

**SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES LLP**

HELEN I. ZELDES (SBN 220051)

*hzeldes@sshzlaw.com*

BEN TRAVIS (SBN 305641)

*btravis@sshzlaw.com*

501 W. Broadway, Suite 800

San Diego, CA 92101

Telephone: (619) 400-4990

Facsimile: (310) 399-7040

PAUL L. HOFFMAN (71244)

*hoffpaul@aol.com*

JOHN WASHINGTON (315991)

*jwashington@sshzlaw.com*

200 Pier Avenue, Ste. 226

Hermosa Beach, CA 90254

Telephone: (310) 396-0731

*Attorneys for Plaintiff Walker and the Putative Class.*

*[Additional counsel listed on signature page]*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Renee Walker, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

Nestlé USA, Inc., a Delaware  
Corporation; and DOES 1 to 100;

Defendants.

Civil Case No.: 3:19-cv-00723-L-DEB

Hon. M. James Lorenz

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Complaint Served: April 24, 2019

1 Plaintiff Renee Walker (“Plaintiff”) brings this action, on behalf of herself and all  
 2 others similarly situated against NESTLÉ USA, INC. (“Defendant” or “Nestlé”).  
 3 Plaintiff alleges the following based upon information and belief, the investigation of  
 4 counsel, and personal knowledge as to the allegations pertaining to herself.

### 5 I. NATURE OF THE CASE

6 1. Nestlé, the world’s largest food company, is best known for chocolate  
 7 products like Butterfinger, Nestlé Crunch, Baby Ruth, Nesquik, 100 Grand and Toll  
 8 House chocolate chips. What Nestlé is not as well known for is that it has been making  
 9 its chocolate fortune off the backs of child labor and child slave labor in West Africa.  
 10 Nestlé has been acutely aware of the magnitude of unethical labor in its supply chain for  
 11 more than a decade – indeed, it admits, albeit anemically, that two-thirds of its cocoa  
 12 supply is tainted with child labor and/or child slave labor.<sup>1</sup> In fact, the World Cocoa  
 13 Foundation, which Nestle is a member of, reports that there are approximately **10 million**  
 14 **children** working on the cocoa farms in Côte d’Ivoire and Ghana.<sup>2</sup>

15 2. Notwithstanding knowing full well that its cocoa is primarily procured  
 16 from farms using the worst forms of child labor, Nestlé slaps bogus “seals” on its  
 17 products claiming its cocoa is “sustainably sourced” “certified” and “supports” or  
 18 “helps” farmers when it knows the opposite is true. It is abhorrent to equate slavery  
 19 and child labor to a “sustainable” practice. Nor does Nestlé fare any better on the  
 20 environmental “sustainability” front: Nestlé’s supply chain has virtually no  
 21 environmental standards in place. To the contrary, the “[c]hocolate industry drives  
 22 rainforest disaster in [the] Ivory Coast.”<sup>3</sup> This massive deforestation was documented  
 23 by *The Guardian*, whose investigative reporters “travelled across Ivory Coast and  
 24 documented rainforests cleared for cocoa plantation; villages and farmers occupying

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 26 <sup>1</sup><https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf>, at p. 11.

27 <sup>2</sup> <https://www.worldcocoafoundation.org/blog/tackling-child-labor-in-the-cocoa-sector-an-industry-viewpoint-of-a-work-in-progress/>

28 <sup>3</sup><https://www.theguardian.com/environment/2017/sep/13/chocolate-industry-drives-rainforest-disaster-in-ivory-coast>

1 supposedly protected national parks; enforcement officials taking kickbacks for  
2 turning a blind eye to infractions and trading middlemen who supply the big brands  
3 indifferent to the provenance of beans.” *Ibid.* At the current pace of deforestation,  
4 there will be no forest left in the Ivory Coast by 2030. *Ibid.*

5 3. Nestlé’s deceptive labeling misleads consumers into believing their  
6 products are procured in accordance with environmentally and socially responsible  
7 standards, when it knows they are not. Ms. Walker was misled by the affirmative  
8 misrepresentations on Nestlé’s product packaging concerning the use of fair labor and  
9 environmental standards and practices. Had she been aware of the misrepresentations  
10 described herein, she would not have purchased Nestlé’s products.

11 4. Plaintiff thus brings this action pursuant to: (i) California’s Business &  
12 Professions Code §§ 17200, *et seq.* (the Unfair Competition Law or “UCL”); and (ii)  
13 California Civil Code §§ 1750, *et seq.* (the Consumers Legal Remedies Act or  
14 “CLRA”). Plaintiff brings this action on behalf of a nationwide class for damages,  
15 restitution and injunctive relief, and any other relief deemed appropriate by the court  
16 to which this case is assigned.

## 17 **II. JURISDICTION AND VENUE**

18 5. This Court has personal jurisdiction over Nestlé because Nestlé has  
19 conducted and continues to conduct business in the State of California, and because  
20 Nestlé has committed the acts and omissions complained of herein in the State of  
21 California.

22 6. This court has subject matter jurisdiction pursuant to the Class Action  
23 Fairness Act, 28 U.S.C. 1332(d), as Plaintiff (California) and Nestlé (Delaware) are  
24 diverse, there are over 100 class members, and the amount in controversy exceeds \$5  
25 million.

26 7. Venue is proper in the Southern District of California, because a substantial  
27 portion of the acts giving rise to this action occurred in this district.

28

### III. PARTIES

1  
2 8. Plaintiff Walker is, and at all times mentioned herein was, an individual  
3 citizen of the State of California and resident of San Diego County. Plaintiff, a frequent  
4 baker, regularly purchased Defendant Nestlé’s chocolate/cocoa products (specifically  
5 semi-sweet morsels, semi-sweet mini morsels as well as hot cocoa mix) from her local  
6 Vons and other grocery stores in Carlsbad, California, labeled with the “Nestlé Cocoa  
7 Plan” “UTZ Certified” “Certified through UTZ” and “Sustainably Sourced” labels on  
8 them purporting to, among other things, “Support farmers for better chocolate” and  
9 “help improve the lives of cocoa farmers.” Plaintiff relied upon Nestlé’s  
10 misrepresentations about the social and environmental benefits of the products in  
11 making her decision to purchase the products. Plaintiff purchased Nestlé’s chocolate  
12 chips (morsels) and hot cocoa numerous times during the four years prior to filing her  
13 Complaint in April 2019. Her most recent purchases were in or around January –  
14 February 2019. Plaintiff suffered injury in that she would not have bought the  
15 UTZ/Nestlé Cocoa Plan/Sustainability-labeled products had she known that the  
16 products were not sourced from sustainable farming practices but rather off the backs  
17 of child and slave labor.

18 9. Plaintiff would like to buy Defendant’s products in the future if and when  
19 they were produced as advertised by Nestle. She can no longer rely on the accuracy  
20 of the representations addressed below in deciding whether to purchase these products,  
21 and furthermore, cannot readily determine whether the misrepresentations have been  
22 corrected.

23 10. Defendant Nestlé USA (“Nestlé”) is a Delaware corporation with its  
24 principal place of business at 1812 North Moore Street in Rosslyn, Virginia 22209.  
25 Nestlé is one of the largest food and beverage companies in the world.<sup>4</sup> Nestlé  
26 purchases approximately 414,000 tons of cocoa annually.<sup>5</sup> Nestlé promotes itself as

27 <sup>4</sup> <https://www.nestle.com/aboutus>

28 <sup>5</sup> <https://www.nestleprofessional.us/we-share-your-values/nestle-cocoa-plan-promotes-better-farming-better-lives-better-cocoa>

1 “the ‘Good Food, Good Life’ company, we enhance quality of life and contribute to a  
2 healthier future.”<sup>6</sup> Nestlé does no such thing in the Côte D’Ivoire.

3 **IV. FACTUAL ALLEGATIONS**

4 **A. Child Labor and Environmental Degradation in the Côte D’Ivoire's**  
5 **Cocoa Industry Are Well-Known and Undisputed by Nestlé**

6 11. Nestlé has long been aware that cocoa farming in Côte D’Ivoire relies  
7 heavily on child labor and slavery. Children on Ivorian cocoa plantations are subjected  
8 to what the International Labor Organization (ILO) terms the “Worst Forms of Child  
9 Labor” – including trafficking, slavery, and exposure to toxic chemicals and hazardous  
10 tools.<sup>7</sup> In 2001, Nestlé signed the Harkin-Engel Protocol, signifying its commitment  
11 to eradicating the Worst Forms of Child Labor in West Africa. Signatories pledged to  
12 “develop and implement credible, mutually-acceptable, voluntary, industry-wide  
13 standards of public certification” to ensure that cocoa beans were “grown and/or  
14 processed without the worst forms of child labor” by July 2005.

15 12. Nestlé, like all the other big cocoa companies in the Côte d’Ivoire, has  
16 repeatedly pushed out the date by which it commits to being slave-free. Nestlé’s Cocoa  
17 Plan’s latest aspiration – and admission that its cocoa is not “sustainably sourced” - is  
18 to purchase all of its cocoa through its Cocoa Plan by 2025.

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<sup>6</sup>[https://www.nestle.com/asset-library/documents/library/documents/annual\\_reports/2018-annual-review-en.pdf](https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf), at p. 11.

