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11 *and the putative Classes*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 SIERRA GILLESPIE, individually,
15 on behalf of herself and others
16 similarly situated,

17 Plaintiff,

18 vs.

19 TASTE OF NATURE, INC.,

20 Defendant.

21 **Case No.:**

22 **CLASS ACTION COMPLAINT**
23 **FOR:**

- 24 **1. UNFAIR AND UNLAWFUL**
25 **BUSINESS ACTS AND PRACTICES**
26 **(CAL. BUS & PROF. CODE §17200**
27 ***ET SEQ.*);**
28 **2. DECEPTIVE ADVERTISING**
PRACTICES (CAL. BUS & PROF.
CODE §§ 17500, *ET SEQ.*);
3. CONSUMER LEGAL
REMEDIES ACT (CAL. CIV. CODE
§ 1750, *ET SEQ.*); AND
4. QUASI-CONTRACT.

DEMAND FOR JURY TRIAL

29 *///*

30 **CLASS ACTION COMPLAINT**

1 Plaintiff, Sierra Gillespie, individually, and on behalf of others similarly situated,
2 by and through her undersigned counsel, files this Class Action Complaint against
3 Defendant Taste of Nature, Inc., (“Defendant” or “Taste of Nature”) and states as
4 follows:

5 **NATURE OF THE ACTION**

6 1. “Informed consumers are essential to the fair and efficient functioning of a
7 free market economy. Packages . . . should enable consumers to obtain accurate
8 information as to the quantity of the contents and should facilitate value comparisons.”
9 15 U.S.C.A. § 1451.

10 2. The average consumer spends a mere 13 seconds making an in-store
11 purchasing decision.¹ That decision is heavily dependent on a product’s packaging, and
12 particularly the package dimensions: “Faced with a large box and a smaller box, both
13 with the same amount of product inside . . . consumers are apt to choose the larger box
14 because they think it’s a better value.”²

15 3. Plaintiff brings this class-action lawsuit based on Defendant’s misleading,
16 deceptive and unlawful conduct in packaging its Chocolate Chip Cookie Dough Bites in
17 opaque cardboard containers with the following dimensions: 3.5 inches x .75 inches x
18 5.875 inches. The Chocolate Chip Cookie Dough Bites containers are uniformly under-
19 filled or “slack-filled.”

20 4. As used herein, “Products” include all products manufactured by Defendant
21 that are substantially similar to the 3.1-ounce and 4.0-ounce opaque boxes of candy
22

23
24 ¹<http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-window.html> (citing the Ehrenberg-Bass Institute of Marketing Science’s report “Shopping Takes Only Seconds...In-Store and Online”).

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

1 within the following product lines: Cookie Dough Bites, Chocolate Chip Cookie Dough
 2 Bites, Fudge Brownie Cookie Dough Bites, Santa's Village Chocolate Chip Cookie
 3 Dough Bites, Cookies N' Cream Cookie Dough Bites, Cinnamon Bun Bites, Red Velvet
 4 Cupcake Bites, Moon Pie Bites, Strawberry Dream Bites, Birthday Cake Cookie Dough
 5 Bites, Peanut Butter Cookie Dough Bites, Muddy Bears, Shari Candies Cherry Sour
 6 Balls, Despicable Me 2 Sour Gummies, Sqwigglies, and Hello Kitty Treats.³

7 5. As more fully described below, the slack-fill in the Products is non-
 8 functional, and therefore misleading and unlawful.

9 6. As a result of its unlawful conduct, Defendant has obtained substantial
 10 profits from its sales of the Products, and has retained these profits. Plaintiff and Class
 11 Members have suffered actual damages. Plaintiff brings this action individually and on
 12 behalf of those similarly situated. Plaintiff seeks to represent a National Class and a
 13 California Subclass (defined *infra.*). Plaintiff seeks damages, interest thereon,
 14 reasonable attorneys' fees and costs, restitution, other equitable relief, and disgorgement
 15 of all benefits Defendant has enjoyed from its unlawful and deceptive business practices,
 16 as detailed herein. In addition, Plaintiff seeks injunctive relief to stop Defendant's
 17 unlawful conduct in misleadingly and deceptively packaging, advertising, and marketing
 18 the Products. Plaintiff makes these allegations based on her personal knowledge as to
 19 herself and, otherwise, on information and belief based on investigation of counsel.

