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County of Sonoma
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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOMONA

LINDA CHESLOW and STEVEN PRESCOTT,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
and DOES 1 through 10, inclusive,

Defendants.

Case No. SCV-265203

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
3. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. Seq.*

DEMAND FOR JURY TRIAL

Plaintiffs Linda Cheslow and Steven Prescott (“Plaintiffs”), individually and on behalf of all other similarly situated purchasers (the “Class”) of Ghirardelli’s Premium Baking Chips Classic White Chips (the “Product”) bring this class action against Ghirardelli Chocolate Company (“Ghirardelli” or “Defendant”) and Does 1 through 10, inclusive (collectively, “Defendants”), and allege as follows.

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SUMMARY OF THE ACTION

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2 1. Ghirardelli, a company synonymous with chocolate, sells fake white chocolate
3 baking chips and tries to pass them off as white chocolate.

4 2. Ghirardelli is a multi-billion-dollar company¹ and a highly visible competitor in the
5 global chocolate market. In 2018, Ghirardelli generated \$4.4 billion dollars worldwide and \$1.7
6 billion in North America.

7 3. According to its 2018 Annual Shareholder Report, Ghirardelli is the number one
8 premium brand of chocolate in the United States.

9 4. Ghirardelli’s profits are attributable, in part, to its deceptive labeling and advertising
10 of its purported white chocolate product called Ghirardelli Premium Baking Chips Classic White
11 Chips.² In reality, the Product does not contain *any* white chocolate. It is fake white chocolate.



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20 5. Upon information and belief, Ghirardelli used to sell real white chocolate baking
21 chips in the recent past. Ghirardelli used actual white chocolate to develop a loyal consumer base
22 of the Product and propel the company to the self-described #1 premium chocolate brand in the
23 U.S. But at some point, Ghirardelli pulled a classic “bait and switch,” covertly swapping out its
24 real white chocolate for fake white chocolate.

25
26 ¹ See Ghirardelli’s Annual Report to Stockholders and Other Reports, https://www.lindt-spruengli.com/fileadmin/user_upload/corporate/WEB_GB18_Gesamt_en_low.pdf (last visited August 26, 2019).

27 ² See screenshots from Defendant’s official website, <https://www.ghirardelli.com/classic-white-baking-chips-%2812-ct---11-oz-ea%29-61065cs> (last visited August 26, 2019).

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1 6. The Product packaging and official website advertises the Product as “Classic White”
2 “Premium Baking Chips” which, together with Ghirardelli’s other advertising and business
3 practices, misleads reasonable consumers into thinking that the Product contains premium
4 ingredients, not fake white chocolate. “Premium” is defined as “of exceptional quality or amount.”³

5 7. Reasonable consumers do not expect the Product to include fake white chocolate
6 made of inferior—not premium—ingredients like hydrogenated and palm oils. Ghirardelli
7 Chocolate Company is synonymous with chocolate, as it is the self-described #1 premium
8 chocolate brand in the U.S.

9 8. Ghirardelli manufactures other chocolate varieties of the Product, which it sells
10 alongside its fake white chocolate Product at retail outlets throughout California and the United
11 States. Ghirardelli labels these other products by type of chocolate: “milk chocolate,” “bittersweet
12 chocolate,” and “semi-sweet.” Therefore, the “white” in “white baking chips” deceives reasonable
13 consumers into thinking it represents the type of chocolate in the Product, *white* chocolate. True
14 and correct representations of some of Defendant’s other versions of the Product within the same
15 line of products⁴ are depicted below.



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25 ³ *Premium*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/premium>
(last visited on August 26, 2019).

26 ⁴ There are six versions of the Product within the same line of products, including the Product:
27 Milk Chocolate, Bittersweet Chocolate, Semi-Sweet Chocolate, Classic White, Grand Chips Semi-
28 Sweet Chocolate, and Semi-Sweet Chocolate Mini.

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9. Consumers reasonably and detrimentally rely on Ghirardelli’s representations of the Products as real chocolate, not fake chocolate, in making their purchase decisions.

10. Ghirardelli is aware that reasonable consumers are misled into believing the Product contains real white chocolate but refuses to make any labeling and advertising changes, such as labeling its Product “Vanilla Flavored Chips,” or “Vanilla Chips,” or “Does not contain chocolate,” or “not white chocolate,” or the like, to dispel the consumer deception.

11. In fact, consumers have complained about the Product on numerous consumer protection and retailer websites, such as Amazon.com, stating, “Because of Ghirardelli’s reputation, I didn’t look at the ingredient list when I purchased the white chips; this was a big

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1 mistake. There is no cocoa butter in them, and I was disgusted by the end product. I wasted over
 2 \$50 and hours of my time using this in a product that I was giving as a holiday gift. Needless to
 3 say, I threw the end product away [...].” True and correct screenshots of the consumer reviews of
 4 the Product on the third party website Amazon.com are depicted below in Figure 1.

