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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 ELENA COLEMAN, individually and on
 13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 MONDELEZ INTERNATIONAL INC.,
 17 a Virginia Corporation,

18 Defendant.

Case No.

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.*
4. UNJUST ENRICHMENT
5. COMMON LAW FRAUD
6. INTENTIONAL MISREPRESENTATION
7. NEGLIGENT MISREPRESENTATION

DEMAND FOR JURY TRIAL

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INTRODUCTION

1
2 1. Defendant manufactures one of the most popular theater box candy
3 products in the world. To increase profits at the expense of consumers and fair
4 competition, Defendant pioneered a scheme to deceptively sell all flavors, varieties,
5 and sizes of Swedish Fish sold in opaque containers (the “Products”) in oversized,
6 boxes that do not reasonably inform consumers that they are more than half empty.
7 Defendant’s “slack-fill” scam dupes unsuspecting consumers across America to pay
8 premium prices for empty space. In one version of the Products, the opaque box
9 measures to a vertical height of approximately 15.4 cm, while the product inside
10 only measures to a vertical height of approximately 6.5 cm. Below is a true and
11 correct image of the Products, evidencing the deception. The black line represents
12 the actual fill line, below which is product, and above which is nonfunctional empty
13 space.



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1 2. While other similar lawsuits against Defendant’s competitors have all
2 but curbed this unfair business practice, Defendant remains one of the last holdouts,
3 ignoring the industry trend towards transparency in the hopes of obtaining an unfair
4 competitive advantage in the marketplace. This class action aims to remedy
5 Defendant’s unfair business practice by forcing it to follow the industry trend
6 toward greater transparency and eliminating consumer deception.

7 3. Defendant markets the Products in a systematically misleading manner
8 by representing it as adequately filled when, in fact, it contains an unlawful amount
9 of empty space or “slack-fill.” Defendant underfills the Products for no lawful
10 reason. The front of the Products’ packaging does not include any information that
11 would reasonably apprise Plaintiff of the quantity of candy relative to the size of the
12 box, such as a fill line or an actual size depiction accompanied by the words “actual
13 size” and numerical piece count. Defendant does this to save money (by not filling
14 the boxes) and to deceive consumers into purchasing the Products over its
15 competitors’ products. Defendant’s slack-fill scheme not only harms consumers, the
16 scheme also harms Defendant’s competitors who have implemented labeling
17 changes designed to alert consumers to the true amount of product in each box.
18 Accordingly, Defendant has violated the California Consumers Legal Remedies
19 Act, particularly California Civil Code sections 1770(a)(2), 1770(a)(4), 1770(a)(5),
20 1770(a)(9), and 1770(a)(16). As such, Defendant has committed *per se* violations of
21 Business & Professions Code section 17200, *et seq.* and Business & Professions
22 Code section 17500, *et seq.* and Civil Code section 1750, *et seq.*

23 4. Plaintiff and consumers have accordingly suffered injury in fact caused
24 by the false, fraudulent, unfair, deceptive, unlawful, and misleading practices set forth
25 herein, and seek injunctive relief, as well as, *inter alia*, compensatory damages,
26 statutory damages, restitutionary damages, and attorneys’ fees.

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1 **DEFENDANT’S COMPETITORS HAVE REMEDIED SLACK-FILL**
2 **VIOLATIONS BUT DEFENDANT REFUSES**

3 5. Defendant’s major competitors have modified their labeling, and/or
4 packaging, and/or manufacturing processes to dispel consumer deception and
5 confusion.

6 6. Tootsie Roll Industries, Inc. modified its labeling of Junior Mints® and
7 Sugar Babies® to dispel consumer deception and confusion by adding to the front
8 label an actual size depiction, accompanied by the words “actual size” and a piece
9 count.

10 7. Taste of Nature, Inc. modified its labeling and manufacturing processes
11 of Cookie Dough Bites®, Chocolate Chip Cookie Dough Bites®, Fudge Brownie
12 Cookie Dough Bites®, Santa’s Village Chocolate Chip Cookie Dough Bites®,
13 Cookies N’ Cream Cookie Dough Bites®, Cinnamon Bun Bites®, Red Velvet
14 Cupcake Bites®, Moon Pie Bites®, Strawberry Dream Bites®, Birthday Cake
15 Cookie Dough Bites®, Peanut Butter Cookie Dough Bites®, Muddy Bears®, Shari
16 Candies Cherry Sour Balls®, Despicable Me 2 Sour Gummies®, Sqwigglies®, and
17 Hello Kitty Treats® to dispel consumer deception and confusion by agreeing to
18 include an actual size depiction, accompanied by the words “actual size,” and/or
19 increase its fill levels.

20 8. Just Born, Inc. modified its labeling of Hot Tamales® and Mike and
21 Ike® to dispel consumer deception and confusion by agreeing to add a fill level line
22 and/or an actual size depiction to help dispel consumer deception and confusion.

23 9. Ferrara Candy Company, agreed to modify its manufacturing processes
24 of Jujufruits®, Jujubes®, Now & Later®, Lemonhead®, Applehead®, Cherryhead®,
25 Grapehead®, RedHots®, Trolli®, Chuckles®, Black Forest®, Jawbuster®,
26 Jawbreaker®, Brach’s®, Boston Baked Beans®, Super Bubble®, Rainblo®, and
27 Atomic Fireball to dispel consumer deception and confusion by increasing the fill
28 levels of those products.