20 **JURISDICTION AND VENUE**

21 7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
 22 1332(d) because this is a class action in which: (1) there are over 100 members in the
 23 proposed class; (2) members of the proposed class have a different citizenship from
 24 Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the
 25

26
 27 ³ See also <http://tasteofnatureinc.com/product-galleries/theatre-box-candy/>;
 28 <http://candyasap.com/theater-boxes/all-theater-box-candy>

1 aggregate.

2 8. This Court has personal jurisdiction over Defendant because Defendant's
3 contacts with the forum are continuous and substantial, and Defendant intentionally
4 availed itself of the markets within California through its sales of the Products to
5 California consumers.

6 9. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
7 Defendant engages in continuous and systematic business activities within the State of
8 California. In addition, Defendant is headquartered in Santa Monica, California.
9 Moreover, a substantial part of the events and omissions giving rise to the claims alleged
10 herein occurred in this District, including Plaintiff's purchase of the Products in this
11 judicial district. *See* Declaration of Sierra Gillespie Regarding Venue Pursuant to Cal.
12 Civ. Code § 1780(d), attached hereto as Exhibit A.

13 **PARTIES**

14 10. Plaintiff Sierra Gillespie is a resident of Redondo Beach, California. On
15 August 25, 2017, Ms. Gillespie made a purchase of a Chocolate Chip Cookie Dough
16 Bites Product (3.1-ounce box), a Fudge Brownie Cookie Dough Bites Product (3.1-
17 ounce box), and a Santa's Village Chocolate Chip Cookie Dough Bites Product (3.1-
18 ounce box) at a Big Lots store in Redondo Beach, California. The purchase price of
19 each Product was \$1.00. Plaintiff's claim is typical of all members of the Classes in this
20 regard. In addition, the non-functional slack-fill contained in the Products purchased by
21 Plaintiff is typical of the slack-fill contained in the Products purchased by members of
22 the Classes.

23 11. Taste of Nature, Inc., is a corporation headquartered in Santa Monica,
24 California. Taste of Nature maintains its principal business office at 2828 Donald
25 Douglas Loop North, Santa Monica, California, 90405. Defendant and its agents
26 promoted, marketed and sold the Products at issue in this jurisdiction and in this judicial
27 district. The unfair, unlawful, deceptive, and misleading packaging of the Products was
28

created, approved and/or authorized by Defendant and its agents.

FACTUAL ALLEGATIONS

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

12. Defendant's deceptive and misleading conduct, as described herein, violates the Federal Food, Drug and Cosmetic Act ("FDCA") Section 403 (21 U.S.C. § 343); Section 403(d) (21 U.S.C. § 343(d)); and the Code of Federal Regulations Title 21 part 100, *et seq.*, as well as parallel California statutes.

13. 21 C.F.R. § 100.100 prohibits nonfunctional slack-fill:

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

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

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

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

15. In adopting 21 C.F.R. 100.100, the United States Food and Drug Administration (“FDA”) stated: “Congress determined . . . that packages that are only partly filled (containing slack-fill) create a false impression as to the quantity of food they contain.” Misleading Containers; Nonfunctional Slack-Fill, 58 Fed. Reg. 64123-01, 64128 (Dec. 6, 1993). “In fact, Congress stated in arriving at section 403(d) of the act that that section is ‘intended to reach deceptive methods of filling where the package is only partly filled and, *despite the declaration of quantity of contents on the label*, creates the impression that it contains more food than it does.’” *Id.* at 64129 (internal citations omitted) (emphasis added).

16. California state law also prohibits non-functional slack-fill and mirrors the federal laws described herein. *See* California Business and Professions Code § 12606.2.

Defendant’s Products Contain Substantial Slack-Fill

17. Defendant manufactures, packages, markets, promotes, labels, advertises, and sells a variety of confectionery products, including the Products at issue.