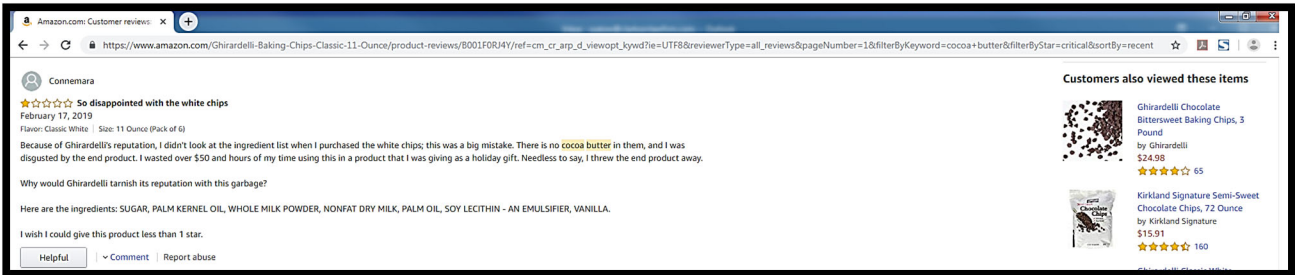
5 12. Another consumer complained that the Product is “Not white chocolate. ... [T]hey
 6 are made from Palm Kernel oil, not cocoa butter. They are not white chocolate and they do not taste
 7 like white chocolate.” See Figure 1, *infra*.

8 13. Yet another consumer complained, “They don’t show you the ingredient list because
 9 there is no chocolate in them.” See Figure 1, *infra*.

10 14. The Product misrepresents it contains white chocolate, as a consumer complained,
 11 “There is no cocoa butter in this product.” See Figure 1, *infra*.

12 **Figure 1-3:** Screenshots below taken from Amazon.com revealing that consumers are
 13 misled by Ghirardelli’s labeling and advertising of the Product to think that the Product contains
 14 white chocolate when it does not.

15 **Figure 1.**



16 **Figure 2.**

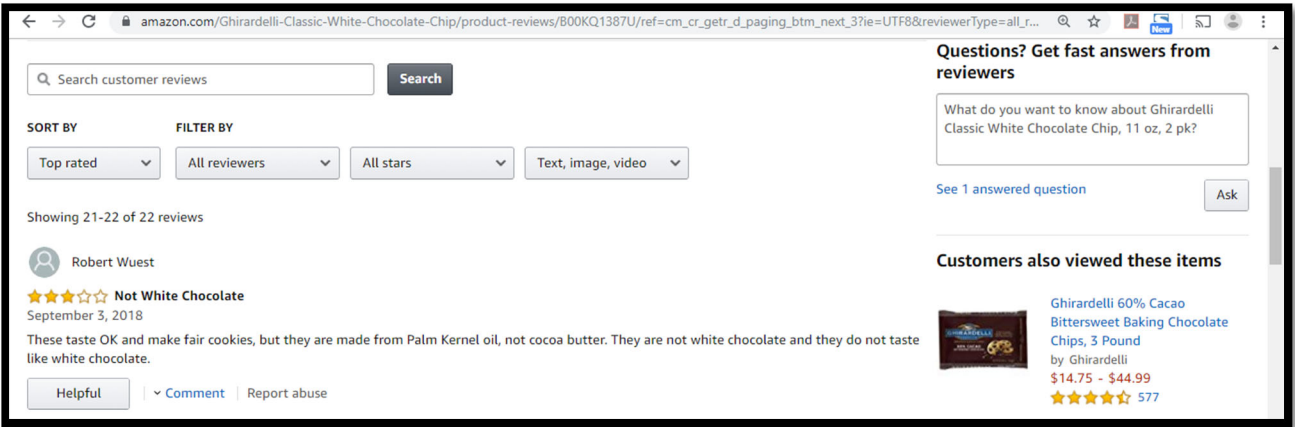
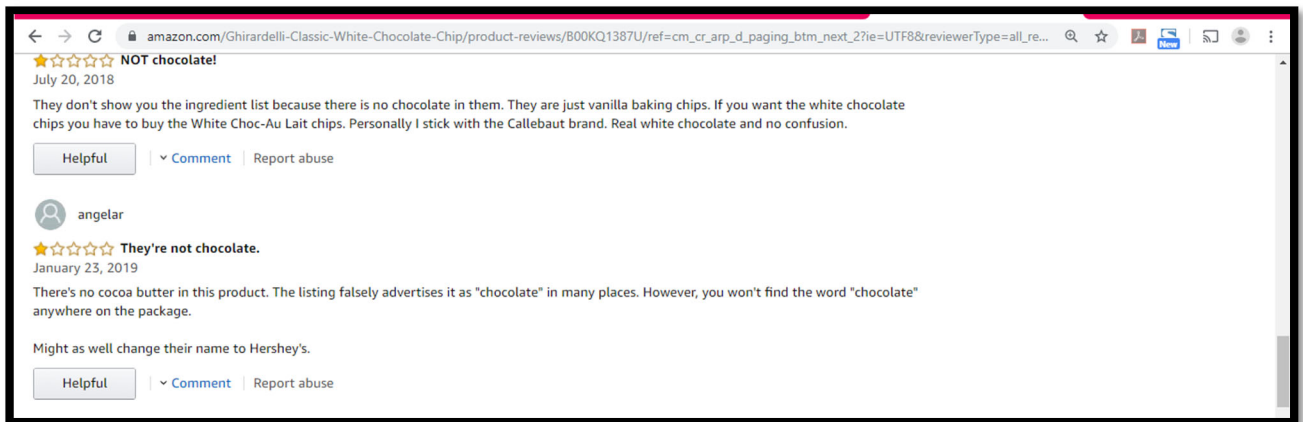


Figure 3.



15. Most consumers purchase the Product to bake with, as Plaintiffs did. Defendant advertises on its official website, as well on the Product packaging, baking recipes that require the use of the Product. However, because the Product does not contain white chocolate, it does not melt like chocolate. Yet, the Product’s deceptive labeling and advertising leads reasonable consumers to believe that the Product is white chocolate and should therefore melt during baking. Thus, consumers are surprised when the Product does not melt. True and correct representations of the consumer reviews of the Product not melting as expected are depicted in Figures 4-5 below.