1 10. Rather than following the industry trend and ceasing its false, fraudulent,
2 unfair, deceptive, unlawful, and misleading business practice, Defendant continues to
3 prioritize its own bottom line over consumer protection and deceive consumers as to
4 the amount of candy contained in the Products.

5 **COURTS AROUND THE COUNTRY FIND SLACK-FILL VIOLATIONS**

6 **MERITORIOUS AND APPROPRIATE FOR CLASS TREATMENT**

7 11. Several state and federal courts have found that cases involving nearly
8 identical claims are meritorious and appropriate for class treatment. *See Iglesias v.*
9 *Ferrara Candy Co.*, Case No. 3:17-cv-00849-VC (N.D. Cal.) (defendant’s FRCP
10 12(b)(6) motion to dismiss slack-filled Jujufruits® and Lemonhead® candy box
11 claims denied and nationwide settlement class certified); *Tsuchiyama v. Taste of*
12 *Nature, Inc.*, Case No. BC651252 (L.A.S.C.) (defendant’s motion for judgment on
13 the pleadings involving slack-filled Cookie Dough Bites® candy box claims denied
14 and nationwide settlement subsequently certified through Missouri court); *Gordon v.*
15 *Tootsie Roll Industries, Inc.*, Case No. 2:17-cv-02664-DSF-MRW (C.D. Cal.)
16 (defendant’s FRCP 12(b)(6) motion to dismiss slack-filled Junior Mints® and Sugar
17 Babies® candy box claims denied); *Escobar v. Just Born, Inc.*, Case No. 2:17-cv-
18 01826-BRO-PJW (C.D. Cal.) (defendant’s FRCP 12(b)(6) motion to dismiss slack-
19 filled Mike N’ Ike® and Hot Tamales® candy box claims denied and California class
20 action certified); *Thomas v. Nestle USA, Inc.*, Cal. Sup. Case No. BC649863 (April
21 29, 2020) (certifying as a class action slack-fill claims brought under California
22 consumer protection laws).

23 **PARTIES**

24 12. Plaintiff Elena Coleman is an individual residing in Los Angeles,
25 California. Plaintiff purchased the Products in 2019 at a Ralph’s in Los Angeles. In
26 making her purchase, Plaintiff relied upon the opaque packaging, including the size
27 of the box and product label, which was prepared and approved by Defendant and its
28 agents and disseminated statewide and nationwide, as well as designed to encourage

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1 consumers like Plaintiff to purchase the Products. Plaintiff understood the size of the
2 box and product label to indicate the amount of candy contained therein was
3 commensurate with the size of the box, and she would not have purchased the
4 Products, or would not have paid a price premium for the Products, had she known
5 that the size of the boxes and product labels were false and misleading. If the
6 Products' packaging and labels were not misleading, then Plaintiff would purchase
7 the Products in the future.

8 13. Mondelez International Inc. is a Virginia corporation headquartered in
9 Illinois. Defendant maintains its principal place of business at 3 Parkway North, Suite
10 300, Deerfield, Illinois 60015. Defendant directly and through its agents, has
11 substantial contacts with and receives substantial benefits and income from and
12 through the State of California. Defendant is the owner, manufacturer, distributor,
13 advertiser, and seller of the Products, and is the company that created and/or
14 authorized the false, misleading, and deceptive advertisements and/or packaging and
15 labeling for the Products.

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

21 15. Defendant, upon becoming involved with the manufacture, advertising,
22 and sale of the Products, knew or should have known that its advertising of the
23 Products' boxes, specifically by representing that they were full, was false,
24 deceptive, and misleading. Defendant affirmatively misrepresented the amount of
25 candy product contained in the Products' boxes in order to convince the public and
26 consumers of the Products to purchase the Products, resulting in profits of millions
27 of dollars or more to Defendant, all to the damage and detriment of the consuming
28 public.

1 16. Defendant has created and still perpetuates a falsehood that its candy
2 boxes contain an amount of candy commensurate with the size of the box, though
3 they actually contain nonfunctional, unlawful slack-fill. As a result, Defendant's
4 consistent and uniform advertising claims about the Products are false, misleading,
5 and/or likely to deceive in violation of California and federal advertising laws.

6 **JURISDICTION AND VENUE**

7 17. This Court has subject matter jurisdiction of this action pursuant to the
8 Class Action Fairness Act of 2005, 28 U.S.C. Section 1332, because: (i) there are
9 100 or more class members, (ii) there is an aggregate amount in controversy
10 exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal
11 diversity because at least one plaintiff and defendant are citizens of different states.
12 This Court has supplemental jurisdiction over any state law claims pursuant to 28
13 U.S.C. Section 1367.

14 18. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for
15 this action because a substantial part of the events, omissions, and acts giving rise to
16 the claims herein occurred in this District. Plaintiff is a citizen of California who
17 resides in Los Angeles, California; Defendant made the challenged false
18 representations to Plaintiff in this District; Plaintiff purchased the Product in this
19 District; and Plaintiff consumed the Product within this District. Moreover,
20 Defendant receives substantial compensation from sales in this District, and
21 Defendant made numerous misrepresentations which had a substantial effect in this
22 District, including but not limited to, labeling, packaging, Internet, and infomercial
23 advertisements, among other advertising.