<sup>7</sup> <https://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm>

1 13. Nestle admits that the problem has gotten worse, not better, under its  
2 Cocoa Plan (instituted in 2009):

3 **Reach of the system**

	2017	2019
4 Number of children aged 5-17 being monitored	<b>40,728</b>	<b>78,580</b>
5 Number of children identified in child labor and currently 6 in the system	<b>7,002</b>	<b>18,283</b>
7 Child labor rate	<b>17%</b>	<b>23%</b>
8 Number of children who received at least one form of remediation	<b>Not measured</b>	<b>15,740</b>

9  
10 <https://www.nestlecocoaplan.com/tacklingchildlabor>

11 14. This trend has been consistent in the chocolate industry. Notwithstanding  
12 the chocolate industry's alleged commitment to combating child labor and slavery, a  
13 study conducted in 2015 by Tulane University concluded that the number of Ivorian  
14 children engaged in the Worst Forms of Child Labor on cocoa plantations substantially  
15 *increased* between 2009 and 2014.

16 15. During the 2013-14 harvest season, 1,203,473 child laborers aged 5 to 17  
17 were found to be working on cocoa farms in Côte d'Ivoire, with 95.9 percent engaged  
18 in hazardous work in cocoa production. The work children engage in on the cocoa  
19 farms includes burning and clearing fields, cutting down trees to expand cocoa  
20 plantations, spraying pesticides, using sharp tools to break pods, and transporting  
21 heavy loads of cocoa pods and water.<sup>8</sup>

22 16. The U.S. Department of Labor describes the conditions of forced labor in  
23 chilling detail: "[s]ome children are sold by their parents to traffickers, some are  
24 kidnapped, and others migrate willingly but fall victim to traffickers who sell them to  
25 recruiters or farmers, where they end up in conditions of bonded labor. Some farmers  
26 buy the children and refuse to let them leave the farm until the debt of their purchase  
27 has been worked off. The children are frequently not paid for their work; some of their

28 <sup>8</sup> <https://www.dol.gov/sites/default/files/images/ilab/child-labor/CotedIvoire.pdf>, at p. 1.

1 wages are paid to the recruiter or trafficker. These children are held against their will  
2 on isolated farms, are locked in their living quarters at night, and are threatened and  
3 beaten if they attempt to escape. They are punished by their employers with physical  
4 abuse. They are forced to work long hours, including overtime, and are required to  
5 work even when they are sick. Some children are denied sufficient food by their  
6 traffickers and employers.”<sup>9</sup>

7 **B. Nevertheless, Nestlé Deceptively Labels Its Chocolate as a**  
8 **Sustainable, Fair Trade Product**

9 17. Notwithstanding Nestlé’s knowledge that its supply chain is inundated  
10 with child labor and child slave labor, and that conditions have gotten worse not better  
11 under its Cocoa Plan, Nestlé has the audacity to place patently false “seals” on its  
12 products, purporting to be a “sustainably sourced” product. Nothing could be further  
13 from the truth.

14 18. Many of Nestlé’s products prominently feature the logo of the Nestlé  
15 Cocoa Plan. Products advertised with the Nestlé Cocoa Plan seal are also accompanied  
16 by references to UTZ, a third-party certifier which holds itself out as the “benchmark  
17 for the sustainable production of . . . cocoa.”<sup>10</sup> UTZ certified products purportedly  
18 stand for ethical and sustainable farming, including better working conditions and  
19 better care for the natural environment.<sup>11</sup> Placing these seals on the product next to the  
20 sustainability claims serves to reinforce the deception that the product being purchased  
21 is in fact a “fair trade” or “green” product.

22 19. For example, Nestlé’s hot cocoa packaging boasts of Nestlé’s  
23 “sustainably sourced cocoa beans.” Next to that statement, Nestlé’s hot cocoa  
24 packaging also prominently advertises that the Nestlé Cocoa Plan “supports farmers”  
25 and claims to be working with UTZ in order to “improve the lives of cocoa farmers.”  
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27 <sup>9</sup> [https://www.dol.gov/sites/default/files/documents/ilab/EO\\_Report\\_2014.pdf](https://www.dol.gov/sites/default/files/documents/ilab/EO_Report_2014.pdf), at p. 12.

28 <sup>10</sup> <https://utz.org/>

<sup>11</sup> See, <https://utz.org/what-we-offer/certification/the-standard/>

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20. Nestlé’s Toll House Morsels products – both mini and regular – use the same tactic. Both also advertise the cocoa as “sustainably sourced” through Nestlé’s Cocoa Plan, “Certified Through UTZ.” Nestlé’s Morsels packaging also prominently advertises that the Nestlé Cocoa Plan “supports farmers” and claims to be working with UTZ to “improve the lives of cocoa farmers.”





1           21. All of these claims are prominently included on the product packaging.  
2 Consumers justifiably rely on Nestlé’s assertions when choosing whether to purchase  
3 a particular product.

4                   **1. Nestlé’s Sustainability Labeling is False and Misleading**

5           22. Sustainability is commonly used in the business world, and the accepted  
6 definition encompasses social and environmental sustainability<sup>12</sup>.

7           23. UTZ’s use and promotion of the term is instructive. UTZ states that its  
8 products indicate “the sustainable production of . . . . cocoa,” because consumers can  
9 be sure that UTZ certified products “have been sourced in a way that is fair to  
10 producers, suppliers, and the environment.”<sup>13</sup>

11           24. Nestle relies on its claims of sustainability to convey the environmental  
12 and ethical nature of its products to consumers. It is this understanding that drives  
13 consumers to buy the products. In an analysis of different industries, chocolate  
14 products’ growth was the most pronounced based on claims of sustainability, with such  
15 products growing at more than 3 times the rate of chocolate products without  
16 sustainability claims.<sup>14</sup> Surveys of cocoa consumers also show that if sustainability  
17 claims were false over 80% of consumers would cease to buy the product.<sup>15</sup>

18           25. Nestlé’s sustainability claims on its labels are false on both social and  
19 environmental sustainability grounds.

20                   **a. Nestlé’s “Sustainable” Environmental Claims Are**  
21                   **Deceptive**

22           26. Nestlé’s production and purchasing mechanisms in the Côte D’Ivoire do  
23 not follow any sustainable environmental protocols, and actually adversely affect the  
24 local ecosystem.

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26 <sup>12</sup> Definition of business sustainability, Financial Times, <http://lexicon.ft.com/Term?term=business-sustainability>.

27 <sup>13</sup> <https://utz.org/what-we-offer/certification/>

28 <sup>14</sup> <https://www.nielsen.com/us/en/insights/article/2018/sustainability-sells-linking-sustainability-claims-to-sales/>

<sup>15</sup> <https://cocoa-alliance.org/wp-content/uploads/2018/12/FCA-Consumer-Survey-May-2018.pdf>

1           27. The rainforest in Côte D'Ivoire has decreased from 16 million hectares in  
2 1960, making up half of the country, to less than 2 million hectares by 2010.<sup>16</sup> Nestlé's  
3 overproduction and indiscriminate purchasing in Côte D'Ivoire has contributed to this  
4 mass deforestation.<sup>17</sup> An estimated 40 percent of the Ivorian cocoa harvest currently  
5 comes from inside classified or protected areas. This has devastating consequences for  
6 biodiversity and the local microclimate (including desertification and changing  
7 weather patterns<sup>18</sup>).

8           28. Many of Côte D'Ivoire's national parks and protected areas have been  
9 entirely or almost entirely cleared of forest and replaced with cocoa growing  
10 operations.<sup>19</sup> For years the world's major chocolate companies have been buying  
11 cocoa grown through the illegal deforestation of national parks and other protected  
12 forests, in addition to driving extensive deforestation outside of protected areas.<sup>20</sup> In  
13 the world's two largest cocoa producing countries, Ivory Coast and Ghana, the market  
14 created by the chocolate industry has been the primary source for the destruction of  
15 environmentally protected areas.<sup>21</sup> As Mighty Earth reports, "many of the country's  
16 national parks and conservation lands have been cleared of their forest to make way  
17 for cocoa operations to feed demand from large chocolate companies like Nestlé,  
18 Cadbury, and Mars."<sup>22</sup>

19           29. Nestlé currently has no protocols in place to prevent purchasing cocoa  
20 produced on protected lands. Nestlé's March 5, 2019 "Action Plan" highlights ending  
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24 <sup>16</sup> 2018 Cocoa Barometer, at p.19, [https://www.voicenetwork.eu/wp-](https://www.voicenetwork.eu/wp-content/uploads/2019/08/Cocoaborometer2018_web4.pdf)  
25 [content/uploads/2019/08/Cocoaborometer2018\\_web4.pdf](https://www.voicenetwork.eu/wp-content/uploads/2019/08/Cocoaborometer2018_web4.pdf)

26 <sup>17</sup> *Id.*

27 <sup>18</sup> *Id.* p. 18-19

28 <sup>19</sup> Chocolate's Dark Secret, Mighty Earth, 2017, [http://www.mightyearth.org/wp-](http://www.mightyearth.org/wp-content/uploads/2017/09/chocolates_dark_secret_english_web.pdf)  
content/uploads/2017/09/chocolates\_dark\_secret\_english\_web.pdf

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

1 deforestation but extends its original 2012 commitment to 2022.<sup>23</sup> Currently, upwards  
2 of 80 percent of cocoa production and sales are done without properly tracing the  
3 source of the cocoa. Accordingly, a large percentage of Nestlé’s cocoa is knowingly  
4 grown in and purchased from protected nature reserves. As demand continues to  
5 expand in cocoa production, rainforests are cut down for new cocoa fields.