18. The Products are sold throughout the United States, including the State of California, and are regularly sold at grocery stores, convenience stores, big box stores, and other food retail outlets.

19. The Chocolate Chip Cookie Dough Bites Products are described as “bite size cookie dough in creamy milk chocolate.”



20. The Chocolate Chip Cookie Dough Bites candy is uniformly packaged in opaque cardboard containers that have the following dimensions: 3.5 inches x .75 inches x 5.875 inches.

21. The candy is further uniformly packaged in a transparent plastic pouch, which is placed inside the Product container.



1 22. As illustrated immediately *supra*, the plastic pouch holding the candy
2 contains significant slack-fill.

3 23. The total volume of the pouch—including the candy and the significant
4 slack-fill contained therein—only comprises approximately 53% of the total volume of
5 the cardboard Product container. Put differently, the Product container still contains
6 approximately 47% slack-fill even with the pouch inside—and this slack-fill
7 measurement does not include the significant slack-fill inside the pouch.

8 24. Were the Product container filled with just the candy—and not the pouch—
9 the Product container would be approximately 58% slack-filled. “Space within a
10 container that is devoid of product is slack-fill[.]” 58 Fed. Reg. at 64126.
11



25. Because the Products are packaged in opaque, non-pliable cardboard containers, consumers, such as Plaintiff and Class Members, could not see the contents of the container at the time of purchase, including the substantial, non-functional slack-fill.

26. Defendant's misrepresentations and omissions are uniform because the Products are packaged in uniformly-sized containers.

The Products' Slack-Fill Is Non-Functional

27. The slack-fill in the Products is non-functional, and therefore unlawful, because it cannot be justified by any of the safe-harbor provisions contained in 21 C.F.R. § 100.100(a).⁴

21 C.F.R. § 100.100(a)(1) [Protection of the Contents of the Package]

28. The slack-fill in the packaging of the Products does not protect the Product contents.

29. A classic example of slack-fill that is designed to protect the contents of a package is the empty space contained in bags of potato chips. The packages are filled with air to protect the fragile chips during shipment and in retail display.

30. By contrast, here, the substantial slack-fill may actually *increase* the risk of damaging the candy contained in the packaging. The more empty space there is in the Products' packaging, the more movement the Products will likely experience within the packaging, which increases the potential the candy pieces will be damaged.

31. In any event, the rigid cardboard containers in which the Products are packaged provide significant protection to the candies from any external forces that may impact the candies.

⁴ For the same reasons, the slack-fill cannot be justified under the identical safe-harbor provisions contained in California Business and Professions Code § 12606.2.

1 **21 C.F.R. § 100.100(a)(2) [Requirements of Machines Used for Enclosing the**
2 **Contents]**

3 32. There is no machine requirement used for enclosing the Product contents
4 that would justify the Products' substantial slack-fill.

5 33. In industry-standard packaging-line machinery, a candy container is held in
6 a vertical position by a "cartoner" machine with the top end of the container remaining
7 open. The container is moved in an intermittent manner such that the opening of the
8 container is indexed directly below the filler. The filler typically consists of a hopper
9 containing bulk quantities of product. The product is then conveyed from the hopper to
10 the scale, which weighs the pre-determined amount of product. Next, the product is
11 dropped into the container through its open end, either directly through a chute into the
12 container, or into a dispenser with a gate that opens when the container is in position.

13 34. After the container is filled, the cartoner machine conveys the container to
14 the next station, where the container's top flaps are sealed. Thereafter, the container
15 exits the cartoner machine to the tray or case packer.

16 35. The industry standard machines are capable of filling and enclosing the
17 Products with far less slack-fill than the Products currently contain.

18 36. In fact, very similar candy products packaged and sold in very similar
19 cardboard containers contain substantially less slack-fill than Defendant's Products.

20 37. Accordingly, the amount of slack-fill cannot be justified by the machines
21 and equipment used to enclose the Products.