16. In fact, Defendant advertises on its Product packaging that the Product will “[e]levate your baking from great to extraordinary with our top quality, premium ingredients to create a rich, smooth flavor and silky texture. [B]ake to impress.” There is nothing “premium” about fake white chocolate and consumers cannot “bake to impress” because the Product does not contain, let alone taste or melt like, white chocolate.

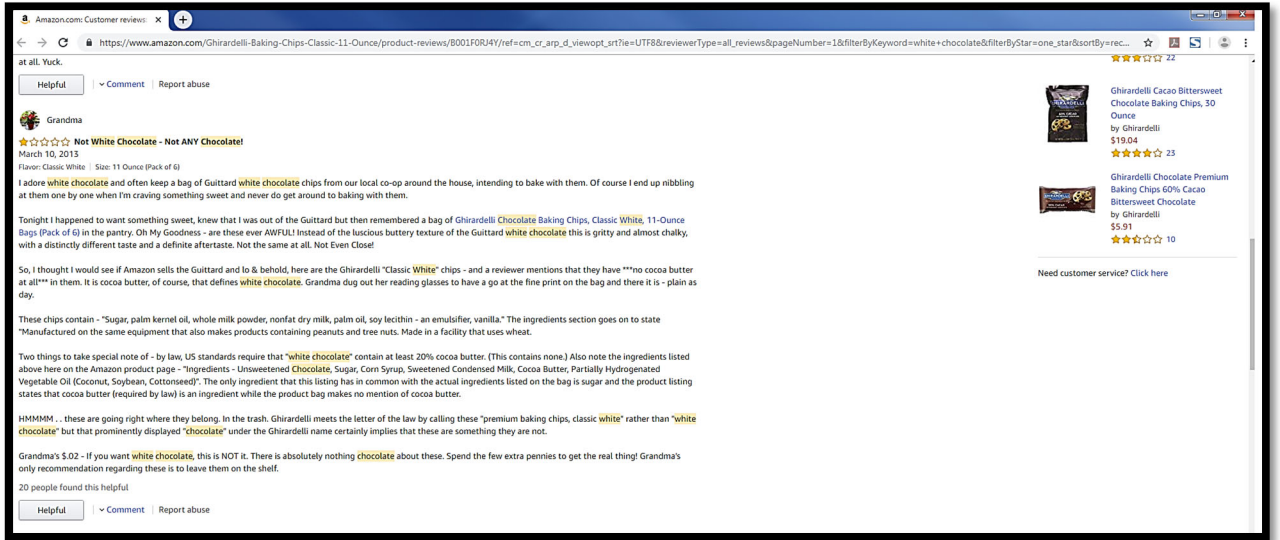
17. For example, one consumer complained, “...I cooked the white chocolate in a double boiler for 20 minutes, without any result, the chips turned into a mush the consistency of cream cheese, but wouldn’t melt further. I have now learned that these chips aren’t chocolate at all, it was such a waste of money!” See Figure 4, *infra*.

18. Another consumer complained, “...They don’t melt worth a darn, so don’t try using them for dipping. I’m very unsatisfied!” See Figure 5, *infra*.

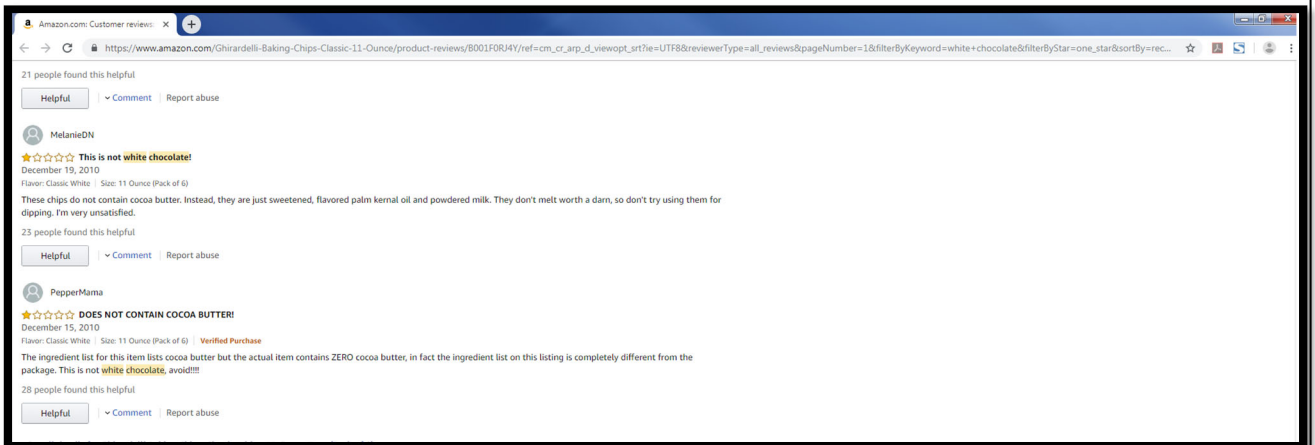
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1 **Figure 4-5:** Screenshots below taken from Amazon.com revealing that consumers are
2 misled by Ghirardelli’s labeling and advertising of the Product as containing white chocolate and
3 are therefore surprised when the Product does not melt as expected from white chocolate.