6 30. In addition to mass deforestation, the current known and common  
7 practices around cocoa farming are not sustainable. There is excessive use of fertilizers  
8 and pesticides and a loss of biodiversity.<sup>24</sup> Chemicals pollute waterways, killing  
9 wildlife and harming communities. Deforestation exposes shade-dependent plants to  
10 full sun, which increased the biosphere’s susceptibility to disease.

11 **b. Slavery and Forced Child Labor Are Not “Sustainable”**

12 31. Nestlé contends it provides sustainable chocolate to consumers through  
13 its “Cocoa Plan” and claims that the company is working toward “improving the lives  
14 of farmers.”

15 32. As previously stated, even Nestlé’s own statistics show that the number of  
16 children working in dangerous conditions on the cocoa farms it sources from in Côte  
17 d’Ivoire has *increased* considerably in recent years and its alleged efforts have *not*  
18 made farmers’ lives better as a result of Nestlé’s “Cocoa Plan”.<sup>25</sup>

19 33. Nestlé cannot publicly claim that it adopts sustainable practices and that  
20 it is working to improve the lives of farmers when its unethical practices are in fact  
21 perpetuating a system that relies on and increases child and child slave labor.

22  
23  
24 <sup>23</sup> Nestle Action Plan, March 5th, 2019, at [https://www.nestle.com/asset-library/documents/library/documents/corporate\\_social\\_responsibility/cocoa-and-forests-initiative-nestle-initial-action-plan.pdf](https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/cocoa-and-forests-initiative-nestle-initial-action-plan.pdf)

25 <sup>24</sup> Chocolate’s Dark Secret, Mighty Earth, 2017, [http://www.mightyearth.org/wp-content/uploads/2017/09/chocolates\\_dark\\_secret\\_english\\_web.pdf](http://www.mightyearth.org/wp-content/uploads/2017/09/chocolates_dark_secret_english_web.pdf)

26 <sup>25</sup> Tulane Report 2015  
27 [https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane\\_university\\_-\\_survey\\_research\\_on\\_child\\_labor\\_in\\_the\\_cocoa\\_sector\\_-\\_30\\_july\\_2015.pdf](https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf)  
28

## 2. Nestlé’s “Cocoa Plan” is a Sham

34. Nestlé’s own internal certification plan, the “Nestlé Cocoa Plan”, is a clear attempt to vindicate the company to the public without requiring it to take tangible actions to eradicate this widespread scourge. It thus deceives consumers into believing that buying Nestlé’s products will benefit farmers in Côte d’Ivoire and misleads them into thinking their product is child labor and slave-labor free.

35. Nestlé makes false assurances that it is “determined to tackle the problem”<sup>26</sup> and that its Nestlé Cocoa Plan (launched in 2009) is helping to “eliminate the use of child labour” and to “stamp out forced labour practices” in the Ivorian cocoa industry. Nestlé also claims that it is “helping the lives of farmers” through the Plan. However, Nestlé’s profiteering off child labor does not help the lives of farmers. Child labor has undisputedly increased in Côte d’Ivoire since Nestlé instituted its “Cocoa Plan.”<sup>27</sup> Nestlé has yet to commit to paying farmers a fair price for their cocoa and does not currently have any long-term plans to support farmers achieving a living income.

36. Nestlé’s Cocoa Plan represents that it is tackling child labor but relies solely on Nestlé’s own Child Labor Monitoring and Remediation System (CLMRS), to achieve that goal. CLMRS purports to be a community-based monitoring system to identify and remediate child labor. Nestlé’s plan relies on Community Liaison People (community auditors) to spot children engaged in labor activities, or on the children themselves who can self-declare to be engaging in a hazardous activity.<sup>28</sup>

37. Independent monitoring visits conducted annually by the Fair Labor Association (“FLA”) confirm the continued presence of child labor on Nestlé Cocoa Plan CLMRS-certified farms. The 2017 FLA assessment found an overall *increase* in the total number of child workers on farms from the previous year. Child labor

<sup>26</sup> <http://www.nestlecocoaplan.com/betterlives>

<sup>27</sup> School of Public Health and Tropical Medicine Tulane University, “Survey Research on Child Labor in West African Cocoa Growing Areas”, Tulane University, 30 July 2015, at page 35. [https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane\\_university\\_-\\_survey\\_research\\_on\\_child\\_labor\\_in\\_the\\_cocoa\\_sector\\_-\\_30\\_july\\_2015.pdf](https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf)

<sup>28</sup> <http://www.nestlecocoaplan.com/better-lives/>

1 constituted 21% of the labor on CLMRS farms.<sup>29</sup>

2 38. Moreover, the Nestlé Cocoa Plan does not even try to certify that children  
3 are not being used as forced labor. Rather, it purports to include a voluntary reporting  
4 and monitoring system for identifying child labor. As of 2017, Nestlé claimed it had  
5 identified over 7,000 children working on farms covered by the Nestlé Cocoa Plan.<sup>30</sup>  
6 In 2019, that number more than doubled, with Nestlé reporting over 18,000 children  
7 working on farms covered by its Cocoa Plan. However, those numbers are deceptively  
8 understated.

9 39. The World Cocoa Foundation states that: “The organized supply chains  
10 of a handful of companies reach only a *fraction* of the entire cocoa-growing population  
11 of Côte d’Ivoire and Ghana, and efforts to date have only reached a fraction of the  
12 farmers in those supply-chains.”<sup>31</sup> “There are approximately two million cocoa farmers  
13 in Côte d’Ivoire and Ghana representing 6-8 million children under the age of 18.”

14 40. The Plan provides that around a third of Nestlé’s total global supply is  
15 currently bought from producers covered by the Nestlé Cocoa Plan.<sup>32</sup> Other  
16 information however suggests that as little as 25 percent of its cocoa is bought through  
17 the Nestlé Cocoa Plan, with the remaining 75 percent coming from untraceable  
18 sources.<sup>33</sup>

19 41. By all sources, Nestlé has admitted that the vast majority of its cocoa is  
20 sourced through untraceable channels, *where absolutely no monitoring takes place*,  
21 where child labor and trafficking occur on a widespread basis.

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23 <sup>29</sup>[http://www.fairlabor.org/sites/default/files/documents/reports/2017\\_nestle\\_cocoa\\_executive\\_summary\\_october-2018.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/2017_nestle_cocoa_executive_summary_october-2018.pdf), at p. 4.

24 <sup>30</sup> <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf> at p. 6.

25 <sup>31</sup> <https://www.worldcocoaoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>

26 <sup>32</sup> <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf>, at p. 11.

27 <sup>33</sup> Fair Labor Association,

28 [http://www.fairlabor.org/sites/default/files/documents/reports/assessment\\_nestle\\_standard\\_supply\\_chain\\_ivory\\_coast\\_august\\_2016.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/assessment_nestle_standard_supply_chain_ivory_coast_august_2016.pdf)

1           42.     Additionally, out of the 70 co-operatives in Côte d’Ivoire that supply the  
2 small amount of traceable cocoa bought by Nestlé, only 22 co-operatives have  
3 implemented CLMRS.<sup>34</sup> In other words, even in the small number of cooperatives  
4 where the cocoa is traceable to farmers, monitoring activities through the Nestlé Cocoa  
5 Plan CLMRS system take place in only a fraction of them.

6           43.     Moreover, the available data demonstrates that the areas covered by the  
7 CLMRS constitute a minimal proportion of the total number of farmers and children  
8 supplying cocoa to Nestlé in Côte d’Ivoire.

### 9                   **3.     The UTZ Certification Promoted by Nestlé Is Also a Sham**

10           44.     Nestlé couples false assurances of its Cocoa Plan with a reference to a  
11 UTZ certification. Like Nestlé, UTZ claims child labor is prohibited on its certified  
12 farms.<sup>35</sup> It purports to regulate the illegal use of child labor through its “UTZ certified  
13 traceability system,” the “Good Inside Portal”. It boasts consumers can trust that “the  
14 sustainable ingredients sourced for the product has been traced all the way from field  
15 to shop shelf, every stage of its journey documented.”<sup>36</sup> Nestlé relies on these  
16 assurances to sell products it touts as bearing UTZ certification.