22 **21 C.F.R. § 100.100(a)(3) [Unavoidable Product Settling During Shipping and**
23 **Handling]**

24 38. Product "settling" accounts for approximately 2% of the slack-fill in the
25 Products' packaging; thus, the substantial slack-fill is not due to unavoidable product
26 settling.

39. Due to the candies' size, shape and consistency, when placed in the packaging, the candy pieces create minimal void patterns, and experience very little "settling."

21 C.F.R § 100.100(a)(4) [Need for the Package to Perform a Specific Function]

40. The Products' packaging does not "perform a specific function," such as playing a role in the "preparation or consumption" of the candies (for example, cereal that is sold in a bowl-shaped container to which a consumer adds milk and that necessarily requires empty space to accommodate that purpose).

41. Nor is any such function "clearly communicated to consumers." The Products' packaging and labeling are silent as to any function beyond merely holding the candies.

21 C.F.R § 100.100(a)(5) [Reusable Container Where the Container Has Independent Value]

42. The Products are not packaged in a container that is meant to be reused or otherwise used after the candies are consumed.

43. Nor is the packaging a "durable commemorative or promotional package."

44. In addition, the packaging does not have any value that is both significant in proportion to the value of the Products and independent of its function to hold the food.

45. Rather, the packaging is a cardboard container that is expected to be discarded after the candies are consumed, and a reasonable consumer does not attach any independent value, monetary or otherwise, to the Products' packaging.

21 C.F.R § 100.100(a)(6) [Food Labeling and Packing Requirements]

46. As described herein, the level of fill in the Product containers can certainly be increased. There is nothing unique or inherent to the candy pieces (e.g., their shape, size, composition, etc.) that would prevent more of them from being placed in the

1 packaging. Indeed, very similar candy products packaged in very similar packages
2 contain substantially higher levels of fill than Defendant's Products.

3 47. There is also nothing unique or inherent to the candies that requires
4 Defendant to package them in a specific packaging material, such as the cardboard
5 containers at issue.

6 48. Nor is there an industry standard for packaging the Products in a container
7 of a specific shape, size, or in one containing a specific number of candy pieces.

8 49. Finally, the packaging could be reduced and still accommodate the required
9 food labeling.

10 **The Products' Packaging Is Misleading**

11 50. Plaintiff relied on the Products' packaging as a representation of the
12 quantity of candy contained in the packaging. Accordingly, Plaintiff was misled and
13 deceived because she believed she was purchasing more Product than was actually
14 received.

15 51. Had Plaintiff known Defendant's packaging was substantially slack-filled,
16 she would not have purchased the Products, or would have purchased them on different
17 terms.

18 52. Plaintiff would, however, likely purchase the Products in the future if the
19 Products complied with the applicable laws.

20 **CLASS DEFINITION AND CLASS ALLEGATIONS**

21 53. Plaintiff hereby re-alleges and incorporates the foregoing allegations as if
22 set forth herein in their entirety.

23 54. Plaintiff brings this action as a class action pursuant to Federal Rules of
24 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself, on behalf of all others
25 similarly situated, and as a member the Class and Subclass defined as follows
26 (collectively, the "Classes"):

27 All citizens of the United States who, within the relevant statute
28 of limitations period, purchased Defendant's Products

1 (“Nationwide Class”); and
 2 All citizens of California who, within four years prior to the filing
 3 of the Complaint, purchased Defendant’s Products (“California
 4 Subclass”).

5 55. Excluded from the Classes are: (i) Defendant, its assigns, successors, and
 6 legal representatives; (ii) any entities in which Defendant has controlling interests;
 7 (iii) federal, state, and/or local governments, including, but not limited to, their
 8 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or
 9 subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a
 10 bankruptcy discharge in the last three years; and (v) any judicial officer presiding over
 11 this matter and person within the third degree of consanguinity to such judicial officer.

12 56. Plaintiff reserves the right to amend or otherwise alter the class definitions
 13 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in
 14 response to facts learned through discovery, legal arguments advanced by Defendant, or
 15 otherwise.

16 57. This action is properly maintainable as a class action pursuant to Federal
 17 Rule of Civil Procedure 23 for the reasons set forth below.

