attorneys’ fees and costs, injunctive, and/or any other  
28           relief;

- 1 k. Whether Pak 'N Save sold and distributed to the public a product with
- 2 known health dangers, containing ingredients for which there are safer and
- 3 commercially viable substitutes;
- 4 l. Whether Pak 'N Save's conduct was knowing, or whether Pak 'N Save
- 5 reasonably should have known of the conduct;
- 6 m. Whether the statute of limitations should be tolled on behalf of the Class;
- 7 n. Whether Mondelez's conduct constitutes violations of the California's
- 8 False Advertising Law;
- 9 o. Whether Pak 'N Save's conduct constitutes violations of the California's
- 10 False Advertising Law;
- 11 p. Whether Mondelez's conduct was immoral, unscrupulous, or offensive of
- 12 public policy because Mondelez advertised Ginger Snaps to people
- 13 deliberately seeking a healthy option despite knowing of the dangers from
- 14 its artificial trans fat content;
- 15 q. Whether Mondelez's conduct constitutes a violation of the California
- 16 Consumer Legal Remedies Act;
- 17 r. Whether Pak 'N Save's conduct constitutes a violation of the California
- 18 Consumer Legal Remedies Act;
- 19 s. Whether Mondelez's conduct constitutes a violation of the unlawful prong
- 20 of California's Unfair Competition Law;
- 21 t. Whether Pak 'N Save's conduct constitutes a violation of the unlawful
- 22 prong of California's Unfair Competition Law;
- 23 u. Whether Mondelez acted willfully, recklessly, negligently, or with gross
- 24 negligence in violation of the law as alleged herein;
- 25 v. Whether Pak 'N Save acted willfully, recklessly, negligently, or with gross
- 26 negligence in violation of the law as alleged herein;
- 27 w. Whether members of the Class are entitled to restitution and, if so, the
- 28 correct measure of restitution;

1 x. Whether members of the Class are entitled to an injunction and, if so, its  
2 terms; and

3 y. Whether members of the Class are entitled to any further relief.

4 115. By purchasing Ginger Snaps, all Class members were subjected to the same wrongful  
5 conduct.

6 116. Absent Mondelez's material deceptions, misstatements, and omissions, and Pak 'N  
7 Save's unlawful sale, distribution, and marketing of Ginger Snaps Plaintiff and other Class members  
8 would not have purchased Ginger Snaps.

9 117. Plaintiff's claims are typical of the Class' claims.

10 118. All Class members were subjected to the same economic harm when they purchased  
11 Ginger Snaps and suffered economic injury.

12 119. Plaintiff will fairly and adequately protect the interests of the Class, has no interests that  
13 are incompatible with the interests of the Class, and has retained counsel competent and experienced in  
14 class litigation.

15 120. The Class is sufficiently numerous, as it includes thousands of individuals who  
16 purchased Ginger Snaps throughout California during the Class Period.

17 121. Class representation is superior to other options for the resolution of the controversy.  
18 The relief sought for each Class member is small, as little as two dollars for some Class members.  
19 Absent the availability of class action procedures, it would be infeasible for Class members to redress  
20 the wrongs done to them.

21 122. Mondelez has acted on grounds applicable to the Class, thereby making final injunctive  
22 relief or declaratory relief appropriate concerning the Class as a whole. Pak 'N Save has acted on  
23 grounds applicable to the Subclass, thereby making appropriate final injunctive relief or declaratory  
24 relief concerning the Subclass as a whole.

25 123. Questions of law and fact common to the Class predominate over any questions  
26 affecting only individual members.

27 124. Class treatment is appropriate under Fed. R. Civ. P. 23(a) and both Fed. R. Civ. P.  
28 23(b)(2) and 23(b)(3). Plaintiff will, if notice is required, confer with Mondelez and seek to present the

1 Court with a stipulation and proposed order on the details of a class notice plan.

2 **XIII. CAUSES OF ACTION**

3 **First Cause of Action**

4 **California Unfair Competition Law, Unfair Prong**

5 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

6 125. In this and every cause of action, Plaintiff realleges and incorporates by reference each  
7 and every allegation contained elsewhere in this Complaint, as if fully set forth herein.

8 126. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business  
9 act or practice.”