17           45.     These assurances are false, as Nestlé knows. A 2018 study co-sponsored  
18 in part by both Nestlé and UTZ entitled, “*Towards sustainable cocoa in Cote*  
19 *d’Ivoire—The impacts and contribution of UTZ certification combined with services*  
20 *provided by companies*” found widespread use of child labor on UTZ certified farms  
21 and a lack of oversight on those farms.<sup>37</sup> The study found that in 2017, only 38 percent  
22 of UTZ farmers had been inspected for the use of child labor.<sup>38</sup> That same year, 16  
23 percent of UTZ farmers reported children doing prohibited hazardous or unhealthy  
24 work<sup>39</sup>

25 \_\_\_\_\_  
26 <sup>34</sup> <http://www.nestlecocoaplan.com/better-lives/>

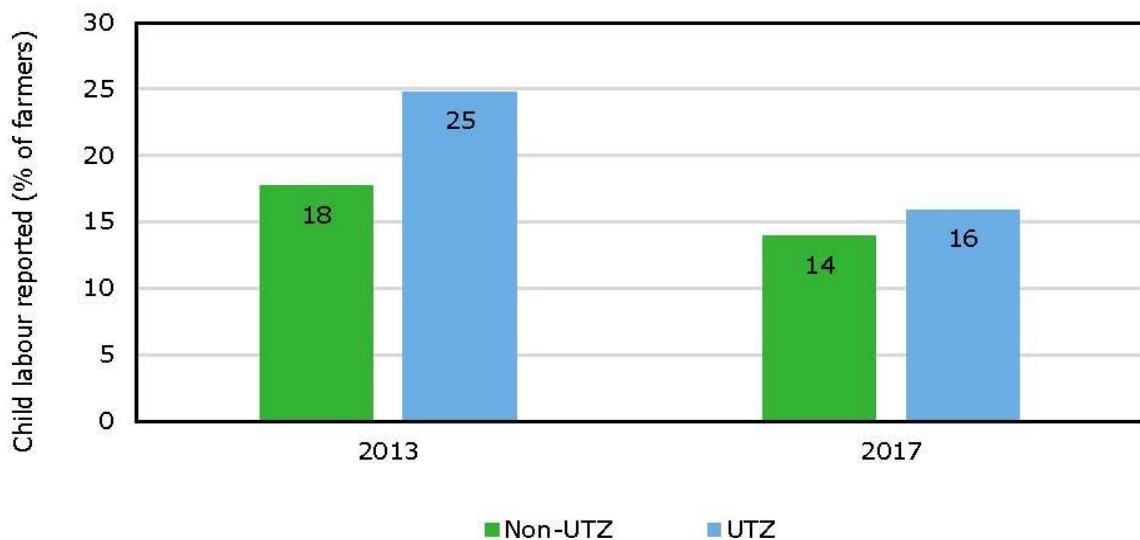
27 <sup>35</sup> <https://utz.org/what-we-offer/sector-change/child-labor/>

28 <sup>36</sup> <https://utz.org/what-we-offer/traceability-system/traceability-system/>

<sup>37</sup> See generally, <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>

<sup>38</sup> <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 64.

<sup>39</sup> *Towards sustainable cocoa in Côte d’Ivoire*,



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**Figure 7.9** Percentage of cocoa farms where children conduct hazardous activities

prohibited by the UTZ Code of Conduct.<sup>40</sup> **This figure was two percent higher than for non-UTZ farms.**<sup>41</sup> Further, only 35 percent of UTZ farmers were aware of the minimum age for children to work on their farms.<sup>42</sup>

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46. Further deceiving consumers, UTZ purports to pay farmers a premium for joining cooperatives which allegedly use fair labor. In fact, the premium is not paid to farmers. Instead, it is paid directly to the cooperatives, who retain it for their own benefit with no financial remuneration to the cocoa farmers.

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47. By placing the UTZ certification label on its cocoa products, Nestlé knowingly misleads consumers into believing they are purchasing sustainable, ethically sourced chocolate which couldn't be further from the truth.

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<sup>40</sup> <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223> at p. 62

<sup>41</sup> <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 62.

<sup>42</sup> <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223> at p. 62

<sup>43</sup> <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 64

1                   **4. Child Labor and Trafficked Labor Are So Widespread in Côte**  
 2                   **d’Ivoire That No Chocolate Can Be Labeled as Sustainably**  
 3                   **Sourced**

4           48. Nestlé admits that the use of child labor and trafficking remains  
 5 widespread and endemic. Nestlé cannot claim it is even using primarily or close to  
 6 50% child labor free cocoa. As stated in the latest Cocoa Barometer Report: “Not a  
 7 single company or government is anywhere near reaching the sector-wide objective of  
 8 the elimination of child labour, and not even near their commitments of a 70%  
 9 reduction of child labour by 2020.”<sup>43</sup>

10          49. In the almost 20 years since the execution of the Harkin-Engel protocol,  
 11 no significant advancements have been made in Côte d’Ivoire. Rather than decreasing,  
 12 child labor has increased in West Africa. According to the 2015 Tulane Report, the  
 13 increase in cocoa production has also led to an increase of child laborers to 2.1 million  
 14 children in Côte d’Ivoire and a total of more than 3.7 million children in the country.  
 15 Of this number, 1,153,672 children working the cocoa sector are involved in hazardous  
 16 work,<sup>44</sup> including using machetes to cut trees or cocoa pods, burning fields, carrying  
 17 heavy loads, handling agro-pharmaceutical products, as well as being deprived of  
 18 schooling.<sup>45</sup> Around 90,000 children and adults are estimated to be trafficked to Côte  
 19 d’Ivoire from neighboring countries such as Mali and Burkina Faso and subjected to  
 20 forced labor on cocoa plantations.<sup>46</sup> Rather than eliminate the problem, the industry  
 21 has merely pledged to reduce child labor in Côte d’Ivoire and Ghana by 70 percent by  
 22 2020.<sup>47</sup>

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 24 <sup>43</sup> Fountain, A.; Huetz-Adams, F. “Cocoa Barometer 2018”, Voice Network, The Netherlands,  
 2018, at page 5.

25 <sup>44</sup> School of Public Health and Tropical Medicine Tulane University, “Survey Research on Child  
 26 Labor in West African Cocoa Growing Areas”, Tulane University, 30 July 2015, at page 35.  
[https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane\\_university\\_-  
 \\_survey\\_research\\_on\\_child\\_labor\\_in\\_the\\_cocoa\\_sector\\_-\\_30\\_july\\_2015.pdf](https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf)

27 <sup>45</sup> Id. at page 60-61.

28 <sup>46</sup> “Our Story”, Tony Chocolonely, <https://tonyschocolonely.com/us/en/our-story>, (Consulted on 26  
 March 2019)

<sup>47</sup> Chocolate’s Dark Secret, Might Earth, 2017, <http://www.mightyearth.org/wp->



1                                   **a.     The Cocoa Supply Chain is Comprised of Two Million**  
2                                                           **Disperse Small Farms**

3           50.     The number of cocoa farmers in Côte d’Ivoire and Ghana is estimated to  
4 be around 2 million.<sup>48</sup> Most of them are small farms with a size normally of no more  
5 than 3.5 hectares (10,000 square meters).<sup>49</sup> The majority of these farmers are also  
6 dispersed around the country in a region called the “cocoa belt,” located across the  
7 southern region of Côte d’Ivoire.

8           51.     Their small operation and fragmented presence across the country favor a  
9 system in which farmers sell to intermediaries who will collect the beans and gather  
10 them in warehouses. These intermediaries are either cooperatives, where the farmers  
11 are part of a cooperative system, or individuals called “middlemen”, who are not part  
12 of any formal organization. Middlemen collect beans across diverse farms in the cocoa  
13 belt, where no monitoring takes place, to sell to grinders or traders, and then to  
14 manufacturers such as Nestlé.

15           52.     A small percent of farmers, estimated at 20%, are in a formal cooperative  
16 system in Côte d’Ivoire.<sup>50</sup> In other words, the vast majority of the cocoa sourced in  
17 Côte d’Ivoire comes from untraceable farms, in which child and slave labor is a  
18 common and widespread practice.

19           53.     No companies, including Nestlé, can claim to be sourcing sustainable  
20 cocoa, as nearly Nestlé’s totality of cocoa sourced in the country comes from farms in  
21 which no auditing, monitoring, awareness training, remediation mechanisms or  
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23 content/uploads/2017/09/chocolates\_dark\_secret\_english\_web.pdf at p. 14

24 <sup>48</sup> Fountain, A.; Huetz-Adams, F. “Cocoa Barometer 2018”, Voice Network, The Netherlands, 2018.

25 <sup>49</sup> Macek, Paul et al., “Farmer Livelihoods” World Cocoa Foundation,  
26 <https://www.worldcocoafoundation.org/focus-areas/farmer-livelihoods/>, (consulted on 23 March 2019).

27 <sup>50</sup> Fair Labor Association, Assessment of Nestlé’s Standard Cocoa Supply Chain in Côte d’Ivoire,  
28 August 2016,  
[http://www.fairlabor.org/sites/default/files/documents/reports/assessment\\_nestle\\_standard\\_supply\\_chain\\_ivory\\_coast\\_august\\_2016.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/assessment_nestle_standard_supply_chain_ivory_coast_august_2016.pdf), page 8.

1 environmental-friendly practices are set up by the industry.

2 **b. Nestlé Does Not Trace its Beans, Making Any Sustainable**  
3 **or Environmental Claims Baseless**

4 54. Around 25 percent of the cocoa procured from Côte d’Ivoire by Nestlé is  
5 at present covered by the Nestlé Cocoa Plan and the remaining percentage comes from  
6 the yet to-be-traced “standard supply chain” through non-certified cooperatives or  
7 middlemen.<sup>51</sup>

8 55. Nestlé does not know where the majority of its cocoa comes from and  
9 cannot make claims about environmental or social practices occurring in the  
10 overwhelming number of farms from where it procures its cocoa.