18 58. **Numerosity**: Members of the Classes are so numerous that joinder of all
 19 members is impracticable. Upon information and belief, the Nationwide Class consists
 20 of hundreds of thousands of purchasers dispersed throughout the United States, and the
 21 Subclass likewise consists of tens of thousands of purchasers throughout the State of
 22 California. Accordingly, it would be impracticable to join all members of the
 23 Nationwide Class and California Subclass before the Court.

24 59. **Common Questions Predominate**: There are numerous and substantial
 25 questions of law or fact common to all members of the Classes that predominate over
 26 any individual issues. Included within the common questions of law or fact are:

- 27 • Whether the Products’ containers or packaging were made, formed, or
 28 filled as to be misleading;

- Whether the Products contained non-functional slack-fill;
- Whether Defendant engaged in unlawful, unfair or deceptive business practices by packaging, advertising and/or selling the Products;
- Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- Whether Plaintiff and the Classes are entitled to equitable and/or injunctive relief;
- Whether Plaintiff and the Class Members have sustained damages as a result of Defendant's unlawful conduct;
- The proper measure of damages sustained by Plaintiff and Class Members; and
- Whether Defendant was unjustly enriched by its misleading and deceptive practices.

60. **Typicality**: Plaintiff's claims are typical of the claims of the members of the Classes she seeks to represent because Plaintiff, like the Class Members, purchased Defendant's misbranded Products. Defendant's unlawful, unfair and/or fraudulent conduct concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Classes sustained similar injuries arising out of Defendant's conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

61. **Adequacy**: Plaintiff is an adequate representative of the Classes she seeks to represent because her interests do not conflict with the interests of the members of the Classes Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of members of the Classes and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer-protection litigation.

1 62. **Superiority and Substantial Benefit:** A class action is superior to other
2 methods for the fair and efficient adjudication of this controversy, since individual
3 joinder of all members of the Classes is impracticable and no other group method of
4 adjudication of all claims asserted herein is more efficient and manageable for at least
5 the following reasons:

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

24 63. Because Plaintiff seeks relief for all members of the Classes, the
25 prosecution of separate actions by individual members would create a risk of inconsistent
26 or varying adjudications with respect to individual members of the Classes, which would
27 establish incompatible standards of conduct for Defendant.
28

64. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or equitable relief with respect to the Classes as a whole.

65. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are also met as questions of law or fact common to Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

66. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unfair and Unlawful Business Acts and Practices (Business and Professions Code § 17200, *et seq.*) (for the California Subclass)

67. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint, as though fully set forth herein.

68. Defendant's conduct constitutes an unfair business act and practice pursuant to California Business & Professions Code §§ 17200, *et seq.* (the "UCL"). The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

69. Plaintiff brings this claim seeking equitable and injunctive relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

70. Defendant's knowing conduct, as alleged herein, constitutes an "unfair"

1 and/or “fraudulent” business practice, as set forth in California Business & Professions
2 Code §§ 17200-17208.

3 71. Defendant’s conduct was and continues to be unfair and fraudulent because,
4 directly or through its agents and employees, Defendant made uniform and materially
5 false representations and omissions regarding the Products’ packaging by including
6 substantial non-functional slack-fill.

7 72. Defendant is aware that the representations and omissions it has made about
8 the Products were and continue to be false and misleading.

9 73. Defendant had an improper motive—to derive financial gain at the expense
10 of accuracy or truthfulness—in its practices related to the packaging of the Products.

11 74. There were reasonable alternatives available to Defendant to further
12 Defendant’s legitimate business interests, other than the conduct described herein.

13 75. Defendant’s misrepresentations of material facts, as set forth herein, also
14 constitute an “unlawful” practice because they violate California Civil Code §§ 1572,
15 1573, 1709, 1710, 1711, and 1770, as well as the common law.

16 76. Defendant’s conduct in making the representations described herein
17 constitutes a knowing failure to adopt policies in accordance with and/or adherence to
18 applicable laws, as set forth herein, all of which are binding upon and burdensome to its
19 competitors. This conduct engenders an unfair competitive advantage for Defendant,
20 thereby constituting an unfair business practice under California Business & Professions
21 Code §§ 17200-17208.