10 127. The business practices and omissions of Mondelez as alleged herein constitute “unfair”  
11 business acts and practices in that Defendants’ conduct is immoral, unethical, unscrupulous, and  
12 substantially injurious to consumers and the utility of its conduct does not outweigh the gravity of the  
13 harm to consumers.

14 128. Further, Defendants’ practices are unfair because they violated public policy as declared  
15 by specific constitutional, statutory, or regulatory provisions, including those embodied in the FDCA,  
16 California Health & Safety Code, and California Education Code.

17 129. Moreover, Defendants’ practices are unfair because the injury to consumers from  
18 Defendants’ practices is substantial, not outweighed by benefits to consumers or competition, and not  
19 one consumers themselves could reasonably have avoided or should be obligated to avoid.

20 130. In accordance with Cal. Bus. & Prof Code § 17203, Plaintiff seeks an order enjoining  
21 Defendants from continuing to conduct business through unfair acts and practices and to commence a  
22 corrective advertising campaign.

23 131. Plaintiff also seeks an order for the disgorgement and restitution of all revenue received  
24 by Defendants from the sale of Ginger Snaps.

25 **Second Cause of Action**

26 **California Unfair Competition Law, Unlawful Prong**

27 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

28 132. Mondelez has made and distributed, in interstate commerce and in this County, products

1 that contained unlawful food additives. Ginger Snaps were placed into interstate commerce by  
2 Defendants and sold throughout the country and in this County.

3 133. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business  
4 act or practice.”

5 134. Defendants’ conduct is “unlawful” because it violated the Federal Food, Drug, and  
6 Cosmetic Act (“FDCA”), specifically, the Food Additives Amendment of 1958, which deems a food  
7 additive unsafe unless it has met one of two exceptions, neither of which the PHO used in the Ginger  
8 Snaps has met. 21 U.S.C. §§ 348, 342.

9 135. Defendants’ conduct also violated the following portions of the FDCA:

- 10 • 21 U.S.C. § 331(a), prohibiting the “introduction or delivery for introduction into  
11 interstate commerce of any food, drug, device, tobacco product, or cosmetic that is  
12 adulterated or misbranded”;
- 13 • 21 U.S.C. § 331(b), prohibiting the “adulteration or misbranding of any food, drug,  
14 device, tobacco product, or cosmetic in interstate commerce”;
- 15 • 21 U.S.C. § 331(c), prohibiting the “receipt in interstate commerce of any food, drug,  
16 device, tobacco product, or cosmetic that is adulterated or misbranded, and the delivery  
17 or proffered delivery thereof for pay or otherwise”;
- 18 • 21 U.S.C. § 331(k), prohibiting “the doing of any other act with respect to, a food, drug,  
19 device, tobacco product, or cosmetic, if such act is done while such article is held for  
20 sale (whether or not the first sale) after shipment in interstate commerce and results in  
21 such article being adulterated or misbranded”;
- 22 • 21 U.S.C. § 342(a), which deems any food adulterated if it “contains any poisonous or  
23 deleterious substance which may render it injurious to health”;
- 24 • 21 U.S.C. § 348, prohibiting the use of any food additive unless it has been deemed  
25 GRAS;

26 136. Defendants’ conduct violates The California Sherman Food, Drug, and Cosmetic Law  
27 (“Sherman Law”), Cal. Health & Safety Code § 110100, which adopts all FDA regulations as state  
28 regulations. Defendants’ conduct violates the following sections of the Sherman Law:

- 1 • § 110085, adopting all FDA food additive regulations as state regulations;
- 2 • § 110100, adopting all FDA regulations as state regulations;
- 3 • § 110398, “It is unlawful for any person to advertise any food, drug, device, or cosmetic that is
- 4 adulterated or misbranded.”;
- 5 • § 110620, “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
- 6 food that is adulterated.”;

7 137. The use of artificial trans fat in Ginger Snaps constitutes a violation of the FDCA and  
8 the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

9 138. Defendants’ unlawful acts allowed them to sell more units of Ginger Snaps than they  
10 would have otherwise, and at a higher price, and higher margin.

11 139. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining  
12 Defendants from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and  
13 practices and to commence a corrective advertising campaign. Plaintiff intends to purchase the Ginger  
14 Snaps in the future when Defendants ceases their unfair business practices.