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

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1 **FACTUAL BACKGROUND**

2 20. The amount of product inside any product packaging is material to any
3 consumer seeking to purchase that product. The average consumer spends only 13
4 seconds deciding whether to make an in-store purchase,¹ which decision is heavily
5 dependent on a product's packaging, including the package dimensions. Research
6 has demonstrated that packages that seem larger are more likely to be purchased.²

7 21. Accordingly, Defendant chose certain size boxes for its Products to
8 convey to consumers that they are receiving a certain and substantial amount of
9 candy commensurate with the size of each box. Such representations constitute an
10 express warranty regarding the Products' content.

11 22. Slack-fill is the difference between the actual capacity of a container
12 and the volume of product contained therein. Nonfunctional slack-fill is the empty
13 space in a package that is filled to less than its capacity for illegitimate or unlawful
14 reasons.

15 23. Defendant falsely represents the quantity of candy in each of the
16 Products' opaque boxes through its packaging. The size of each box leads the
17 reasonable consumer to believe he or she is purchasing a box full of candy product
18 when, in reality, what he or she actually receives is about 58% less than what is
19 represented by the size of the box.

20 24. Even if Plaintiff and other reasonable consumers of the Products had a
21 reasonable opportunity to review, prior to the point of sale, other representations of
22 quantity, such as net weight or serving disclosures, they did not and would not have
23 reasonably understood or expected such representations to translate to a quantity of
24 candy product meaningfully different from their expectation of a quantity of candy
25 product commensurate with the size of the box.

26
27 ¹ Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN, Jan.
13, 2015, <https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-second-window/>.

28 ² P. Raghubir & A. Krishna, *Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?*, 36 J. MARKETING RESEARCH 313-326 (1999).

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1 25. Prior to the point of sale, the Products’ packaging does not allow for a
2 visual or audial confirmation of the contents of the Products. The Products’ opaque
3 packaging prevents a consumer from observing the contents before opening. Even if
4 a reasonable consumer were to “shake” the Products before opening the box, the
5 reasonable consumer would not be able to discern the presence of any nonfunctional
6 slack fill, let alone the 58% nonfunctional slack-fill that is present in the Products.

7 26. The other information that Defendant provides about the quantity of
8 candy product on the front and back labels of the Products does not enable
9 reasonable consumers to form any meaningful understanding about how to gauge
10 the quantity of contents of the Products as compared to the size of each box itself.
11 For instance, the front of the Products’ packaging does not have any labels that
12 would provide Plaintiff with any meaningful insight as to the amount of candy to be
13 expected, such as a fill line or an actual size depiction accompanied by the words
14 “actual size” and a numerical piece count.

15 27. Disclosures of net weight and serving sizes in ounces or grams do not
16 allow the reasonable consumer to make any meaningful conclusions about the
17 quantity of candy contained in the Products’ boxes that would be different from the
18 reasonable consumer’s expectation that the quantity of candy product is
19 commensurate with the size of the box.

20 28. The net weight and serving size disclosures do not allow Plaintiff to
21 make – and Plaintiff did not make – any meaningful conclusions about the quantity
22 of candy product contained in the Products’ box that was different than Plaintiff’s
23 expectations that the quantity of candy product would be commensurate with the
24 size of the box.

25 29. Plaintiff would not have purchased the Products had she known that the
26 Products contained slack-fill that serves no functional or lawful purpose.

27 30. The slack-fill contained in the Products’ packaging does not protect the
28 contents of the package. In fact, the greater the amount of slack-fill, the more room

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1 the contents have to bounce around during shipping and handling, making it more
2 likely that the contents will break or sustain damage. Plaintiff shall proffer expert
3 testimony to establish these facts once this case reaches the merits.

4 31. If, on the other hand, the amount of candy product contained in each box
5 was commensurate with the size of the box, as reasonable consumers expect, then the
6 candy product would have less room to move around during shipping and handling
7 and would be less likely to sustain damage.

8 32. As such, the slack-fill present in the Products' packaging makes the
9 candy product more susceptible to damage, and, in fact, causes the candy product to
10 often sustain damage.

11 33. The slack-fill present in the Products' containers is not a result of the
12 candy product settling during shipping and handling. Given the Products' density,
13 shape, and composition, any settling occurs immediately at the point of filling the
14 box. No additional product settling occurs during subsequent shipping and handling.

15 34. The contents of the Products are of a great enough density that any slack-
16 fill present at the point of sale was present at the time of filling the containers and
17 packaging the contents.

18 35. The Products' packaging is not reusable or of any significant value to the
19 Products independent of its function to hold the candy product. The Products'
20 containers are boxes intended to be discarded immediately after the candy is eaten.

21 36. The slack-fill present in the Products' containers does not accommodate
22 required labeling, discourage pilfering, facilitate handling, or prevent tampering.

23 37. Defendant can easily increase the quantity of candy product contained in
24 each box (or, alternatively, decrease the size of the containers) by approximately 58%
25 more volume.

26 38. Contrast Defendant's packaging of the Products with a comparator
27 product, such as "Boston Baked Beans" ("Boston Beans"), a candy product
28 manufactured by Ferrara Candy Company, and similarly sold at movie theaters and

1 retail outlets located throughout the United States. A true and correct representation
2 of the front of the Boston Beans product is shown in the image below.