4 **Figure 4.**



14 **Figure 5.**



19. The Product is labeled “white” and advertised as “Premium Classic White,” on
24 Defendant’s official website, point of purchase display, and is offered for sale side-by-side with
25 Defendant’s milk chocolate and semi-sweet chocolate baking chips. Taken as a whole, the
26 Product’s labeling and advertising misleads reasonable consumers into believing it contains white
27 chocolate, not fake chocolate.

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1 20. Plaintiffs seek injunctive relief and restitution against Defendant for false and
2 misleading advertising in violation of Business and Professions Code Section 17200, *et seq.*,
3 Business and Professions Code Section 17500, *et seq.*, and Civil Code Section 1750, *et seq.*
4 Defendant made and continues to make these false and misleading statements in its labeling and
5 advertising of the Product. Compliance with remedial statutes like those underlying this lawsuit
6 will benefit Plaintiffs, the putative class, consumers, and the general public.

7 21. The false and misleading labeling and advertising of the Product violates the
8 California Consumers Legal Remedies Act, particularly California Civil Code Sections 1770(a)(5),
9 1770(a)(7), and 1770(a)(9). As such, Defendant has committed *per se* violations of Business and
10 Professions Code Section 17200, *et seq.*, and Business and Professions Code Section 17500.

11 22. On June 12, 2019, the putative class provided Defendant with notice of these
12 violations via certified U.S. mail pursuant to Civil Code Section 1750, *et seq.*

13 **JURISDICTION AND VENUE**

14 23. This Court has jurisdiction over all causes of action asserted herein pursuant to the
15 California Constitution, Article VI, Section 10, because this case is a cause not given by statute to
16 other trial courts. Plaintiffs have standing to bring this action pursuant to Business and Professions
17 Code Section 17200, *et seq.*

18 24. Venue is proper in this Court because Plaintiff Cheslow purchased the Product in
19 Sonoma County; Defendant receives substantial compensation from sales in Sonoma County; and
20 Defendant made numerous misrepresentations which had a substantial effect in Sonoma County,
21 including, but not limited to, label, point of purchase displays, and internet advertisements.

22 25. Defendant is subject to personal jurisdiction in California based upon sufficient
23 minimum contacts which exist between Defendants and California. Defendants are authorized to
24 do and doing business in California.

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PARTIES

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2 26. Plaintiff Cheslow is an individual residing in Santa Rosa, California. Plaintiff
3 purchased the Product in California within the last four (4) years of the filing of this Complaint.
4 Specifically, Plaintiff Cheslow purchased the Product in or around December 2018 at a Target store
5 located at 950 Coddington Center in Santa Rosa, California. In making her purchase decision,
6 Plaintiff Cheslow relied upon the labeling and advertising of the Product, which she reasonably
7 believed to be “white chocolate,” not fake white chocolate.

8 27. Plaintiff Prescott is an individual residing in Santa Cruz, California. Plaintiff Prescott
9 purchased the Product in California within the last four (4) years of the filing of this Complaint.
10 Specifically, Plaintiff Prescott purchased the Product in late 2018 or early 2019 at a Target store
11 located at 1825 41st Avenue in Capitola, California. In making his purchase decision, Plaintiff
12 Prescott relied upon the labeling and advertising of the Product, which he reasonably believed to
13 be “white chocolate,” not fake white chocolate.

14 28. The labeling and advertising of the Product were prepared and approved by
15 Defendant and its agents and disseminated through its packaging, label, and national advertising
16 media, containing the misrepresentations alleged herein and designed to encourage consumers to
17 purchase the Product. Plaintiffs purchased the Product in reasonable and detrimental reliance upon
18 these “white chocolate” misrepresentations. Had Plaintiffs known the Product was not white
19 chocolate, they would not have purchased the Product. Plaintiffs would purchase the Product again
20 in the future if they could be sure that the Product was white chocolate or if Defendant dispelled
21 any confusion that the Product does not contain white chocolate in its labeling, packaging, and
22 advertising of the Product.

23 29. Ghirardelli Chocolate Company is a corporation headquartered in California.
24 Ghirardelli maintains its principal place of business at 1111 139th Avenue, San Leandro, California
25 94578. Ghirardelli offers the Products for sale at stores and retailers as well as through the internet,
26 throughout the nation, including the State of California. Ghirardelli, directly and through its agents,
27 has substantial contacts with and receives substantial benefits and income from and through the
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1 State of California. Ghirardelli is one of the owners and distributors of the Product and is the
2 company that created and/or authorized the false, misleading, and deceptive advertisements and
3 packaging for the Product.

4 30. The true names and capacities, whether individual, corporate, associate, or otherwise
5 of certain manufacturers, distributors, and/or their alter egos sued herein as DOES 1 through 10
6 inclusive are presently unknown to Plaintiffs who therefore sue these Defendants by fictitious
7 names. Plaintiffs will seek leave of this Court to amend the Complaint to show their true names
8 and capacities when the same have been ascertained. Plaintiffs are informed and believe and based
9 thereon allege that DOES 1 through 10 were authorized to do and did business in Sonoma County.
10 Plaintiffs are further informed and believe and based thereon allege that DOES 1 through 10 were
11 and/or are, in some manner or way, responsible for and liable to Plaintiffs for the unfair business
12 practices set forth herein.

13 31. Plaintiffs are informed and believe and based thereon allege that at all times relevant
14 herein each of the Defendants was the agent, servant, employee, subsidiary, affiliate, partner,
15 assignee, successor-in-interest, alter ego, or other representative of each of the remaining
16 Defendants and was acting in such capacity in doing the things herein complained of and alleged.