15 140. Plaintiff also seeks an order for the disgorgement and restitution of all revenue received  
16 by Defendants from the sale of Ginger Snaps.

17 **Third Cause of Action**

18 **Breach of Implied Warranty of Merchantability**

19 141. Defendants, through their acts and omissions set forth herein, in the sale, marketing, and  
20 promotion of Ginger Snaps, made representations to Plaintiff and the Class that Ginger Snaps were safe  
21 to consume.

22 142. Plaintiff and the Class bought the Products manufactured, advertised, and sold by  
23 Defendants, as described herein.

24 143. Defendants are merchants with respect to the goods of this kind which were sold to  
25 Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied  
26 warranty that those goods were merchantable.

1 144. Defendants breached that implied warranty, however, in that the Products were not fit  
2 for their ordinary purpose and do not conform with the representations on their labels, as set forth in  
3 detail herein.

4 145. As an actual and proximate result of Defendants' conduct, Plaintiff and the Class did not  
5 receive goods as impliedly warranted by Defendants to be merchantable in that they did not conform to  
6 the promises and affirmations made on the container or label of the goods.

7 146. Plaintiff and Class have sustained damages as a proximate result of the foregoing breach  
8 of implied warranty in the amount of Ginger Snaps' purchase price.

9 **Fourth Cause of Action**

10 **California Unfair Competition Law, Unlawful Prong**

11 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

12 147. Defendants have made and distributed, in interstate commerce and in this County,  
13 products that make false and misleading statements of fact regarding their content. Ginger Snaps were  
14 placed into interstate commerce by Defendants and sold throughout California.

15 148. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair or fraudulent business  
16 act or practice."

17 149. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as  
18 alleged herein constitute "unlawful" business acts and practices in that Defendants' conduct violates the  
19 California False Advertising Law, and the California Consumer Legal Remedies Act, as alleged herein.

20 150. Defendants' conduct is further "unlawful" because it violates § 43(a) of the Lanham Act,  
21 15 U.S.C. § 1125(a), in that Defendants' advertising constitutes false statements of fact in interstate  
22 commerce about its own and other products, which were material in that they were likely to influence  
23 consumers' purchasing decisions, and which had a tendency to deceive, or actually deceived a  
24 substantial segment of Defendants' audience, resulting in injury.

25 151. Defendants' conduct is further "unlawful" because it violates the Federal Food, Drug,  
26 and Cosmetic Act ("FDCA"), specifically, (1) 21 U.S.C. § 343(a), which deems food misbranded when  
27 the label contains a statement that is "false or misleading in any particular," (2) 21 C.F.R. §  
28 101.13(i)(3), which bars nutrient content claims that are "false or misleading in any respect," (3) 21

1 C.F.R. § 101.14 requiring claims to be “complete, truthful, and not misleading,” and which “enables to  
2 public to comprehend the information” and (4) 21 U.S.C. § 343(r)(3)(C) requiring claims to present “a  
3 balanced representation of the scientific literature relating to the relationship between a nutrient and a  
4 disease or health-related condition to which the claim refers,” be “stated in a manner so that the claim is  
5 an accurate representation of the authoritative statement,” be in compliance with “section 201(n)”, and  
6 the product “not [to] contain . . . any nutrient in an amount which increases to persons in the general  
7 population the risk of a disease or health-related condition which is diet-related.”

8 152. Defendants further violate the FDCA’s implementing regulation, 21 C.F.R. § 1.21,  
9 because Ginger Snaps packaging fails to reveal material facts, namely the dangers of PHO described in  
10 detail herein, “in light of other representations,” namely the specific statements described herein as  
11 misleading. In particular, its comparison of Ginger Snaps and butter omitted the material fact that butter  
12 is free of PHO, while Ginger Snaps contains it in dangerous amounts.