11 39. Boston Beans are sold in identical packaging to that of the Products, i.e.,
12 opaque boxes of identical size, shape, volume, and material. Boston Beans are
13 packaged using nearly identical fill and heated glue enclosing machines to those of
14 the Products.

15 40. Boston Beans are coated candies of similar size, shape, and density of
16 that of the Products. However, contrary to the Products, Boston Beans have very little
17 slack-fill and negligible nonfunctional slack-fill. A true and correct representation of
18 the open container of Boston Beans is pictured in the image below.



27 41. Boston Beans' packaging provides additional evidence that the slack-fill
28 present in the Products' packaging is nonfunctional to the tune of 58%.

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1 42. Boston Beans’ packaging provides additional evidence that the slack-fill
2 in the Products is not necessary to protect and, in fact, does not protect, the contents
3 of the Products; is not a requirement of the machines used for enclosing the contents
4 of the Products; is not a result of unavoidable product settling during shipping and
5 handling; is not needed to perform a specific function; and is not part of a legitimate
6 reusable container.

7 43. Boston Beans’ packaging provides additional evidence that Defendant is
8 able to increase the level of fill inside the Products’ boxes.

9 44. Boston Beans’ packaging provides more evidence that Defendant has
10 reasonable alternative designs available to it in its packaging of the Products.

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

14 46. The Products are made, formed, and filled so as to be misleading. The
15 Products are, therefore, misbranded.

16 47. The slack-fill contained in the Products does not serve a legitimate or
17 lawful purpose.

18 48. Defendant’s false, deceptive, and misleading label statements are
19 unlawful under state and federal consumer protection and packaging laws.

20 49. Defendant intended for Plaintiff and the Class members to be misled.

21 50. Defendant’s misleading and deceptive practices proximately caused harm
22 to Plaintiff and the Class.

23 **CLASS ACTION ALLEGATIONS**

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

26 “All persons who purchased the Product[s] in the United
27 States or, alternatively, the State of California, for
28 personal use and not for resale during the time period of

1 four years prior to the filing of the complaint through the
2 present.”

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

5 52. On March 25, 2019, the United States District Court for the Central
6 District of California certified a class action against another one of Defendant’s
7 highly visible competitors involving nearly identical claims and products under
8 Federal Rule of Civil Procedure 23. *See Escobar v. Just Born, Inc.*, Case No. 2:17-cv-
9 01826-BRO-PJW (C.D. Cal. Mar. 25, 2019).

10 53. On April 29, 2020, a California State Court certified a class action
11 against Defendant’s highly visible competitor for nearly identical claims involving
12 similar products under California law. *See Thomas v. Nestle USA, Inc.*, Los Angeles
13 Superior Court Case No. BC 649863 (Apr. 29, 2020).

14 54. The Class is comprised of many thousands of persons. The Class is so
15 numerous that joinder of all members is impracticable and the disposition of their
16 claims in a class action will benefit the parties and the Court.

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

- 23 a. The true nature and amount of product contained in each Products’
24 packaging;
- 25 b. Whether the marketing, advertising, packaging, labeling, and other
26 promotional materials for the Products are deceptive;
- 27 c. Whether Defendant misrepresented the approval of the FDA, United
28 States Congress, and California Legislature that the Products’ packaging
complied with federal and California slack-fill regulations and statutes;

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- d. Whether the Products contain nonfunctional slack-fill in violation of 21 C.F.R. Section 100.100, *et seq.*;
- e. Whether the Products contain nonfunctional slack-fill in violation of California Business and Professions Code Section 12606.2, *et seq.*;
- f. Whether Defendant’s conduct is an unlawful business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- g. Whether Defendant’s conduct is a fraudulent business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- h. Whether Defendant’s conduct is an unfair business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant’s advertising is untrue or misleading within the meaning of Business and Professions Code section 17500, *et seq.*;
- j. Whether Defendant made false and misleading representations in its advertising and labeling of the Products;
- k. Whether Defendant knew or should have known that the misrepresentations alleged herein were false;
- l. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- m. How much more money Plaintiff and the Class paid for the Products than they actually received;
- n. Whether Defendant committed common law fraud; and
- o. Whether Defendant was unjustly enriched at the expense of Plaintiff and the Class members;

56. Plaintiff’s claims are typical of the claims of the proposed Class, as the representations and omissions made by Defendant are uniform and consistent and

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1 are contained in advertisements and on packaging that was seen and relied on by
2 Plaintiff and members of the Class.

3 57. Plaintiff will fairly and adequately represent and protect the interests of
4 the proposed Class. Plaintiff has retained competent and experienced counsel in class
5 action and other complex litigation. Plaintiff’s Counsel prosecuted the largest slack-
6 fill nationwide class action settlement in 2018. Plaintiff’s Counsel also was the first
7 law firm to successfully certify a slack-fill lawsuit involving theater box candy
8 confectioners (twice, in 2019 and 2020, respectively).

9 58. Plaintiff and the Class have suffered injury in fact and have lost money as
10 a result of Defendant’s false, deceptive, and misleading representations. Plaintiff
11 purchased the Products because of the size of the box and the product label, which
12 she believed to be indicative of the amount of candy product contained therein as
13 commensurate with the size of the box. Plaintiff relied on Defendant’s representations
14 and would not have purchased the Products if she had known that the packaging,
15 labeling, and advertising as described herein was false and misleading.