11 56. The small number of legitimately harvested cocoa beans and those  
12 harvested using the worst forms of child labor are currently all co-mingled, such that  
13 Nestlé is unable to trace the products it sells to confirm they were not made using  
14 hazardous and/or forced child labor.

15 **C. The Cocoa Industry Has Repeatedly Pushed Out the Date it Claims**  
16 **It Will Eliminate Even the Worst Forms of Child Labor,**  
17 **Underscoring the Enormity of the Problem**

18 57. The chocolate oligopolists have repeatedly broken promises to eliminate  
19 child slavery in Côte D’Ivoire. In 2001, Senator Tom Harkin and Congressman Eliot  
20 Engel established the Harkin-Engel Protocol aimed at eliminating the worst forms of  
21 child labor in the cocoa sector. The worst forms of child labor are defined by the  
22 International Labor Organization (ILO)’s Convention 182 to include all forms of slavery  
23 or practices similar to slavery, such as the sale and trafficking of children, debt bondage  
24 and forced or compulsory labor.<sup>52</sup>

25  
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27 <sup>51</sup> *Id.* at p. 7.

28 <sup>52</sup>[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)



1 Code) § 17580.5. Claims may be asserted directly or by implication, such as through  
2 the use of symbols, logos, or certifications. 16 C.F.R. § 260.1.

3 62. The Guides prohibit “deceptive acts” or representations which are “likely  
4 to mislead consumers acting reasonably under the circumstances and [are] material to  
5 consumers’ decisions.” This includes representations made through labeling,  
6 advertising, or other promotional activities. 16 C.F.R. § 260.1.

7 63. “Unqualified general environmental benefit claims” - including terms like  
8 “eco-friendly” - typically qualify as deceptive, because they tend to convey that a  
9 product has “no negative environmental impact.” Marketers are almost invariably  
10 unable to substantiate such broad assertions, as required by the FTC in order to  
11 demonstrate that a claim was not misrepresentative. 16 C.F.R. § 260.4.

12 64. To avoid deceiving consumers, marketers should use “clear and  
13 prominent qualifying language” explaining that a general environmental claim refer  
14 only to specific, limited benefits. This is important when marketers utilize  
15 environmental certifications or seals, which might otherwise convey a broad meaning.  
16 16 C.F.R. § 260.6.

17 65. Marketers retain responsibility for substantiating all claims that are  
18 reasonably communicated by a third-party certification. 16 C.F.R. § 260.6.

19 66. To the extent Nestlé cocoa products are advertised as “certified by UTZ,”  
20 Nestle is responsible for qualifying any claims reasonably conveyed to consumers  
21 through the use of the UTZ name.

22 67. Sustainability is a broad concept that encompasses a wide range of  
23 environmental and social practices. The term generally connotes a combination of  
24 environmental, social, and ethical concerns.<sup>58</sup> For example, Unilever describes its  
25 sustainable sourcing strategy as an “an unwavering commitment to deeper  
26 transparency and traceability on climate and social impact issues,” which includes “a  
27

28 <sup>58</sup> <https://www.ecovadis.com/us/sustainable-sourcing/>

1 focus on living conditions and economic viability for the smallholders in [its] supply  
2 chain.”<sup>59</sup> Similarly, PepsiCo’s sustainable sourcing efforts include a focus on “health,  
3 safety, and hygiene, environmental and management system, and working hours.”<sup>60</sup>  
4 In the context of the chocolate industry, Nestlé’s competitor, Barry Callebaut, defines  
5 sustainability to include human rights as well as environmental impact.<sup>61</sup>

6 68. By labeling its products as “sustainably sourced,” Nestlé advances an  
7 unqualified general environmental claim. Based on Nestlé’s representation of its  
8 products as “sustainably sourced,” Plaintiff reasonably inferred that Nestlé’s  
9 “sustainably sourced” cocoa was produced in a socially and environmentally conscious  
10 manner.

11 69. Nestlé cannot substantiate its claims to use “sustainably sourced cocoa.”  
12 To the extent that “sustainably sourced” encompasses a concern for social as well as  
13 environmental welfare, Nestlé’s reliance on the worst forms of child labor contradicts  
14 any such claim. Labor involving hazardous and environmentally-destructive  
15 chemicals, dangerous machinery, and victims of trafficking is the subject of  
16 international condemnation.<sup>62</sup> A reasonable consumer would not view such practices  
17 as “sustainable” in any sense of the word.

18 70. Nestlé’s misrepresentations materially influenced Plaintiff’s decision to  
19 purchase its chocolate products.

## 20 **B. California Environmental Marketing Claims Act**

21 71. Under the California Environmental Marketing Claims Act (EMCA), it is  
22 unlawful to make “any untruthful, deceptive, or misleading environmental marketing  
23 claim, whether explicit or implied” Cal. Bus. & Prof. Code § 17580.5.

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25 \_\_\_\_\_  
26 <sup>59</sup> <https://www.unilever.com/sustainable-living/reducing-environmental-impact/sustainable-sourcing/>

27 <sup>60</sup> <https://www.pepsico.com/sustainability/sustainable-sourcing>

28 <sup>61</sup> <https://www.barry-callebaut.com/en/group/forever-chocolate/ethical-sourcing-and-business/sustainable-sourcing>

<sup>62</sup> *See, e.g.* <https://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm>

1           72. California has incorporated the provisions of the Guides into the  
2 California Environmental Marketing Claims Act. The phrase “environmental  
3 marketing claims” includes, but is not explicitly limited to, all claims described in the  
4 Guides. Cal. Bus. & Prof. Code § 17580.5.

5           73. Nestlé’s claims that its products are sustainably sourced constitute  
6 deceptive claims within the meaning of the Guides and violate the terms of the EMCA.  
7 By claiming to use “sustainably sourced” beans, Nestlé violates the FTC provisions  
8 relating to general environmental claims and implicitly puts forward the deceptive  
9 notion that its supply chain relies on environmentally and socially responsible policies.  
10 Nestlé cannot substantiate these claims.

### 11           **C. Intent of California Transparency in Supply Chain Act**

12           74. The California Transparency in Supply Chain Act, California Civil Code  
13 § 1714.43 requires companies that do business in California and have worldwide gross  
14 receipts exceeding \$100 million to disclose on their websites their efforts to eradicate  
15 slavery and human trafficking from their direct supply chain for tangible goods offered  
16 for sale. It requires companies subject to the Act to post disclosures related to five  
17 specific areas: verification, audits, certification, internal accountability, and training.

18           75. Nestlé’s website page on the Transparency in Supply Chain Act provides  
19 that the company “fully support[s] the United Nations Global Compact’s (UNGC)  
20 guiding principles on human rights and labour and aim[s] to provide an example of  
21 good human rights and labour practices throughout our business activities”.<sup>63</sup>

22           76. Nestlé’s Transparency in Supply Chain Act website page also provides  
23 hyperlinks to Nestlé’s corporate business principles and to Nestlé Supplier Code,  
24 which both provide more detailed information about the standards to which the Nestlé  
25 and its suppliers pretend they are adhering to.

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27 \_\_\_\_\_  
28 <sup>63</sup> The Nestlé Corporate Business Principles, June 2010, [https://www.nestle.com/asset-library/documents/library/documents/corporate\\_governance/corporate-business-principles-en.pdf](https://www.nestle.com/asset-library/documents/library/documents/corporate_governance/corporate-business-principles-en.pdf)

1           77. Nestlé identifies the protection of human rights in its business activities  
2 as one of its Corporate Business Principles stating that they “make sure that [they] are  
3 not complicit in human rights abuses (UNGC Principle 2)”.<sup>64</sup> However, Nestlé is  
4 continuously complicit in human rights abuses by not setting real measures or  
5 programs to eradicate child labor from its supply chain and profiting directly from the  
6 cheap labor provided by child and slave labor.

7           78. The Nestlé Supplier Code of Conduct also explicitly forbids child labor  
8 by its suppliers: “In accordance with international labour standards, no person shall be  
9 employed under the age of 15 or under the age for completion of compulsory  
10 education, whichever is higher, except in the strict frame of the Family Farm  
11 Work[...]”.<sup>65</sup> It also prohibits its suppliers to use young workers to work night shifts  
12 or engage in work with hazardous conditions and equally prohibits the use of forced  
13 labor in their operations.<sup>66</sup> However, Nestlé knowingly buys most of its cocoa in Côte  
14 d’Ivoire from untraceable farms on which child labor and trafficking are happening.

15           79. Nestlé’s use of Ivorian cocoa in the supply for its chocolate violates the  
16 publicly available statements made through its Supply Chain Act website page, as well  
17 as its Corporate Business Principles and its Supplier Code. The website is designed to  
18 create the impression that Nestlé monitors its supply chain and takes measures to obtain  
19 compliance with its codes. Nestlé states that “we do not tolerate child labour in our  
20 supply chain.”<sup>67</sup> However, it not only is tolerating but in fact is profiting from child  
21 labor.

22           80. Plaintiff read this website page and the affirmative statements that appear  
23 in both Nestlé’s Corporate Business Principles as well as in its Supplier Code of  
24 Conduct that contain affirmative misrepresentations about the Nestlé’s efforts to

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25 <sup>64</sup> Id.