13 153. Defendants’ conduct further violates the California Sherman Food, Drug, and Cosmetic  
14 Law (“Sherman Law”), Cal. Health & Safety Code § 110660, which deems food products  
15 “misbranded” if their labeling is “false or misleading in any particular.” Defendants’ conduct also  
16 violates the following sections of the Sherman Law:

- 17 • § 110100, adopting all FDA regulations as state regulations;
- 18 • § 110290, “In determining whether the labeling or advertisement of a food . . . is misleading, all  
19 representations made or suggested by statement, word, design, device, sound, or any  
20 combination of these shall be taken into account. The extent that the labeling or advertising fails  
21 to reveal facts concerning the food . . . or consequences of customary use of the food . . . shall  
22 also be considered.”;
- 23 • § 110390, “It is unlawful for any person to disseminate any false advertisement of any  
24 food . . . . An advertisement is false if it is false or misleading in any particular.”;
- 25 • § 110395, “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any  
26 food . . . that is falsely advertised.”;
- 27 • § 110398, “It is unlawful for any person to advertise any food, drug, device, or cosmetic that is  
28 adulterated or misbranded.”;

- 1 • § 110400, “It is unlawful for any person to receive in commerce any food . . . that is falsely  
2 advertised or to deliver or proffer for delivery any such food . . . .”;
- 3 • § 110670, “Any food is misbranded if its labeling does not conform with the requirements for  
4 nutrient content or health claims as set forth in Section 403(r) (21 U.S.C. Sec. 343(r)) of the  
5 federal act and the regulations adopted pursuant thereto.”;
- 6 • § 110680, “Any food is misbranded if its labeling or packaging does not conform to the  
7 requirements of Chapter 4 (commencing with Section 110290).”;
- 8 • § 110705, “Any food is misbranded if any word, statement, or other information required  
9 pursuant to this part to appear on the label or labeling is not prominently placed upon the label or  
10 labeling and in terms as to render it likely to be read and understood by the ordinary individual  
11 under customary conditions of purchase and use.”;
- 12 • § 110760 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any  
13 food that is misbranded.”);
- 14 • § 110765, “It is unlawful for any person to misbrand any food.”; and
- 15 • § 110770, “It is unlawful for any person to receive in commerce any food that is misbranded  
16 or to deliver or proffer for delivery any such food.”

17 154. All of the challenged labeling statements made by Mondelez thus constitute violations of  
18 the FDCA and the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

19 155. Mondelez leveraged its deception to induce Plaintiff and members of the Class to  
20 purchase products that were of lesser value and quality than advertised.

21 156. Plaintiff suffered injury in fact and lost money or property as a result of Defendants’  
22 deceptive advertising: she was denied the benefit of the bargain when she decided to purchase Ginger  
23 Snaps over competing products that are less expensive and/or contain no artificial trans fat.

24 157. Had Plaintiff been aware of Defendants’ false and misleading advertising tactics, she  
25 would not have purchased Ginger Snaps.

26 158. Defendants’ deceptive advertising allowed it to sell more units of Ginger Snaps than it  
27 would have otherwise, and at a higher price.



1 167. Had Plaintiff been aware of Defendants' false and misleading advertising tactics, she  
2 would not have purchased Ginger Snaps.

3 168. Defendants' deceptive advertising allowed them to sell more units of Ginger Snaps, and  
4 at a higher price.

5 169. The acts, omissions, misrepresentations, practices, and non-disclosures of Mondelez as  
6 alleged herein constitute "unfair" business acts and practices because Defendants' conduct is:

- 7 a. immoral, unethical, unscrupulous, and offends public policy;
- 8 b. the gravity of Defendants' conduct outweighs any conceivable benefit of such  
9 conduct; and
- 10 c. the injury to consumers caused by Defendants' conduct is substantial, not  
11 outweighed by any countervailing benefits to consumers or competition, and not  
12 one that consumers themselves could reasonably have avoided.

13 170. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining  
14 Defendants from continuing to conduct business through unlawful, unfair, and fraudulent acts and  
15 practices; to commence a corrective advertising campaign; and restitution of all monies from the sale of  
16 Ginger Snaps.

17 **Seventh Cause of Action**

18 **California False Advertising Law**

19 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

20 171. In violation of Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the advertisements, labeling,  
21 policies, acts, and practices described herein were designed to, and did, result in the purchase and use of  
22 Ginger Snaps without the knowledge that they contained toxic artificial trans fat.

23 172. Defendants knew and reasonably should have known that the labels on Ginger Snaps  
24 were untrue and misleading.

25 173. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and  
26 equitable relief, restitution, and an order for the disgorgement of the funds by which Defendants were  
27 unjustly enriched.