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

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

24 61. The trial and the litigation of Plaintiff’s claims are manageable.
25 Individual litigation of the legal and factual issues raised by Defendant’s conduct
26 would increase delay and expense to all parties and the court system. The class
27 action device presents far fewer management difficulties and provides the benefits
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1 of a single, uniform adjudication, economies of scale, and comprehensive
2 supervision by a single court.

3 62. Defendant has acted on grounds generally applicable to the entire Class,
4 thereby making final injunctive relief and/or corresponding declaratory relief
5 appropriate with respect to the Class as a whole. The prosecution of separate actions
6 by individual Class members would create the risk of inconsistent or varying
7 adjudications with respect to individual members of the Class that would establish
8 incompatible standards of conduct for Defendant.

9 63. Absent a class action, Defendant will likely retain the benefits of its
10 wrongdoing. Because of the small size of the individual Class members’ claims,
11 few, if any, Class members could afford to seek legal redress for the wrongs
12 complained of herein. Absent a representative action, the Class members will
13 continue to suffer losses and Defendant will be allowed to continue these violations
14 of law and to retain the proceeds of its ill-gotten gains.

15 **COUNT ONE**

16 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

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

18 **(By Plaintiff against Defendant)**

19 64. Plaintiff repeats and re-alleges the allegations set forth in the preceding
20 paragraphs and incorporates the same as if set forth herein at length.

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

25 66. The FDA has implemented regulations to achieve this objective. *See,*
26 *e.g.,* 21 C.F.R. § 101.1 *et seq.*

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1 67. The legislature of California has incorporated 21 C.F.R. Section
2 100.100, which prohibits nonfunctional slack-fill, into the State’s Business and
3 Professions Code at Section 12606.2 *et seq.*

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

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

11 70. Plaintiff is not suing under the FDCA, but under California state law.

12 71. The California Sherman Food, Drug, and Cosmetic Act (“Sherman
13 Law”), Cal. Health & Safety Code Section 109875 *et seq.*, has adopted wholesale
14 the food labeling requirements of the FDCA and NLEA as the food regulations of
15 California. Cal. Health & Safety Code Section 110100.

16 72. The Sherman Law declares any food to be misbranded if it is false or
17 misleading in any particular, if the labeling does not conform with the requirements
18 for nutrition labeling set forth in certain provisions of the NLEA. Cal. Health &
19 Safety Code Sections 110660, 110665, 110670.

20 73. The UCL prohibits “any unlawful, unfair... or fraudulent business act or
21 practice.” Cal. Bus & Prof. Code § 17200.

22 **A. “Unfair Prong”**

23 74. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code
24 Section 17200, *et seq.*, a challenged activity is “unfair” when “any injury it causes
25 outweighs any benefits provided to consumers and the injury is one that the
26 consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of*
27 *Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).
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1 75. Defendant’s action of leaving 58% nonfunctional slack-fill in its
2 Products does not confer any benefit to consumers.

3 76. Defendant’s action of leaving 58% nonfunctional slack-fill in its
4 Products causes injuries to consumers, who do not receive a quantity of candy
5 commensurate with their reasonable expectations.

6 77. Defendant’s action of leaving 58% nonfunctional slack-fill in its
7 Products causes injuries to consumers, who do not receive a level of hunger satiety
8 commensurate with their reasonable expectations.

9 78. Defendant’s action of leaving 58% nonfunctional slack-fill in its
10 Products causes injuries to consumers, who end up overpaying for the Products and
11 receiving a quantity of candy less than what they expected to receive.

12 79. Consumers cannot avoid any of the injuries caused by the 58% or more
13 nonfunctional slack-fill in Defendant’s Products.

14 80. Accordingly, the injuries caused by Defendant’s inclusion of 58%
15 nonfunctional slack-fill in the Products outweigh any benefits.

16 81. Some courts conduct a balancing test to decide if a challenged activity
17 amounts to unfair conduct under California Business and Professions Code Section
18 17200. They “weigh the utility of the defendant’s conduct against the gravity of the
19 harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152,
20 1169 (9th Cir. 2012).

21 82. Here, Defendant’s conduct of including 58% nonfunctional slack-fill in
22 the Products’ packaging has no utility and financially harms purchasers. Thus, the
23 utility of Defendant’s conduct is vastly outweighed by the gravity of harm.

24 83. Some courts require that “unfairness must be tethered to some
25 legislative declared policy or proof of some actual or threatened impact on
26 competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir.
27 2007).

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1 84. The California legislature maintains a declared policy of prohibiting
2 nonfunctional slack-fill in consumer goods, as reflected in State’s Business and
3 Professions Code Section 12606.2 and California Health and Safety Code Section
4 110100.

5 85. The 58% of nonfunctional slack-fill contained in the Products is
6 tethered to a legislative policy declared in California according to Cal. Business and
7 Professions Code Section 12606.2 and Cal. Health & Safety Code Section 110100.

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

11 87. Defendant knew or should have known of its unfair conduct.

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

15 89. There existed reasonably available alternatives to further Defendant’s
16 legitimate business interests, other than the conduct described herein. Defendant
17 could have used packaging appropriate for the amount of candy product contained
18 within the Products.

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

22 91. Plaintiff and the Class have suffered injury in fact and have lost money
23 as a result of Defendant’s unfair conduct. Plaintiff paid an unwarranted premium for
24 this product. Specifically, Plaintiff paid for 58% of candy product she never
25 received. Plaintiff would not have purchased the Products if she had known that the
26 Products’ packaging contained nonfunctional slack-fill.