26 <sup>65</sup> The Nestlé Supplier Code of Conduct, July 2018, <http://www.nestle.com/asset-library/Documents/Library/Documents/Suppliers/nestle-responsible-sourcing-standard-english.pdf>

27 <sup>66</sup> Id.

28 <sup>67</sup> [http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural\\_development/Action\\_Plan\\_for\\_FLA\\_%20cocoa\\_report.PDF](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF), at 1.

1 eradicate slavery and human trafficking from its cocoa supply chain.

2 81. Although the California Transparency in Supply Chain Act does not  
3 require companies to take action to mitigate human trafficking or forced labor risks in  
4 their supply chains, it does require companies to disclose true and verifiable  
5 information. By making false affirmative statements to the public, Nestlé has violated  
6 the very purpose of this Act, which was intended to “provides consumers with critical  
7 information about the efforts that companies are undertaking to prevent and root out  
8 human trafficking and slavery in their product supply chains – whether here or  
9 overseas”.<sup>68</sup>

10 **1. Nestle Fails to Comply with the CTSA by Greenwashing**  
11 **Slave Labor**

12 82. Nestlé blatantly greenwashes its products in order to increase its own sales  
13 and deceptively earn the goodwill and support of the public. “Greenwashing” is  
14 commonly known as the practice of making an unsubstantiated or misleading claim  
15 about the environmental or social benefits of a product, service, technology or  
16 company practice.<sup>69</sup> Nestlé claims, among others, that its products are sustainable and  
17 its relationship with the suppliers improves the lives of the cocoa farmers in the Côte  
18 D’Ivoire region. This could not be further from the truth. Nestlé’s products were not  
19 sourced from sustainable farming practices but rather off the backs of child slave and  
20 trafficked labor.

21 **a. Equating Slave Labor to an Environmentally**  
22 **Sustainable Practice is Abhorrent**

23 83. Greenwashing in its own right can be an extremely misleading and  
24 oftentimes harmful practice. In Nestlé’s case, its actions have perpetuated and funded  
25 child slave labor. Nestlé represents that its products not only support sustainable  
26 farming practices but provide other general environmental and social benefits. This is

27 <sup>68</sup> Kamala D. Harris, *The California Transparency in Supply Chains : Act A Resource Guide*, 2015,  
28 <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>, p. 7

<sup>69</sup> *See* Definition of Greenwashing: <https://whatis.techtarget.com/definition/greenwashing>.



1 difficult to reconcile with the fact that Nestlé actively exploits child slaves in order to  
2 obtain an ongoing, cheap supply of cocoa. Nestlé maintains exclusive supplier/buyer  
3 relationships with local farms and/or farmer cooperatives in Côte d’Ivoire and dictates  
4 the terms by which such farms produce and supply cocoa to them, including  
5 specifically the labor conditions under which the beans are produced.



Child laborer carrying pesticides on his back to spray on cocoa crops

21 84. As stated above, Nestlé has knowledge of the widespread use of child  
22 labor harvesting cocoa on the farms it is working with and purchasing from based on  
23 the numerous, well-documented reports of child labor by both international and U.S.  
24 organizations. Nestlé cannot claim ignorance while it fosters the farmer relationships  
25 in Côte d’Ivoire that perpetuate these abhorrent practices.

26 85. According to the World Fair Trade Organization, Fair Trade is a trading  
27 partnership, based on dialogue, transparency and respect, that seeks greater equity in  
28 international trade. It contributes to sustainable development by offering better trading

1 conditions to, and securing the rights of, marginalized producers and workers.<sup>70</sup>

2 86. Instead of focusing on working to better the conditions of marginalized  
3 workers in Côte d'Ivoire, Nestlé purchases directly from farms that employ child slave  
4 labor and enjoy the spoils of this practice. Meanwhile, Nestlé makes specific and false  
5 assertions in the U.S. to U.S. consumers to deny it is aiding and abetting child slavery,  
6 all the while allowing it to continue aiding and abetting child slavery with no  
7 measurable loss of U.S. market share.

8 **b. There Are No Environmentally Sound Protocols in Place**

9 87. Nestlé's products bear the fair trade, environmentally sustainable and  
10 socially beneficial labeling, seals or certifications. However, there are no such  
11 environmentally sound protocols in place concerning the cocoa sourced for Nestlé's  
12 products.

13 88. Not only are the practices by which Nestlé obtains its cocoa supply  
14 harmful to the child laborers, but current methods of cocoa production are causing  
15 harm to the environment as well. For example, current cocoa farming is causing soil  
16 erosion as well as deforestation. When the soil erodes the land becomes less and less  
17 fertile and yields decrease.<sup>71</sup> It's no secret that farms' cocoa crop outputs struggle to  
18 match the increasing demand for chocolate. It is estimated that the demand for  
19 chocolate will increase twofold by the year 2050.<sup>72</sup> As a result, farmers have shifted  
20 towards unsustainable, less environmentally conscious practices to meet these  
21 demands.<sup>73</sup>

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23  
24 <sup>70</sup> See World Fair Trade Organization: Definition of Fair Trade. <https://wfto.com/fair-trade/definition-fair-trade>.

25 <sup>71</sup> Nieberg, O., (2015). Confectionary News: What Is the Environmental Impact of Cocoa  
26 Production. <https://www.confectionarynews.com/Article/2015/04/29/What-is-the-environmental-impact-of-cocoa-production>.

27 <sup>72</sup> Bisseleua, D.H.B., Missoup, A.D., Vidal, S. (2009). Biodiversity Conservation, Ecosystem  
28 Functioning, and Economic Incentives under Cocoa Agroforestry Intensification. *Conservation Biology*, 23(5), 1176-1184. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1523-1739.2009.01220.x>

<sup>73</sup> Slomkowski, K. (2005). Chocolate's Dark Side. *E: The Environmental Magazine*, 16(6), 33-342.

1           89. For instance, farmers now use large amounts of pesticides to rid the crops  
2 of pests and create larger yields in shorter periods of time. The pesticides employed  
3 damage the land and the health of the sprayers applying the pesticide – mainly the child  
4 laborers. Furthermore, this excessive spraying of pesticides can also cause the weeds  
5 and insects to build up a resistance which will eventually create more harm to the crops  
6 and the opposite of its intended effect.<sup>74</sup>

7           90. Cocoa farming also contributes to rainforest and old growth forest  
8 deforestation.<sup>75</sup> By clearing land in these forests, farmers decrease the biodiversity and  
9 interactions between the many different organisms that naturally live in the area. Not  
10 only are numerous habitats destroyed, but nutrient levels overall begin to fall as a result  
11 of the poor irrigation and inadequate soil protection.<sup>76</sup> As fresh land becomes scarce,  
12 the farmers cut down more forests and destroy more and more of the ecosystem. Nestlé  
13 cannot reasonably claim that its products are the result of environmentally sustainable  
14 practices when it works in conjunction with these local farms and/or farmer  
15 cooperatives in Côte d’Ivoire for its supply while dictating the terms by which such  
16 farms produce and supply cocoa to Nestlé.

17           91. In short, Nestlé greenwashes its products in order to gain consumer  
18 support and approval of its “sustainable” practices. In reality, Nestlé contributes to  
19 environmentally damaging practices that affect the health of the surrounding  
20 ecosystems as well as the child laborers forced to participate in this hazardous work.  
21 Nestlé attempts to turn a blind eye as it actively exploits child slaves in order to obtain  
22 an ongoing, cheap supply of cocoa, all the while fostering the exclusive relationships  
23 in Côte d’Ivoire that perpetuate these harmful operations.

24  
25 \_\_\_\_\_  
26 <sup>74</sup> Rice, R.A., Greenburg, R. (2000). Cacao Cultivation and the Conservation of Biological  
Diversity. *Ambio*, 29(3), 167-173.

27 <https://repository.si.edu/bitstream/handle/10088/391/Rice2000.pdf>

28 <sup>75</sup> England, P. (1993). Forest Protection and the Rights of Cocoa Farmers in Western Ghana.  
*Journal of African Law*, 37(2), 164-176.

<sup>76</sup> Piasentin, F., Klare-Repnik, L. (2004). Gro-Cocoa: Global Research on  
Cocoa. <http://www.cabi.org/Uploads/File/Gro%20Cocoa%20pdfs/gro-cocoa5.pdf>.

1                   **VI. NESTLE HAS THE ABILITY TO SOLVE THIS PROBLEM**

2                   **A. Stop Putting Deceptive Seals or Statements on Products**

3                   92. No one forced Nestlé to make false statements on its packaging. While  
4 admitting that “no company sourcing cocoa in Côte d’Ivoire and Ghana can fully  
5 remove the risk of child labor in its supply chain,” Nestlé should not make misleading  
6 sustainability claims on its product packaging.

7                   **B. Technological Capability Exists to Achieve Greater Accountability**

8                   93. There are a variety of technological innovations that have been developed  
9 to help cocoa producers eradicate child labor, forced labor and trafficking, through true  
10 transparency in their global, complex supply chains. These technologies are already  
11 used in the supply chains of other commodities, demonstrating that their  
12 implementation and application is within the reach of what a large, profitable company  
13 like Nestlé can do. As one of the leaders and largest transnational corporations in the  
14 agriculture sector, Nestlé has no excuse to turn its back to these solutions while  
15 continuing to claim and advertise that it sustainably sources cocoa in Côte d’Ivoire.