28

**Eighth Cause of Action**

**California Consumer Legal Remedies Act**

**Cal. Civ. Code §§ 1750 *et seq.***

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4 174. The CLRA prohibits deceptive practices in connection with the conduct of a business that  
5 provides goods, property, or services primarily for personal, family, or household purposes.

6 175. Defendants' policies, acts and practices were designed to, and did, result in the purchase  
7 and use of Ginger Snaps primarily for personal, family, or household purposes, and violated and  
8 continue to violate the following sections of the CLRA:

- 9 a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do  
10 not have;
- 11 b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they  
12 are of another;
- 13 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
- 14 d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance  
15 with a previous representation when it has not.

16 176. As a result, Plaintiff and the Class have suffered irreparable harm and are entitled to  
17 injunctive relief and restitution.

18 177. As a further result, Plaintiff and the Class have suffered damages, and because the  
19 conduct was deliberate, immoral, oppressive, made with malice and/or contrary to public policy, they  
20 are entitled to punitive or exemplary damages.

21 178. In compliance with Civ. Code § 1782, Plaintiff sent Mondelez written notice of her  
22 claims on September 7, 2016 and sent Pak 'N Save written notice of her claims on February 1, 2017.  
23 Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified Defendants in writing by certified mail  
24 of the particular violations of § 1770 of the Act as to Ginger Snaps and demanded that Defendants  
25 rectify the problems associated with the actions detailed above and give notice to all affected consumers  
26 of its intent to so act. Defendants' wrongful business practices regarding Ginger Snaps constituted, and  
27 constitute, a continuing course of conduct in violation of the CLRA since Defendants are still  
28

1 representing that Ginger Snaps have characteristics, uses, benefits, and abilities which are false and  
2 misleading, and have injured Plaintiff and the Class.

3 179. Mondelez received Plaintiff's written notice on September 12, 2016. Pak 'N Save  
4 received Plaintiff's written notice on February 3, 2017.

5 **Ninth Cause of Action**

6 **Breach of Express Warranty**

7 180. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
8 forth in full herein.

9 181. During the class period, Defendants made written representations to the public,  
10 including Plaintiff, by its advertising and packaging that Ginger Snaps are "Made with Real Ginger &  
11 Molasses" and are a "Sensible Solution."

12 182. These promises printed on the label became part of the basis of the bargain between the  
13 parties and thus constituted an express warranty.

14 183. Thereon, Defendants sold the goods to Plaintiff and other consumers who bought the  
15 goods from Defendants.

16 184. However, Defendants breached this express warranty in that Ginger Snaps hardly  
17 contain any ginger or molasses and in that they are not a "Sensible Solution."

18 185. As a result of this breach, Plaintiff and other consumers in fact did not receive goods as  
19 warranted by Defendants.

20 186. As a proximate result of this breach of warranty by Defendants, Plaintiff and other  
21 consumers have been damaged in an amount to be determined at trial.

22 **XIV. PRAYER FOR RELIEF**

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

- 25 A. An order confirming that this class action is properly maintainable as a class action as  
26 defined above, appointing Plaintiff Valorie Winn and her undersigned counsel to  
27 represent the classes defined herein, and requiring Defendants to disseminate and bear  
28 the cost of class notice;

- 1 B. An order requiring Defendants to pay restitution and damages to Plaintiff and class  
2 members in the amount of less than \$5 million;
- 3 C. An order requiring Defendants to disgorge any benefits received from Plaintiff and their  
4 unjust enrichment realized as a result of their improper and misleading advertising,  
5 marketing, sale, and distribution of Ginger Snaps;
- 6 D. An Order declaring the conduct complained of herein violates the Unfair Competition  
7 Law;
- 8 E. An Order requiring Defendants to pay restitution and damages to Plaintiff and members  
9 of the Misleading Claims Subclass so that they may be restored any money which was  
10 acquired by means of any deceptive and fraudulent acts;
- 11 F. An award of punitive damages to the extent allowable by law in an amount to be proved  
12 at trial;
- 13 G. An order requiring Defendants to cease and desist their deceptive, unconscionable and  
14 fraudulent practices;
- 15 H. An order requiring Mondelez to engage in a corrective advertising campaign;
- 16 I. An order requiring Pak 'N Save to cooperate in the corrective advertising  
17 campaign, including placing stores displays correcting Mondelez's misleading claims  
18 adjacent to the Ginger Snaps shelf;
- 19 J. An award of prejudgment and post judgment interest;
- 20 K. An award of attorneys' fees and costs; and
- 21 L. Such other and further relief as this Court may deem just, equitable or proper.