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B. “Fraudulent” Prong

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2 92. California Business and Professions Code Section 17200, et seq.,
3 considers conduct fraudulent and prohibits said conduct if it is likely to deceive
4 members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267
5 (1992).

6 93. Defendant’s conduct of packaging the Products with 58% nonfunctional
7 slack-fill is likely to deceive members of the public.

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

11 95. Defendant knew or should have known of its fraudulent conduct.

12 96. As alleged in the preceding paragraphs, the misrepresentations by
13 Defendant detailed above constitute a fraudulent business practice in violation of
14 California Business & Professions Code Section 17200.

15 97. Defendant had reasonably available alternatives to further its legitimate
16 business interests, other than the conduct described herein. Defendant could have
17 used packaging appropriate for the proportion of product contained therein.

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

21 99. Plaintiff and the Class have suffered injury in fact and have lost money
22 as a result of Defendant’s fraudulent conduct. Plaintiff paid an unwarranted
23 premium for this product. Specifically, Plaintiff paid for 58% of candy product she
24 never received. Plaintiff would not have purchased the Products if she had known
25 that the boxes contained nonfunctional slack-fill.

C. “Unlawful” Prong

26
27 100. California Business and Professions Code Section 17200, et seq.,
28 identifies violations of other laws as “unlawful practices that the unfair competition

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

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

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

10 103. Defendant knew or should have known of its unlawful conduct.

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

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

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

21 107. Plaintiff and the Class have suffered injury in fact and have lost money
22 as a result of Defendant’s unlawful conduct. Plaintiff paid an unwarranted premium
23 for this product. Specifically, Plaintiff paid for 58% of candy product she never
24 received. Plaintiff would not have purchased the Product if she had known that the
25 packaging contained nonfunctional slack-fill.

26 108. Pursuant to Business and Professions Code Sections 17203, Plaintiff
27 and the Class seek an order of this Court enjoining Defendant from continuing to
28 engage, use, or employ its practice of under-filling the Products’ boxes. Likewise,

1 Plaintiff and the Class seek an order requiring Defendant to disclose such
2 misrepresentations, and additionally request an order awarding Plaintiff restitution
3 of the money wrongfully acquired by Defendant by means of responsibility attached
4 to Defendant’s failure to disclose the existence and significance of said
5 misrepresentations in an amount to be determined at trial.

6 **COUNT TWO**

7 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**
8 **& PROFESSIONS CODE § 17500, et seq.**
9 **(By Plaintiff against Defendant)**

10 109. Plaintiff repeats and re-alleges the allegations set forth in the preceding
11 paragraphs and incorporates the same as if set forth herein at length.

12 110. California’s False Advertising Law, California Business and
13 Professions Code Section 17500, et seq., makes it “unlawful for any person to make
14 or disseminate or cause to be made or disseminated before the public in this state, in
15 any advertising device or in any other manner or means whatever, including over
16 the Internet, any statement, concerning personal property or services, professional
17 or otherwise, or performance or disposition thereof, which is untrue or misleading
18 and which is known, or which by the exercise of reasonable care should be known,
19 to be untrue or misleading.”

20 111. Defendant knowingly manipulated the physical dimensions of the
21 Products’ box, or stated another way, under-filled the amount of candy product in
22 Products, by including 58% nonfunctional slack-fill as a means to mislead the
23 public about the amount of candy product contained in each package.

24 112. Defendant controlled the packaging of the Products. It knew or should
25 have known, through the exercise of reasonable care, that its representations about
26 the quantity of candy product contained in the Products were untrue and misleading.

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113. Defendant’s action of packaging the Products with 58% nonfunctional slack-fill instead of including more candy content in the box, or decreasing the size of the box, is likely to deceive the general public.

114. Defendant’s actions were false and misleading, such that the general public is and was likely to be deceived, in violation of Section 17500.

115. Pursuant to Business and Professions Code Section 17535, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice of under-filling the Products’ boxes. Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff and the Class restitution of the money wrongfully acquired by Defendant by means of responsibility attached to Defendant’s failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

116. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant’s false representations. Plaintiff purchased the Products in reliance upon the claims by Defendant that the Products were of the quantity represented by Defendant’s packaging and advertising. Plaintiff would not have purchased the Products if she had known that the claims and advertising as described herein were false.

COUNT THREE

**VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,
CALIFORNIA CIVIL CODE § 1750, *et seq.***

(By Plaintiff against Defendant)

117. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and incorporates the same as if set forth herein at length.

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

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1 119. The practices described herein, specifically Defendant’s packaging,
2 advertising, and sale of the Products, were intended to result and did result in the
3 sale of the Products to the consuming public and violated and continue to violate
4 sections 1770(a)(2), 1770(a)(4), 1770(a)(5), 1770(a)(9), and 1770(a)(16) of the
5 CLRA by (1) misrepresenting the approval of the Products as compliant with 21
6 C.F.R Section 100.100, California Business and Professions Code Section 12606.2,
7 and the Sherman Law; (2) using deceptive representations in connection with the
8 Products; (3) representing the Products have characteristics and quantities that they
9 do not have; (4) advertising and packaging the Products with intent not to sell them
10 as advertised and packaged; and (5) representing that the Products have been
11 supplied in accordance with a previous representation as to the quantity of candy
12 product contained within each box, when they have not.