22 77. In addition, Defendant’s conduct was, and continues to be, unfair, in that
23 its injury to countless purchasers of the Products is substantial, and is not outweighed by
24 any countervailing benefits to consumers or to competitors.

25 78. Moreover, Plaintiff and members of the California Subclass could not have
26 reasonably avoided such injury. Defendant’s practice of uniformly enclosing its
27 Products with substantial non-functional slack-fill was and is likely to deceive and
28

1 mislead reasonable consumers, including Plaintiff and Subclass members, and
2 Defendant knew or should have known its slack-filling practices were misleading and
3 deceptive.

4 79. Plaintiff purchased the Products in reasonable reliance on the Products'
5 packaging size as a representation of the quantity of candy contained in the packaging,
6 as further described herein. Based on the oversized packaging of the Products, Plaintiff
7 believed she was purchasing more candy than was actually received in the Product
8 containers.

9 80. Plaintiff and members of the California Subclass have been directly and
10 proximately injured by Defendant's conduct in ways including, but not limited to, the
11 monies paid to Defendant for the Products that lacked the quantities of candy advertised
12 and represented by the packaging size, interest lost on those monies, and consumers'
13 unwitting support of a business enterprise that promotes deception and undue greed to
14 the detriment of consumers, such as Plaintiff and Subclass members.

15 81. As a result of the business acts and practices described above, Plaintiff and
16 members of the California Subclass, pursuant to § 17203, are entitled to an Order
17 enjoining such future wrongful conduct on the part of Defendant and such other Orders
18 and judgments that may be necessary to disgorge Defendant's ill-gotten gains and to
19 restore to any person in interest any money paid for the Products as a result of the
20 wrongful conduct of Defendant.

21 82. Pursuant to Civil Code § 3287(a), Plaintiff and the California Subclass are
22 further entitled to pre-judgment interest as a direct and proximate result of Defendant's
23 unfair and fraudulent business conduct. The amount on which interest is to be calculated
24 is a sum certain and capable of calculation, and Plaintiff and the California Subclass are
25 entitled to interest in an amount according to proof.

26 ///

27 ///

SECOND CAUSE OF ACTION
Deceptive Advertising Practices
(California Business & Professions Code §§ 17500, *et seq.*)
(for the California Subclass)

83. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

84. California Business & Professions Code § 17500 prohibits “unfair, deceptive, untrue or misleading advertising[.]”

85. Defendant violated § 17500 when it represented, through its false and misleading packaging of the Products, that the Products possessed characteristics and value that it did not actually have.

86. Defendant’s deceptive slack-filling practices were specifically designed to induce reasonable consumers, like Plaintiff, to purchase the Products. Defendant’s uniform, material representations and omissions regarding the Products were likely to deceive, and Defendant knew or should have known that its uniform representations and omissions were untrue and misleading. Plaintiff purchased the Products in reliance on the representations made by Defendant, as alleged herein.

87. Plaintiff and members of the California Subclass have been directly and proximately injured by Defendant’s conduct in ways including, but not limited to, the monies paid to Defendant for the Products that lacked the characteristics advertised, interest lost on those monies, and consumers’ unwitting support of a business enterprise that promotes deception and undue greed to the detriment of consumers, such as Plaintiff and Subclass members.

88. The above acts of Defendant, in disseminating material misleading and deceptive representations throughout California to consumers, including Plaintiff and members of the California Subclass, were and are likely to deceive reasonable consumers in violation of § 17500.

89. In making and disseminating the representations alleged herein, Defendant

1 knew or should have known that the representations were untrue or misleading, and acted
2 in violation of § 17500.

3 90. Defendant continues to engage in unlawful, unfair and deceptive practices
4 in violation of § 17500.

5 91. As a direct and proximate result of Defendant's unlawful conduct in
6 violation of § 17500, Plaintiff and members of the California Subclass, pursuant to §
7 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on
8 the part of Defendant, and requiring Defendant to disclose the true nature of its
9 misrepresentations.