16                   **CLASS ACTION ALLEGATIONS**

17                   94. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of  
18 Civil Procedure on behalf of herself and all other similarly situated individuals (the  
19 “Class”), defined as follows:

20                   All United States residents who purchased Nestle Products marked  
21 with the “Nestle Cocoa Plan”, “UTZ” seals, “sustainably sourced”,  
22 or “improv[ing] the lives of farmers” within the United States from  
23 the period of April 18, 2015 to the present. Excluded from the Class  
24 are any of Defendant’s officers, directors, or employees; officers,  
25 directors, or employees of any entity in which Defendant currently  
has or has had a controlling interest; and Defendant’s legal  
representatives, heirs, successors, and assigns.

26                   95. At this time, Plaintiff does not know the exact number of Class members;  
27 however, given the nature of the claims and the number of stores in the United States  
28 selling Nestlé’s Products, Plaintiff believes that the Class members are so numerous

1 that joinder of all members is impracticable.

2 96. There is a well-defined community of interest in the questions of law and  
3 fact involved in this case. The following questions of law and fact are common to the  
4 Class members and predominate over questions that may affect individual Class  
5 members:

- 6 1. whether Nestlé misrepresented the environmental and social  
7 benefits of products labeled with fair trade, environmentally  
8 sustainable and socially beneficial labeling;
- 9 2. whether Nestlé's labeling, marketing, advertising, and/or selling  
10 of its products with fair trade, environmentally sustainable and  
11 socially beneficial representations constituted an unfair and/or  
12 deceptive trade practice;
- 13 3. whether Nestlé participated in and pursued the common course of  
14 conduct complained of herein; and
- 15 4. whether Nestlé was enriched as a result of the unlawful,  
16 fraudulent, and unfair conduct alleged in this Complaint such that  
17 it would be inequitable for Nestlé to retain the benefits conferred  
18 upon it by Plaintiff and the other Class members.

19  
20 97. Plaintiff's claims are typical of those of the Class because Plaintiff, like  
21 all Class members, purchased Nestlé's products bearing the fair trade, environmentally  
22 sustainable and socially beneficial labeling, seals or certifications in a typical consumer  
23 setting and sustained damages from Nestlé's wrongful conduct.

24 98. Plaintiff will adequately protect the interests of the Class and has retained  
25 counsel who are experienced in litigating complex class actions. Plaintiff has no  
26 interests that conflict with those of the Class.

27 99. A class action is superior to other available methods for the fair and  
28 efficient adjudication of this controversy.



1 107. Plaintiff and Nestlé, and the other Class members and Nestlé, have  
2 engaged in “transactions,” as that term is defined by California Civil Code §1761(e).

3 108. The conduct alleged in this complaint constitutes unfair methods of  
4 competition and unfair and deceptive acts and practices for the purpose of the CLRA,  
5 and the conduct was undertaken by Nestlé in transactions intended to result in, and  
6 which did result in, the sale of goods to consumers.

7 109. As alleged more fully above, Nestlé has violated the CLRA by falsely  
8 representing to Plaintiff and the other Class members that Nestlé’s products labeled  
9 with the Environmental and socially beneficial seals or certifications were  
10 independently verified as having been produced using environmentally sound and  
11 socially responsible practices.

12 110. As a result of engaging in such conduct, Nestlé has violated California  
13 Civil Code § 1770(a)(5), (a)(7), and (a)(9).

14 111. Pursuant to California Civil Code § 1780(a)(1), (a)(3), (a)(4) and (a)(5),  
15 Plaintiff seeks on behalf of herself and the Class Members actual damages, restitution,  
16 punitive damages, attorneys’ fees and costs of litigation, and any other relief the court  
17 deems proper.

18 112. Pursuant to California Civil Code § 1780(b)(1), Plaintiff seeks on behalf  
19 of all Class Members who are senior citizens or disabled as defined in California Civil  
20 Code § 1761(f) and (g), an additional award of up to \$5,000 for physical, emotional or  
21 economic damage.

22 113. Pursuant to California Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks  
23 an order of this Court that includes, but is not limited to, an order requiring Nestlé to:

- 24 a. remove and/or refrain from making statements representing that products  
25 derived from alleged certified cocoa farms support sustainable farming or  
26 provide other general environmental and social benefits; and/or  
27 b. remove and/or refrain from making representations that the fair trade,  
28 environmentally sustainable and socially beneficial seals or certifications

1 indicate that a product has been independently verified as having been  
2 produced using environmentally sound and socially responsible practices.

3 114. Plaintiff and the other Class members may be irreparably harmed and/or  
4 denied an effective and complete remedy if such an order is not granted.

5 115. The unfair and deceptive acts and practices of Nestlé, as described above,  
6 present a serious threat to Plaintiff and the other Class members.

7 116. On April 15, 2019, Plaintiff sent a letter to Nestlé via certified mail that  
8 provided notice of Nestlé’s violation of the CLRA and demanded that within thirty  
9 (30) days from that date, Nestlé correct, repair, replace or otherwise rectify the  
10 unlawful, unfair, false and/or deceptive practices complained of herein. The letter also  
11 stated that if Nestlé refused to do so, a complaint seeking damages in accordance with  
12 the CLRA would be filed. Thirty days have elapsed, and Nestlé failed to rectify the  
13 unlawful, unfair, false, and/or deceptive practices alleged herein.

14 **COUNT II**

15 **(Violation of California’s Unfair Competition Law)**

16 117. Plaintiff incorporates by reference each of the allegations contained in the  
17 preceding paragraphs of this Complaint and further alleges as follows:

18 118. By committing the acts and practices alleged herein, Nestlé has violated  
19 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-  
20 17210, as to the Class as a whole, by engaging in unlawful, fraudulent, and unfair  
21 conduct.

22 119. **Unlawful Conduct.** Nestlé has violated the UCL’s proscription against  
23 engaging in *unlawful* conduct as a result of:

24 (a) violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and  
25 (a)(9), as alleged above; and

26 (b) violations of California’s Environmental Marketing Claims Act, Cal.  
27 Bus. & Prof. Code §§ 17580-17581, as alleged below:  
28



1           20. Nestlé has made misrepresentations that the environmental and socially  
2 beneficial seals or certifications indicate that a product has been independently verified  
3 as having been produced using environmentally sound and socially responsible  
4 practices.

5           21. Plaintiff and the other Class members have suffered injury in fact and  
6 have lost money or property as a result of Nestlé’s violations of California’s  
7 Environmental Marketing Claims Act (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-  
8 17581.

9           22. In particular, Nestlé has violated and continue to violate California  
10 Business and Professions Code § 17580.5, which makes it “unlawful for any person to  
11 make any untruthful, deceptive, or misleading environmental marketing claim,  
12 whether explicit or implied” and which defines an environmental marketing claim to  
13 include “any claim contained in the [the FTC’s Green Guides].”

14           23. The Federal Trade Commission (FTC), whose mission is partly “[t]o  
15 prevent business practices that are anticompetitive or deceptive or unfair to  
16 consumers,” has promulgated industry guidelines, known as the “FTC Green  
17 Guides,”<sup>77</sup> that apply to the unfair and deceptive nature of Nestlé’s environmental  
18 marketing claims.

19           24. Environmental marketing claims that violate the standards of the Green  
20 Guides are *per se* unlawful under California’s Environmental Marketing Claims Act  
21 (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-17581. The acts and omissions alleged  
22 herein are in contravention of the FTC Green Guides and in violation of the EMCA in  
23 several respects. The FTC Green Guides lay out three applicable principles. First,  
24 manufacturers should avoid making general environmental claims without noting  
25 specific benefits.<sup>78</sup> Second, endorsements that appear to be from third-party

26 \_\_\_\_\_  
27 <sup>77</sup> See, FTC, *GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS*, 16 C.F.R. §  
28 260, available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf> (last visited May 13, 2014).

<sup>78</sup> 16 C.F.R. § 260.3(a) Additionally, such specific claims should be clear, prominent, and specific.

1 organizations must be independent and any material connections with the manufacturer  
2 must be disclosed.<sup>79</sup> Additionally, any representations that appear to be endorsement  
3 must also comply with the FTC Guide on Endorsements.<sup>80</sup>

4 125. Nestlé’s use of the environmental and socially beneficial seals or  
5 certifications is in contravention of the FTC’s Guides on Endorsements because Nestlé  
6 Cocoa Plan and UTZ do not exercise the expertise that consumers reasonably expect  
7 from experts in sustainable farming.<sup>81</sup> These seals/certifications do not evaluate  
8 certified farms as extensively as an expert group on farm sustainability would.

9 126. Pursuant to California Business and Professions Code §§ 17203 and  
10 17535, Plaintiff and the other Class members seek an order of this Court that includes,  
11 but is not limited to, an order requiring Nestlé to:

- 12 a. remove and/or refrain from making statements representing that products  
13 derived from the Nestlé Cocoa Plan and/or have UTZ certification support  
14 sustainable practices or provide other general environmental and social  
15 benefits; and/or  
16 b. remove and/or refrain from making representations that the  
17 environmental and socially beneficial seals or certifications indicate that  
18 a product has been independently verified as having been produced using  
19 environmentally sound and socially responsible practices.