13 120. Defendant fraudulently deceived Plaintiff and the Class by representing
14 that the Products’ packaging, which includes 58% nonfunctional slack-fill, actually
15 conforms to federal and California slack-fill regulations and statutes including the
16 Sherman Law, California Business and Professions Code Section 12606.2, and 21
17 C.F.R. 100.100.

18 121. Defendant packaged the Products in boxes that contain 58%
19 nonfunctional slack-fill and made material misrepresentations to fraudulently
20 deceive Plaintiff and the Class.

21 122. Defendant fraudulently deceived Plaintiff and the Class by
22 misrepresenting the Products as having characteristics and quantities which they do
23 not have, e.g., that the Products are free of nonfunctional slack-fill when they are
24 not. In doing so, Defendant intentionally misrepresented and concealed material
25 facts from Plaintiff and the Class. Said misrepresentations and concealment were
26 done with the intention of deceiving Plaintiff and the Class and depriving them of
27 their legal rights and money.
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1 123. Defendant fraudulently deceived Plaintiff and the Class by packaging
2 and advertising the Products with intent not to sell them as advertised and by
3 intentionally under-filling the Products' boxes and replacing candy product with
4 nonfunctional slack-fill. In doing so, Defendant intentionally misrepresented and
5 concealed material facts from Plaintiff and the Class. Said misrepresentations and
6 concealment were done with the intention of deceiving Plaintiff and the Class and
7 depriving them of their legal rights and money.

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

18 125. Defendant knew or should have known, through the exercise of
19 reasonable care, that the Products' packaging was misleading.

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

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

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

5 129. Defendant’s false and misleading packaging should be enjoined due to
6 the false, misleading, and/or deceptive nature of Defendant’s packaging.
7 Additionally, Defendant should be compelled to provide restitution and damages to
8 consumers who paid for candy product they never received due to Defendant’s
9 representation that the Products contained an amount of candy commensurate with
10 the size of the boxes.

11 130. By letter dated March 23, 2020, Plaintiff advised Defendant of its false
12 and misleading claims pursuant to California Civil Code Section 1782(a).

13 **COUNT FOUR**

14 **Restitution Based on Quasi-Contract/Unjust Enrichment**

15 **(By Plaintiff against Defendant)**

16 131. Plaintiff repeats and realleges the allegations set forth above and
17 incorporates the same as if set forth herein at length.

18 132. Plaintiff brings this cause of action individually and on behalf of the
19 members of the Class against Defendant.

20 133. By means of Defendant’s wrongful conduct alleged herein, Defendant
21 knowingly sold the Products to Plaintiff and members of the Class in a manner that
22 was unfair, unconscionable, and oppressive.

23 134. Defendant knowingly received and retained wrongful benefits and
24 funds from Plaintiff and members of the Class. In so doing, Defendant acted with
25 conscious disregard for the rights of Plaintiff and members of the Class.

26 135. As a result of Defendant’s wrongful conduct as alleged herein,
27 Defendant has been unjustly enriched at the expense of, and to the detriment of,
28 Plaintiff and members of the Class.

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1 136. Defendant’s unjust enrichment is traceable to, and resulted directly and
2 proximately from, the false, deceptive, and misleading conduct alleged herein.

3 137. Under the common law doctrine of unjust enrichment, it is inequitable
4 for Defendant to be permitted to retain the benefits it received, without justification,
5 from selling the Products to Plaintiff and members of the class in an unfair,
6 unconscionable, and oppressive manner. Defendant’s retention of such funds under
7 such circumstances constitutes unjust enrichment.

8 138. The financial benefits derived by Defendant rightfully belong to
9 Plaintiff and members of the Class. Defendant should be compelled to return in a
10 common fund for the benefit of Plaintiff and members of the Class all wrongful or
11 inequitable proceeds received by Defendant.

12 139. Plaintiff and members of the Class have no adequate remedy at law.

13 **COUNT FIVE**

14 **Common Law Fraud**

15 **(By Plaintiff against Defendant)**

16 140. Plaintiff repeats and realleges all of the allegations contained in the
17 preceding paragraphs and incorporates the same as if set forth herein at length.

18 141. Plaintiff brings this cause of action individually and on behalf of the
19 members of the Class against Defendant.

20 142. Defendant has willfully, falsely, and knowingly filled and packaged the
21 Products in a manner indicating that the Products are sufficiently filled with an
22 amount of candy product commensurate with the size of the container. However,
23 the Products contain 58% nonfunctional and unlawful slack-fill. Defendant has
24 misrepresented the quantity of candy product contained in the Products.

25 143. Defendant’s misrepresentations are and were material (i.e., the type of
26 misrepresentations to which a reasonable person would attach importance and
27 would be induced to act thereon in making his or her purchase decision), because
28 they relate to the quantity of candy product contained in the Products.

1 144. Defendant knew of, or showed reckless disregard for, the fact that the
2 Products contained a substantial amount of nonfunctional slack-fill.

3 145. Defendant intended for Plaintiff and the Class to rely on these
4 representations, as evidenced by Defendant’s manufacturing of packaging that is
5 substantially larger than necessary to hold the volume of the contents contained
6 therein.