10 92. Plaintiff and members of the California Subclass also request an Order
11 requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all
12 monies wrongfully acquired by Defendant by means of such acts of false advertising,
13 plus interests and attorneys' fees.

14 **THIRD CAUSE OF ACTION**
15 **Consumer Legal Remedies Act**
16 **(Cal. Civ. Code § 1750, *et seq.*)**
17 **(for the California Subclass)**

18 93. Plaintiff re-alleges and incorporates by reference the allegations contained
19 in the preceding paragraphs of this complaint, as though fully set forth herein.

20 94. Plaintiff brings this action pursuant to California's Consumer Legal
21 Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

22 95. The CLRA provides that "unfair methods of competition and unfair or
23 deceptive acts or practices undertaken by any person in a transaction intended to result
24 or which results in the sale or lease of goods or services to any consumer are unlawful."

25 96. The Product is a "good," as defined by the CLRA in California Civil Code
26 §1761(a).

27 97. Defendant is a "person," as defined by the CLRA in California Civil Code
28 §1761(c).

1 98. Plaintiff and members of the California Subclass are “consumers,” as
2 defined by the CLRA in California Civil Code §1761(d).

3 99. Purchase of the Products by Plaintiff and members of the California
4 Subclass are “transactions,” as defined by the CLRA in California Civil Code §1761(e).

5 100. Defendant violated Section 1770(a)(5) by representing that the Products
6 have “characteristics . . . uses, benefits or quantities that they do not have” in that the
7 Products contain substantial non-functional slack-fill. Defendant has unfairly profited
8 from its false and misleading slack-filling practices.

9 101. Similarly, Defendant violated section 1770(a)(7) by representing that the
10 Product “is of a particular standard, quality, or grade . . . if it is of another” by falsely
11 and deceptively enclosing substantial non-functional slack-fill in the Products’
12 packaging.

13 102. In addition, Defendant violated section 1770(a)(9) by advertising the
14 Products “with intent not to sell it as advertised” in that the Products do not contain the
15 quantity of candy that the oversized, non-functionally slack-filled packaging represents
16 to reasonable consumers is contained therein.

17 103. Defendant’s uniform, material, representations and omissions regarding the
18 Products were likely to deceive, and Defendant knew or should have known that its
19 representations and omissions were untrue and misleading.

20 104. Plaintiff and members of the California Subclass could not have reasonably
21 avoided such injury. Plaintiff and members of the California Subclass were unaware of
22 the existence of facts that Defendant suppressed and failed to disclose; and, Plaintiff and
23 members of the California Subclass would not have purchased the Products and/or would
24 have purchased them on different terms had they known the truth.

25 105. Plaintiff and members of the California Subclass have been directly and
26 proximately injured by Defendant’s conduct. Such injury includes, but is not limited to,
27 the purchase price of the Products and/or value of the quantity of candy that was
28

1 displaced by the non-functional slack-fill in the Products.

2 106. Plaintiff and members of the California Subclass are entitled to seek and
3 seek injunctive relief to put an end to Defendant's violations of the CLRA.

4 107. Moreover, Defendant's conduct is malicious, fraudulent, and wanton in that
5 Defendant intentionally misled and withheld material information from consumers to
6 increase the sale of the Products.

7 108. Pursuant to California Civil Code § 1782(a), Plaintiff, on her own behalf,
8 and on behalf of members of the California Subclass, notified Defendant of the alleged
9 violations of the Consumer Legal Remedies Act. Despite giving Defendant well over
10 30 days from the date of the notification letter to provide appropriate relief for violations
11 of the CLRA, Defendant has failed to provide any such relief. As such, Plaintiff also
12 seeks compensatory, monetary and punitive damages, in addition to equitable and
13 injunctive relief, and requests that this Court enter such Orders or judgments as may be
14 necessary to restore to any person in interest any money that may have been acquired by
15 means of such unfair business practices, and for such other relief as is provided in
16 California Civil Code § 1780 and in the Prayer for Relief.