17 32. In committing the wrongful acts alleged herein, Defendants planned and participated
18 in and furthered a common scheme by means of false, misleading, deceptive, and fraudulent
19 representations to induce members of the public to purchase the Product. Defendants participated
20 in the making of such representations in that each did disseminate or cause to be disseminated said
21 misrepresentations.

22 33. Defendants, upon becoming involved with the manufacture, distribution, advertising,
23 labeling, marketing, and sale of the Product, knew or should have known that the claims about the
24 Product and, in particular, the claims suggesting that the Product is white chocolate when it is not.
25 Defendants affirmatively misrepresented the nature and characteristics of the Product in order to
26 convince the public to purchase and consume the Product, resulting in, upon information and belief,
27 profits of millions of dollars or more to Defendants, all to the detriment of the consuming public.

1 Thus, in addition to the wrongful conduct herein alleged as giving rise to primary liability,
 2 Defendants further aided and abetted and knowingly assisted each other in breach of their respective
 3 duties and obligations as herein alleged.

4 **FACTS AND DEFENDANTS' COURSE OF CONDUCT**

5 34. Defendant's labeling, advertising, marketing, and packaging of the Product as
 6 containing white chocolate is false, misleading, and deceptive because the Product does not contain
 7 any white chocolate. Accordingly, reasonable consumers are consistently misled into paying for
 8 the Product without knowing that it is devoid of white chocolate.

9 35. The Food and Drug Administration ("FDA") has issued regulations defining "white
 10 chocolate," and those regulations have been adopted by the State of California as part of the
 11 Sherman Food, Drug, and Cosmetic Law, California Health and Safety Code § 109875, *et seq.*
 12 Specifically, the FDA defines white chocolate as follows:

13 (1) White chocolate is the solid or semi plastic food prepared by intimately mixing and
 14 grinding cacao fat with one or more of the optional dairy ingredients specified in
 15 paragraph (b)(2) of this section and one or more optional nutritive carbohydrate
 16 sweeteners and may contain one or more of the other optional ingredients specified in
 17 paragraph (b) of this section. White chocolate shall be free of coloring material. (2)
 18 White chocolate contains not less than 20 percent by weight of cacao fat...The finished
 19 white chocolate contains not less than 3 .5 percent by weight of milkfat...

20 Title 21 Code of Federal Regulations Section 163.124.

21 36. One of the reasons the FDA established the foregoing standard of identity for white
 22 chocolate was due in part to "[r]educing economic deception and promoting honesty and fair
 23 dealing in the interest of consumers."⁵ Yet, Defendant has done the opposite here by misleading
 24 unsuspecting consumers about the purported presence of white chocolate in its Product.

25 37. Plaintiffs are not alleging non-compliance with the FDCA or the FDA's standard of
 26 identity for white chocolate; Plaintiffs are alleging that Defendant misrepresents the Product as
 27 white chocolate when it is not.

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⁵ See, *White Chocolate; Establishment of a Standard of Identity* (October 4, 2002), Federal Register: The Daily Journal of the United States Government, <https://www.federalregister.gov/d/02-25252/p-7> (last visited August 26, 2019).

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1 38. The Product does not contain any white chocolate, cocoa butter, cocoa fat, or other
2 cocoa derivative as required by the FDA. Instead, the Product contains: Sugar, Palm Kernel Oil,
3 Whole Milk Powder, Nonfat Dry Milk, Palm Oil, Soy Lecithin, and Vanilla Extract. Despite the
4 foregoing, the Product is advertised as if it contains white chocolate.

5 39. Plaintiffs and reasonable consumers reasonably believed the Product contains white
6 chocolate based on the labeling, advertising, and marketing of the Product. Also, there are other
7 versions of the Product within the same line of products, such as milk chocolate, semi-sweet
8 chocolate, and bittersweet chocolate, which are displayed for sale directly adjacent to the Product,
9 thereby further adding to the deception that the Product is white chocolate.

10 40. The Product is marketed and sold at retail stores throughout California and the United
11 States.

12 41. In addition to the packaging and labeling of the Products, Defendant's official
13 website (<https://www.ghirardelli.com/>) misleads consumers to believe that the Product contains
14 white chocolate.

15 42. After receiving statutory notice of these claims on June 12, 2019, Ghirardelli
16 implemented advertising changes on its official website in regards to the Product. The screenshots
17 that appear herein were included in said June 12 letter and show what the website looked like prior
18 to Defendant receiving statutory notice and making subsequent changes.