7 146. Plaintiff and the Class have reasonably and detrimentally relied on
8 Defendant’s misrepresentations when purchasing the Products and, had they known
9 the truth, they would not have purchased the Products or would have paid
10 significantly less for the Products.

11 147. Therefore, as a direct and proximate result of Defendant’s fraud,
12 Plaintiff and members of the Class have suffered injury in fact.

13 **COUNT SIX**

14 **Intentional Misrepresentation**
15 **(By Plaintiff against Defendant)**

16 148. Plaintiff repeats and realleges all of the allegations contained in the
17 preceding paragraphs and incorporates the same as if set forth herein at length.

18 149. Plaintiff brings this cause of action individually and on behalf of all
19 members of the Class against Defendant.

20 150. Defendant has filled and packaged the Products in a manner indicating
21 that the Products are adequately filled with candy product. However, the Products
22 contain 58% nonfunctional and unlawful slack-fill. Defendant misrepresented the
23 quantity of candy product contained within the Products’ packaging.

24 151. Defendant’s misrepresentations regarding the Products are material to a
25 reasonable consumer, as they relate to the quantity of product received by
26 consumers. A reasonable consumer would attach importance to such representations
27 and would be induced to act thereon in making his or her purchase decision.
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1 152. At all relevant times when such misrepresentations were made,
2 Defendant knew or should have known that the representations were misleading.

3 153. Defendant intended for Plaintiff and the Class to rely on the size and
4 style of the Products' packaging, as evidenced by Defendant's intentional
5 manufacturing, marketing, and selling of packaging that is significantly larger than
6 is necessary to contain the volume of the contents within them.

7 154. Plaintiff and members of the Class reasonably and justifiably relied on
8 Defendant's intentional misrepresentations when purchasing the Products, and had
9 they known the truth, they would not have purchased the Products or would have
10 purchased it at significantly lower prices.

11 155. As a direct and proximate result of Defendant's intentional
12 misrepresentations, Plaintiff and members of the Class have suffered injury in fact.

13 **COUNT SEVEN**

14 **Negligent Misrepresentation**

15 **(By Plaintiff against Defendant)**

16 156. Plaintiff repeats and realleges all of the allegations contained above and
17 incorporates the same as if set forth herein at length.

18 157. Plaintiff brings this cause of action individually and on behalf of the
19 Class against Defendant.

20 158. Defendant has filled and packaged the Products in a manner indicating
21 that the Products are adequately filled with candy product. However, the Products
22 contain 58% less candy product than required and instead contain a substantial
23 amount of nonfunctional slack-fill. Therefore, Defendant has misrepresented the
24 amount of candy product contained in the Products.

25 159. Defendant's misrepresentations regarding the Products are material to a
26 reasonable consumer, as they relate to the quantity of product received by the
27 consumer. A reasonable consumer would attach importance to such representations
28 and would be induced to act thereon in making his or her purchase decision.

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160. At all relevant times when such misrepresentations were made, Defendant knew or should have known that the Products were not adequately filled with candy but instead contained substantial amounts of nonfunctional slack-fill.

161. Defendant intended for Plaintiff and the Class to rely on the size and style of the Products’ packaging, as evidence by Defendant’s packaging that is significantly larger than is necessary to contain the volume of the candy product therein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief on all causes of action as follows:

- A. An order enjoining Defendant from continuing to label, package, and/or advertise the Products as challenged herein so as to dispel the consumer deception;
- B. Damages against Defendant in an amount to be determined at trial, together with pre- and post- judgement interest at the maximum rate allowable by law on any amounts awarded;
- C. Restitution and/or disgorgement in an amount to be determined at trial;
- D. Reasonable attorneys’ fees and costs; and
- E. Granting such other and further as may be just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: September 3, 2020

CLARKSON LAW FIRM, P.C.

/s/ Ryan J. Clarkson
Ryan J. Clarkson, Esq.
Matthew T. Theriault, Esq.
Zachary T. Chrzan, Esq.
Attorneys for Plaintiff

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 ELENA COLEMAN, individually and
13 on behalf of all others similarly
14 situated,

15 Plaintiff,

16 vs.

17 MONDELEZ INTERNATIONAL
18 INC., a Virginia Corporation,

19 Defendants.
20
21
22
23

Case No.

CLASS ACTION

**DECLARATION OF ELENA
COLEMAN REGARDING VENUE
PURSUANT TO CALIFORNIA
CODE OF CIVIL PROCEDURE
SECTION 1780(d)**

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1 I, Elena Coleman, declare as follows:

2 1. I am a plaintiff in this action and a citizen of the State of California,
3 residing in this District. I have personal knowledge of the facts stated herein, and if
4 called to testify as a witness, I could and would competently testify to them.

5 2. Pursuant to California Civil Code Section 1780(d), this Court is proper
6 for trial of this action because Defendants conduct a substantial amount of business in
7 this District.

8 3. The transaction at issue and the subject matter of the above-captioned
9 action occurred in the Central District of California. I purchased the Swedish Fish
10 boxed candy at a Ralphs in Los Angeles, California in 2019.

11
12 I declare under penalty of perjury under the laws of the United States and the
13 State of California that the foregoing is true and correct. Executed on September 3,
14 2020 at Los Angeles, California.

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9255 Sunset Blvd., Ste. 804
Los Angeles, CA 90069

DocuSigned by:
Elena Coleman
B16E88576CEF4B8...

Elena Coleman