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21 

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*Id.*

22 <sup>79</sup> See 16 C.F.R. § 260.6. The subsection on certifications and seals of approval says that  
23 certifications or seals that do not clearly convey the basis for the certification should not be used  
24 because it could be interpreted as making a general environmental claim. 16 C.F.R. § 260.6(d).  
25 The guides recommend that if the positive attributes are too numerous to disclose, the seal of  
26 approval may direct consumers to a website that specifies the claims as long as the content on that  
27 website is truthful and accurate. 16 C.F.R. § 260.6(e). This subsection specifies that a certification  
28 that conveys that it has been certified by an independent organization, it must disclose material  
connections between the organization and the manufacturer. 16 C.F.R. § 260.6(b).

<sup>80</sup> 16 C.F.R. § 260.6(b). The FTC Guide on Endorsements is published at 16 C.F.R. § 255.

<sup>81</sup> See 16 C.F.R. § 255.3 (“[t]his evaluation must . . . [be] as extensive as someone with the same  
degree of expertise would normally need to conduct in order to support the conclusions presented in  
the endorsement.”).

1           127. **Fraudulent Conduct.** Nestlé’s acts and practices described above also  
2 violate the UCL’s proscription against engaging in *fraudulent* conduct.

3           128. As more fully described above, Nestlé’s misleading representations  
4 regarding the environmental and socially beneficial seals or certifications is likely to  
5 deceive reasonable consumers. Indeed, Plaintiff and the other Class members were  
6 unquestionably deceived regarding the Nestlé Cocoa Plan and/or UTZ certification  
7 program and the environmental and social benefits of purchasing products bearing the  
8 environmental and socially beneficial seals or certifications, as Nestlé’s promotion and  
9 use of the Nestlé Cocoa Plan and/or UTZ certification program and environmental and  
10 socially beneficial seals or certifications misrepresented and/or omitted the true facts  
11 concerning the material connections between the Nestlé Cocoa Plan and/or UTZ  
12 certification program and the entities it allows to be certified pursuant to the Nestlé  
13 Cocoa Plan and/or UTZ standards. Nestlé’s promotion and use of the Nestle Cocoa  
14 Plan and/or UTZ certification program and environmental and socially beneficial seals  
15 or certifications misrepresented and/or omitted the true facts concerning the  
16 environmental and social benefits of products labeled with the environmental and  
17 socially beneficial seals or certifications. Said acts are fraudulent business practices.

18           129. **Unfair Conduct.** Nestlé’s acts and practices described above also violate  
19 the UCL’s proscription against engaging in *unfair* conduct.

20           130. Plaintiff and the other Class members suffered a substantial injury by  
21 virtue of buying products that they would not have purchased absent Nestlé’s unlawful,  
22 fraudulent, and unfair marketing, advertising, packaging, and labeling or by virtue of  
23 paying an excessive premium price for the unlawfully, fraudulently, and unfairly  
24 marketed, advertised, packaged, and labeled products.

25           131. There is no benefit to consumers or competition from deceptively  
26 marketing and labeling products that purport to provide consumers with an  
27 environmentally and socially responsible alternative to other products, as determined  
28 according to independent standards.

1           132. Plaintiff and the other Class members had no way of reasonably knowing  
2 that the products they purchased were not as marketed, advertised, packaged, or  
3 labeled. Thus, they could not have reasonably avoided the injury each of them  
4 suffered.

5           133. The gravity of the consequences of Nestlé’s conduct as described above  
6 outweighs any justification, motive, or reason therefore, particularly considering the  
7 available legal alternatives which exist in the marketplace, and such conduct is  
8 immoral, unethical, unscrupulous, offends established public policy, or is substantially  
9 injurious to Plaintiff and the other Class members.

10           134. Nestlé’s violations of the UCL continue to this day.

11           135. Pursuant to California Business and Professional Code § 17203, Plaintiff  
12 and the Class seek an order of this Court that includes, but is not limited to, an order  
13 requiring Nestlé to:

- 14           a. remove and/or refrain from making statements representing that products  
15           derived from the Nestlé Cocoa Plan and/or UTZ certified farms support  
16           sustainable farming or provide other general environmental and social  
17           benefits; and/or
- 18           b. remove and/or refrain from making representations that the  
19           environmental and socially beneficial seals or certifications indicate that  
20           a product has been independently verified as having been produced using  
21           environmentally sound and socially responsible practices;
- 22           c. provide restitution to Plaintiff and the other Class members;
- 23           d. disgorge all revenues obtained as a result of violations of the UCL; and
- 24           e. pay Plaintiff’s and the Class’s attorney fees and costs.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment on behalf of herself and the Class as follows:

- A. an order certifying the proposed Class; appointing Plaintiff as representative of the Class; and appointing Plaintiff’s undersigned counsel as Class counsel;
- B. a declaration that Nestlé is financially responsible for notifying Class members of the pendency of this suit;
- C. an award of restitution pursuant to California Business and Professions Code §§ 17203 and 17535 and California Civil Code 1780(a)(3) for Class members;
- D. an award of disgorgement pursuant to California Business and Professions Code §§ 17203 and 17535 for Class members;
- E. an order enjoining Nestlé’s unlawful and deceptive acts and practices, pursuant to California Business and Professions Code §§ 17203 and 17535 and California Civil Code § 1780(a)(2), to remove and/or refrain from making statements representing that products derived from Nestlé and Cocoa Plan/UTZ certified farms support sustainable farming or provide other general environmental and social benefits and/or to remove and/or refrain from making representations that the environmental and socially beneficial seals or certifications indicate that a product has been independently verified as having been produced using environmentally sound and socially responsible practices;
- F. injunctive relief for Class members pursuant to California Civil Code § 1780;
- G. Actual damages pursuant to California Civil Code § 1780 (a)(1)

- 1 H. Additional awards of up to \$5,000 for physical, emotional or economic
- 2 damage for all senior citizen and disabled Class Members, pursuant to
- 3 California Civil Code § 1780(b)(1)
- 4 I. statutory damages in the maximum amount provided by law;
- 5 J. punitive damages in accordance with proof and in an amount consistent
- 6 with applicable precedent;
- 7 K. an order awarding Plaintiff and the other Class members the reasonable
- 8 costs and expenses of suit, including their attorneys' fees; and
- 9 L. any further relief that the Court may deem appropriate.

10  
11 **JURY TRIAL DEMANDED**

12 Plaintiff demands a trial by jury for all claims so triable.

13  
14 Dated: April 19, 2021

Respectfully submitted,

15 **SCHONBRUN SEPLOW HARRIS**  
16 **HOFFMAN & ZELDES, LLP**

17 By: /s/ Helen I. Zeldes

Helen I. Zeldes, Esq. (220051)

*hzeldes@sshzlaw.com*

Ben Travis (305641)

*btravis@sshzlaw.com*

501 W. Broadway, Suite 800

San Diego, CA 92101

Telephone: (619) 400-4990

Paul L. Hoffman (71244)

*hoffpaul@aol.com*

John C. Washington (315991)

*jwashington@sshzlaw.com*

*hoffpaul@aol.com*

200 Pier Avenue, Ste. 226

Hermosa Beach, CA 90254

Telephone: (310) 396-0731

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Catherine Sweetser (271142)  
*catherine.sdshhh@gmail.com*  
9415 CULVER BLVD # 115  
CULVER CITY, CA 90232  
Tel: (310) 396-0731

**REESE LLP**

Michael R. Reese (206773)  
*mreese@reesellp.com*  
Carlos F. Ramirez (Pro Hac Vice forthcoming)  
*CRamirez@reesellp.com*  
100 West 93rd Street  
Sixteenth Floor  
New York, New York 10025  
Telephone: (212) 643-0500  
Facsimile: (212) 253-4272

George V. Granade (316050)  
*ggranade@reesellp.com*  
8484 Wilshire Blvd.  
Los Angeles, California 90211  
Telephone: (212) 643-0500  
Facsimile: (212) 253-4272  
100 West 93rd Street  
Sixteenth Floor  
New York, New York 10025  
Telephone: (212) 643-0500  
Facsimile: (212) 253-4272

**INTERNATIONAL RIGHTS  
ADVOCATES**

Terrence P. Collingsworth (DC Bar # 471830)  
*tc@iradvocates.org*  
621 Maryland Avenue NE  
Washington, D.C. 20002  
Telephone: (202) 543-5811  
Facsimile: (866) 803-1125

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**AFFIDAVIT OF HELEN ZELDES RE VENUE FOR CLRA COUNT**

I, Helen Zeldes, am an attorney admitted to practice before this Court and I am counsel of record for plaintiff in the above-captioned matter. I make this affidavit pursuant to California Civil Code § 1780(c). Venue is proper in this county because the transaction or any substantial portion thereof occurred here and because defendant is doing business in this county. I declare under penalty of perjury under the laws of the United States of America the above is true and correct and of my own personal knowledge.

Dated: April 19, 2021

Respectfully submitted,

**SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES, LLP**

By: /s/ Helen I. Zeldes

Helen I. Zeldes, Esq. (220051)

*hzeldes@sshzlaw.com*

501 W. Broadway, Suite 800

San Diego, CA 92101

Telephone: (619) 400-4990