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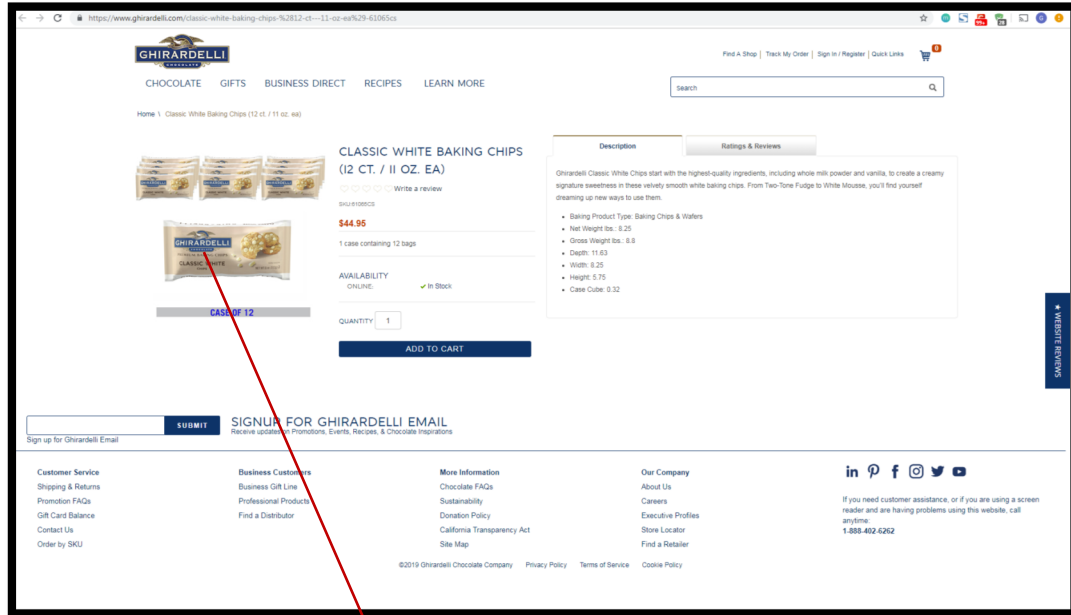
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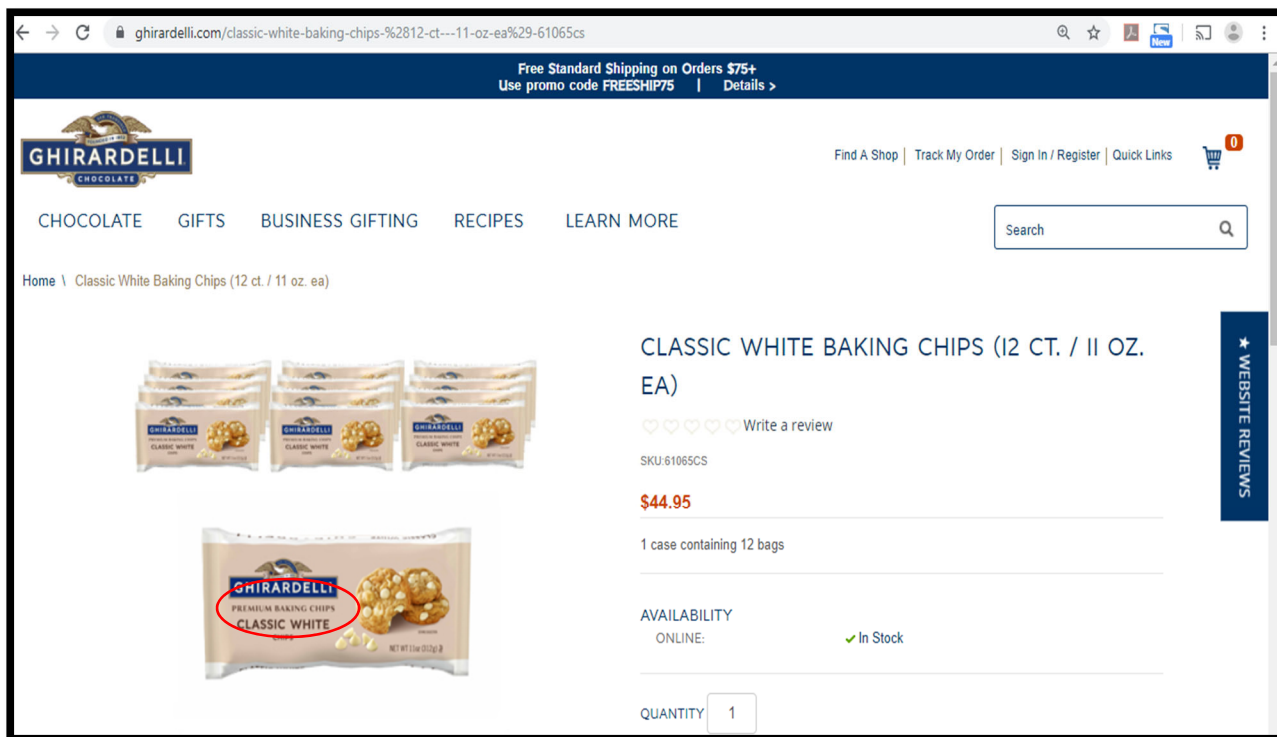
1 **Figure 3:** Screenshot below of Defendant’s official website taken June 12, 2019 depicts the
2 word “chocolate” on the Product packaging (circled in red).



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Figure 4: Screenshot below of Defendant’s official website taken September 5, 2019 reveals that the word “chocolate” on the Product packaging has been removed (circled in red).



43. When purchasing the Product, Plaintiffs relied upon the label “white” and “Premium White” and “Classic White” as well as the overall labeling, advertising, and marketing of the Product as white chocolate, and was led to reasonably believe based on the foregoing, that the Product contains white chocolate. Had Plaintiffs known the Product did not contain white chocolate, then they would not have purchased it. However, if the Product were to actually contain white chocolate or Defendant would dispel the deception that the Product does not contain white chocolate in its labeling, packaging, and advertising, Plaintiffs would repurchase it in the future.

44. Upon information and belief, during the course of its false, misleading, and deceptive labeling and advertising campaign, Defendant has sold millions of units or more of the Product based upon Defendant’s false promises. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant’s false representations.