17 109. Plaintiff further requests that the Court enjoin Defendant from continuing
18 to employ the unlawful methods, acts, and practices alleged herein pursuant to §
19 1780(a)(2).

20 **FOURTH CAUSE OF ACTION**
21 **QUASI-CONTRACT**
22 ***(for the Nationwide Class and California Subclass)***

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

25 111. By purchasing the Products, Plaintiff and members of the Classes conferred
26 a benefit on Defendant in the form of the purchase price of the Products.

27 112. Defendant had knowledge of such benefits.
28

1 DATED: March 13, 2018

KAMBERLAW, LLP

2
3 By: /s/ Christopher D. Moon
4 Christopher D. Moon

5 *Attorneys for Plaintiff and the putative Classes*
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7 *Counsel for Plaintiff Sierra Gillespie,*
8 *and the putative Classes*

9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11
12 SIERRA GILLESPIE, individually,
13 on behalf of herself and others
similarly situated,

14 Plaintiff,

15 vs.

16 TASTE OF NATURE, INC.

17 Defendant.

CLASS ACTION

Case No.:

**DECLARATION OF PLAINTIFF
SIERRA GILLESPIE REGARDING
VENUE (Civil Code § 1780(d))**

18
19 I, Sierra Gillespie, hereby declare:

20 1. I am the named-plaintiff and a prospective class member in the above-entitled
21 action.

22 2. I am an adult, over 18 years old. I have personal knowledge of the facts stated
23 herein and could competently testify thereto if called upon to do so.

24 3. I am currently a resident of Redondo Beach, California. My Complaint filed in
25 this matter contains causes of action for violations of (1) Unfair Competition Law, Cal.
26 Business & Professions Code §§ 17200 *et seq.* (the “UCL”); (2) Deceptive Advertising
27
28

VENUE DECLARATION OF PLAINTIFF SIERRA GILLESPIE

1 Practices, Cal. Business & Professions Code §§ 17500 *et seq.* (the “FAL”); (3)
2 California’s Consumer Legal Remedies Act, Cal. Civil Code §§ 1750 *et seq.* (the
3 “CLRA”); and (4) Quasi-Contract. These causes of action arise out of Defendant Taste
4 of Nature, Inc.’s deceptive, unfair, and false merchandising practices with respect to its
5 Cookie Dough Bites, Chocolate Chip Cookie Dough Bites, Fudge Brownie Cookie
6 Dough Bites, Santa’s Village Cookie Dough Bites, Cookies N’ Cream Cookie Dough
7 Bites, Cinnamon Bun Bites, Red Velvet Cupcake Bites, Moon Pie Bites, Strawberry
8 Dream Bites, Birthday Cake Cookie Dough Bites, Peanut Butter Cookie Dough Bites,
9 Muddy Bears, Shari Candies Cherry Sour Balls, Despicable Me 2 Sour Gummies,
10 Sqwigglies, and Hello Kitty Treats (“Products”).

11 4. Civil Code § 1780(c) provides that a plaintiff seeking to bring a claim under
12 Section 1780(a) of the California Consumer Legal Remedies Act, may commence that
13 action “in the county in which the person against whom it is brought resides, has his or
14 her principal place of business, or is doing business, or in the county where the
15 transaction or any substantial portion thereof occurred.”

16 5. I purchased a Chocolate Chip Cookie Dough Bites Product, a Fudge Brownie
17 Cookie Dough Bites Product, and a Santa’s Village Cookie Dough Bites Product on
18 August 25, 2017, at a Big Lots store in Redondo Beach, California. The purchase price
19 of each Product was \$1.00.

20 6. Accordingly, the Complaint filed in the above-entitled action, is filed in the
21 proper venue pursuant to Civil Code § 1780(d).

22 7. I declare under the penalty of perjury under laws of the State of California that
23 the foregoing is true and correct to the best of my knowledge.

24 Executed on March 13, 2018, in Manhattan Beach, California.

25
26 DocuSigned by:

27 FA391586B50841R
SIERRA GILLESPIE
28