22 **XV. JURY DEMAND**

23 Plaintiff requests a trial by jury.

24 **XVI. DISCLAIMER OF FEDERAL JURISDICTION**

25 Plaintiff expressly disclaims all relief that would subject this action to jurisdiction under the  
26 Class Action Fairness Act, including, but not limited to, relief of \$5 million or more.

27

28

1 DATED: March 24, 2017

Respectfully Submitted,



3 THE WESTON FIRM  
4 GREGORY S. WESTON  
5 ANDREW C. HAMILTON  
6 1405 Morena Blvd., Suite 201  
7 San Diego, CA 92110  
8 Telephone: (619) 798-2006  
9 Facsimile: (313) 293-7071

*Counsel for Plaintiff*

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# Exhibit B

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Attorneys for Defendant

Mondelēz International, Inc.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

VALORIE WINN, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

MONDELÉZ INTERNATIONAL, INC.  
and PAK 'N SAVE, INC.

Defendants.

Case No. RG17854671

**DECLARATION OF JASON L.  
LEVINE**

**DECLARATION OF JASON L. LEVINE**

I, Jason L. Levine, declare as follows:

1. I am Vice President Biscuit Equity for Mondelēz Global LLC, the United States operating company for Mondelēz International, Inc. (collectively, “MDLZ”). I have personal knowledge of the facts set forth herein, and I could and would testify competently thereto if called as a witness.

2. I have personal knowledge of, among other things, the marketing of Ginger Snaps cookie products. I also have access to MDLZ’s financial information, including revenue from the sales of the Ginger Snaps cookie products at issue.

3. MDLZ’s financial records show that between 2009 and April 2017, gross sales of Ginger Snaps cookie products to retailers and distributors totaled approximately \$94,642,654 nationwide. MDLZ currently lacks access to gross sales data for Ginger Snaps cookie products prior to 2009.

4. MDLZ does not track sales of its products by state because, among other things, it sells directly to distributors and retailers, who may distribute the products to various states.

5. According to July 2016 population estimates from the U.S. Census Bureau, available online at [www.census.gov](http://www.census.gov), on July 1, 2016, the population of California was 39,250,017, and the population of the United States was 323,127,513. *See* <https://www.census.gov/quickfacts/table/PST045216/00,06>.

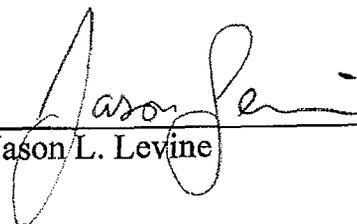
6. Based on these population statistics, I estimate that approximately \$11,496,160 (or approximately 12.15%) of nationwide sales of Ginger Snaps cookie products were sold in California. These figures reflect MDLZ’s sales to distributors and retailers; the sales figure for the amount paid by consumers will be higher because distributors and retailers will typically sell Ginger Snaps cookie products to consumers with a price mark-up.

I declare under penalty of perjury under the laws of the United States that the

1 foregoing is true and correct.

2 Executed this 3 day of May, 2017, in East Hanover, NJ.

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Jason L. Levine

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Valorie Winn, on behalf of herself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) The Weston Firm 1405 Morena Blvd., Suite 201, San Diego, CA 92110 Tel: (619) 798-2006

DEFENDANTS

Mondelēz International, Inc. and Pak 'N Save, Inc.

County of Residence of First Listed Defendant Lake County, Illinois (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

Jenner & Block LLP 633 West 5th St., Suite 3600, Los Angeles, CA 90071 Tel: (213) 239-5100

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): 28 U.S.C. § 1332(d)(2). Brief description of cause: Violations of California Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act; Breach of Implied Warranty of Merchantability; Breach of Express Warranty

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [ ] SAN JOSE [ ] EUREKA-MCKINLEYVILLE

DATE: 05/03/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Kenneth K. Lee

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.