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CLASS ACTION ALLEGATIONS

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2 45. Plaintiff brings this action on her own behalf and on behalf of all other persons
3 similarly situated. The Class which Plaintiff seeks to represent comprises:

4 “All persons who purchased the Product in the United States or,
5 alternatively, in California, for personal consumption and not for
6 resale during the time period of four years prior to the filing of the
7 complaint through the present.”

8 Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a
9 class certification hearing, and orders of this Court.

10 46. The Class is comprised of millions of consumers throughout United States and/or
11 State of California. The Class is so numerous that joinder of all members is impracticable and the
12 disposition of their claims in a class action will benefit the parties and the Court.

13 47. There is a well-defined community of interest in the questions of law and fact
14 involved affecting the parties to be represented in that the Class was exposed to the same common
15 and uniform false and misleading advertising and omissions. The questions of law and fact common
16 to the Class predominate over questions which may affect individual Class members. Common
17 questions of law and fact include, but are not limited to, the following:

- 18 a. Whether Defendant’s conduct is an unlawful business act or practice within the
19 meaning of Business and Professions Code section 17200, *et seq.*;
- 20 b. Whether Defendant’s conduct is a fraudulent business act or practice within the
21 meaning of Business and Professions Code section 17200, *et seq.*;
- 22 c. Whether Defendant’s conduct is an unfair business act or practice within the meaning
23 of Business and Professions Code section 17200, *et seq.*;
- 24 d. Whether Defendant’s advertising is untrue or misleading within the meaning of
25 Business and Professions Code section 17500, *et seq.*;
- 26 e. Whether Defendant made false and misleading representations in its advertising and
27 labeling of the Product;

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1 f. Whether Defendant knew or should have known that the representations were false;
2 and,

3 g. Whether Defendant represented that the Products have characteristics, benefits,
4 uses, or quantities which they do not have.

5 48. Plaintiff's claims are typical of the claims of the proposed Class, as the
6 representations and omissions made by Defendant are uniform and consistent and are contained in
7 advertisements and on packaging that was seen and relied on by Plaintiffs and members of the
8 Class.

9 49. Plaintiffs will fairly and adequately represent and protect the interests of the proposed
10 Class. Plaintiffs have retained competent and experienced counsel in class action and other
11 complex litigation.

12 50. Plaintiffs and the Class have suffered injury in fact and lost money as a result of
13 Defendant's false, deceptive, and misleading representations.

14 51. Plaintiffs would not have purchased the Product but for the representations by
15 Defendant about the Product.

16 52. The Class is identifiable and readily ascertainable. Notice can be provided to such
17 purchasers using techniques and a form of notice similar to those customarily used in class actions,
18 and by internet publication, radio, newspapers, and magazines.

19 53. A class action is superior to other available methods for fair and efficient adjudication
20 of this controversy. The expense and burden of individual litigation would make it impracticable
21 or impossible for proposed members of the Class to prosecute their claims individually.

22 54. The trial and the litigation of Plaintiffs' claims are manageable.

23 55. Defendant has acted on grounds generally applicable to the entire Class, thereby
24 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to
25 the Class as a whole. The prosecution of separate actions by individual Class members would create
26 the risk of inconsistent or varying adjudications with respect to individual member of the Class that
27 would establish incompatible standards of conduct for Defendant.

1 56. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.
2 Because of the small size of the individual Class members' claims, few, if any, Class members
3 could afford to seek legal redress for the wrongs complained of herein. Absent a representative
4 action, the Class members will continue to suffer losses and Defendant will be allowed to continue
5 these violations of law and to retain the proceeds of its ill-gotten gains.

6 **FIRST CAUSE OF ACTION:**

7 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

8 **BUSINESS & PROFESSIONS CODE § 17200, et seq.**

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

10 57. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs
11 and incorporate the same as if set forth herein at length.

12 58. This cause of action is brought pursuant to Business and Professions Code Section
13 17200, *et seq.*, on behalf of Plaintiff and a Class consisting of all persons residing in the United
14 States and/or State of California who purchased the Product for personal use and not for resale
15 during the time period of four years prior to the filing of the complaint through the present.

16 59. Defendant in its advertising and packaging of the Product make false and misleading
17 statements regarding the quality and characteristics of the Product, particularly that it contains white
18 chocolate when it does not. Such claims appear on the label and packaging of the Product which
19 are sold at retail stores nationwide, point-of-purchase displays, as well as Ghirardelli's official
20 website, and other retailers' advertisements which have adopted Ghirardelli's advertisements.

21 60. Defendant's labeling and advertising of the Product led and continues to lead
22 reasonable consumers, including Plaintiffs, to believe that the Product contains white chocolate.

23 61. Defendant does not have any reasonable basis for labeling and advertising the Product
24 the claims about the Product as if it contains white chocolate when it does not.

25 62. Defendant knows that the white chocolate representations it made and continues to
26 make about the Product are false and misleading and deceives reasonable consumers. *See* Paragraph
27 31, *supra*.

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

4 64. In addition, Defendant’s use of various forms of advertising media to advertise, call
5 attention to, or give publicity to the sale of goods or merchandise which are not as represented in
6 any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and
7 an unlawful business practice within the meaning of Business and Professions Code Sections 17200
8 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in
9 violation of Business and Professions Code Section 17200.

10 65. There were reasonably available alternatives to further Defendant’s legitimate
11 business interests, other than the conduct described herein.

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

15 67. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiffs and
16 the members of the Class seek an order of this Court enjoining Defendant from continuing to
17 engage, use, or employ its practice of labeling and advertising the sale and use of the Product and/or
18 to disclose such misrepresentations. Plaintiffs also seek restitution.

19 68. Plaintiffs and the Class have suffered injury in fact and have lost money or property
20 as a result of and in reliance upon Defendant’s false representations.

21 69. Plaintiffs would not have purchased the Product but for the representations by
22 Defendant about the Product as containing white chocolate.

23 70. Plaintiffs would repurchase the Product in the future if it actually contained white
24 chocolate or if Defendant dispelled any confusion that the Product does not contain white chocolate
25 in its labeling, packaging, and advertising of the Product.

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SECOND CAUSE OF ACTION:
FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17500, et seq.
(By Plaintiff against all Defendants)

71. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs and incorporates the same as if set forth herein at length.

72. This cause of action is brought pursuant to Business and Professions Code Section 17500, *et seq.*, on behalf of Plaintiffs and the Class consisting of all persons residing in the United States and/or State of California who purchased the Product for personal consumption and not for resale during the time period of four years prior to the filing of the complaint through the present.

73. Defendant in its advertising and packaging of the Product make false and misleading statements regarding the quality and characteristics of the Product, particularly that it contains white chocolate. Such representations appear on the Product packaging and official website.

74. Defendant's claims about the Product lead reasonable consumers to believe that the Product contains white chocolate.

75. Defendant does not have any reasonable basis for its white chocolate representations.

76. Defendant knew or should have known that its white chocolate representations are false and misleading. *See* Paragraph 31, *supra*.

77. Plaintiffs would not have purchased the Product but for the representations by Defendant that the Product is white chocolate.

78. Plaintiffs and the Class have suffered injury in fact and lost money as a result of and in reasonable and detrimental reliance upon Defendant's false representations.

79. As alleged in the preceding paragraphs, the misrepresentations by Defendant of the material facts detailed above constitute an unfair, unlawful, and fraudulent business practice within the meaning of California Business and Professions Code Section 17500.

80. In addition, Defendant's use of various forms of advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise which are not as represented in

1 any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and
2 an unlawful business practice within the meaning of Business and Professions Code sections 17200
3 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in
4 violation of Business and Professions Code Section 17500.

5 81. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiffs and
6 the members of the Class seek a court order enjoining Defendant from continuing to deceptively
7 advertise and label the Product as if it is white chocolate. Plaintiffs also seek restitution.

8 **THIRD CAUSE OF ACTION:**

9 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,**

10 **CALIFORNIA CIVIL CODE § 1750, et seq.**

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

12 82. Plaintiffs repeat and re-alleges the allegations set forth in the preceding paragraphs
13 and incorporates the same as if set forth herein at length.

14 83. This cause of action is brought pursuant to Civil Code Section 1750, *et seq.*, the
15 Consumers Legal Remedies Act (“CLRA”), on behalf of Plaintiff and a Class consisting of all
16 persons residing in the United States and/or State of California who purchased the Product for
17 personal consumption and not for resale during the time period of four years prior to the filing of
18 the complaint through the present.

19 84. The Class consists of millions of persons, the joinder of whom is impracticable.

20 85. There are questions of law and fact common to the class, which questions are
21 substantially similar and predominate over questions affecting the individual members, as set forth
22 in Paragraph 3, *supra*.

23 86. The white chocolate misrepresentations described herein were intended to increase
24 sales to the consuming public, and violated and continue to violate Section 1770(a)(5) of the CLRA
25 by representing that the Product has characteristics and benefits which it does not have.

26 87. Defendants fraudulently deceived Plaintiffs and the Class by representing that the
27 Product has certain characteristics, benefits, and qualities which it does not have. In doing so,
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1 Defendant intentionally misrepresented and concealed material facts from Plaintiffs and the Class,
2 specifically by claiming and advertising that the Product contains white chocolate when in fact it
3 contains a cheaper, unhealthier blend of sugars and hydrogenated oils. Said misrepresentations and
4 concealment were done with the intention of deceiving Plaintiff and the Class, and depriving them
5 of their legal rights and money.

6 88. Defendant’s claims about the Product led and continues to lead consumers like
7 Plaintiff to reasonably believe that the Product contains white chocolate.

8 89. Defendant knew or should have known that advertising and labeling the Product as
9 “Premium White” and “Class White,” among other deceptive practices, would confuse reasonable
10 consumers into thinking the Product actually contains white chocolate. *See* Figure 1, Figure 2, and
11 Paragraph 31, *supra*.

12 90. Plaintiffs and the Class have suffered injury in fact as a result of and in reliance upon
13 Defendant’s false representations.

14 91. Plaintiffs would not have purchased the Product but for the misrepresentations by
15 Defendant about the Product containing white chocolate.

16 92. Pursuant to Section 1780(a) of the CLRA, Plaintiffs seek injunctive relief in the form
17 of an order enjoining the above-described wrongful acts and practices of Defendant, including, but
18 not limited to, an order enjoining Defendant from continuing to make the representations set forth
19 above that the Product contains white chocolate. Plaintiffs also seek restitution.

20 93. Plaintiffs shall suffer irreparable harm if such an order is not granted.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for judgment and relief on all Causes of Action as follows:


- A. An order enjoining Ghirardelli from labeling and advertising the Product as if it is white chocolate;
- B. Restitution; and
- C. Reasonable attorneys’ fees and costs.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: September 19, 2019

CLARKSON LAW FIRM, P.C.



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Matthew T. Theriault, Esq.
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Attorneys for Plaintiffs