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23 **UNITED STATES DISTRICT COURT**
24 **SOUTHERN DISTRICT OF CALIFORNIA**
25 **SAN DIEGO DIVISION**

26 Marie Falcone, individually and on behalf
27 of all others similarly situated,

28 **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

**THIRD AMENDED CLASS
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Complaint Served: April 24, 2019

1 Plaintiff Marie Falcone (“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.¹ 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.²

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.”³ 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 ¹<https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf>, at p. 11.

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

28 ³<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. Falcone 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 Marie Falcone is, and at all times mentioned herein was, an
3 individual citizen of the State of California and resident of San Diego County. Plaintiff
4 Falcone regularly purchased Defendant Nestlé’s chocolate/cocoa products, specifically,
5 Nestlé’s: semi-sweet morsels, semi-sweet morsels (allergen free), dark chocolate
6 morsels, milk chocolate morsels, mini marshmallows hot cocoa, rich milk chocolate hot
7 cocoa, mini semi-sweet morsels, and Nesquik from her local Ralphs and other grocery
8 stores in San Diego, California, labeled with the “Nestlé Cocoa Plan,” “UTZ Certified,”
9 “Certified through UTZ,” “Sustainably Sourced,” “Responsibly Sourced Cocoa,”
10 “Better Farming. Better Lives. Better Cocoa,” “Proud Part of Rainforest Alliance,”
11 and/or “Rainforest Alliance Certified Cocoa” labels on them purporting to, among other
12 things, “Support[] farmers for better chocolate” and “help improve the lives of cocoa
13 farmers.” Plaintiff Falcone saw and relied upon the foregoing misrepresentations about
14 the social and environmental benefits of the products in making her decision to purchase
15 the products. Plaintiff Falcone purchased the above-mentioned Nestlé products
16 numerous times during the four years prior to the filing of the original Complaint in
17 the above-captioned action on April 19, 2019. Her most recent purchases were within
18 the last year. Plaintiff Falcone suffered injury in that she would not have bought the
19 Nestlé Cocoa Plan/Sustainability-labeled products had she known the products were
20 not sourced from sustainable farming practices but rather off the backs of child and
21 slave labor.

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

27 10. Defendant Nestlé USA (“Nestlé”) is a Delaware corporation with its
28 principal place of business at 1812 North Moore Street in Rosslyn, Virginia 22209.

1 Nestlé is one of the largest food and beverage companies in the world.⁴ Nestlé
2 purchases approximately 414,000 tons of cocoa annually.⁵ Nestlé promotes itself as
3 “the ‘Good Food, Good Life’ company, we enhance quality of life and contribute to a
4 healthier future.”⁶ Nestlé does no such thing in the Côte D’Ivoire.

5 **IV. FACTUAL ALLEGATIONS**

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

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

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

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26 ⁴ <https://www.nestle.com/aboutus>

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

28 ⁶ https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf, at p. 11.

⁷ <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	40,728	78,580
5 Number of children identified in child labor and currently in the system	7,002	18,283
6 Child labor rate	17%	23%
7 Number of children who received at least one form of remediation	Not measured	15,740

8
9
10 <https://www.nestlecocoaplan.com/tacklingchildlabor>

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

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

23 16. The U.S. Department of Labor describes the conditions of forced labor in
24 chilling detail: "[s]ome children are sold by their parents to traffickers, some are
25 kidnapped, and others migrate willingly but fall victim to traffickers who sell them to
26 recruiters or farmers, where they end up in conditions of bonded labor. Some farmers
27 buy the children and refuse to let them leave the farm until the debt of their purchase

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

1 has been worked off. The children are frequently not paid for their work; some of their
2 wages are paid to the recruiter or trafficker. These children are held against their will
3 on isolated farms, are locked in their living quarters at night, and are threatened and
4 beaten if they attempt to escape. They are punished by their employers with physical
5 abuse. They are forced to work long hours, including overtime, and are required to
6 work even when they are sick. Some children are denied sufficient food by their
7 traffickers and employers.”⁹

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

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

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

23 19. For example, Nestlé’s hot cocoa packaging boasts of Nestlé’s
24 “sustainably sourced cocoa beans.” Next to that statement, Nestlé’s hot cocoa
25 packaging also prominently advertises that the Nestlé Cocoa Plan “supports farmers”
26

27 ⁹ https://www.dol.gov/sites/default/files/documents/ilab/EO_Report_2014.pdf, at p. 12.

28 ¹⁰ <https://utz.org/>

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

1 and claims to be working with UTZ in order to “improve the lives of cocoa farmers.”
2 The rich milk chocolate hot cocoa packaging states:



13 The mini marshmallows hot cocoa packaging states:



28 20. Nestlé’s Toll House Morsels products – both mini and regular – use the

1 same tactic. Both also advertise the cocoa as “sustainably sourced” through Nestlé’s
2 Cocoa Plan, “Certified Through UTZ.” Nestlé’s Morsels packaging also prominently
3 advertises that the Nestlé Cocoa Plan “supports farmers” and claims to be working
4 with UTZ to “improve the lives of cocoa farmers.”



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

1. Nestlé’s Sustainability Labeling is False and Misleading

22. Sustainability is commonly used in the business world, and the accepted definition encompasses social and environmental sustainability¹².

23. UTZ’s use and promotion of the term is instructive. UTZ states that its products indicate “the sustainable production of . . . cocoa,” because consumers can be sure that UTZ certified products “have been sourced in a way that is fair to

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

1 producers, suppliers, and the environment.”¹³

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

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

11 **a. Nestlé’s “Sustainable” Environmental Claims Are**
12 **Deceptive**

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

16 27. The rainforest in Côte D’Ivoire has decreased from 16 million hectares in
17 1960, making up half of the country, to less than 2 million hectares by 2010.¹⁶ Nestlé’s
18 overproduction and indiscriminate purchasing in Côte D’Ivoire has contributed to this
19 mass deforestation.¹⁷ An estimated 40 percent of the Ivorian cocoa harvest currently
20 comes from inside classified or protected areas. This has devastating consequences for
21 biodiversity and the local microclimate (including desertification and changing
22 weather patterns¹⁸).

23 28. Many of Côte D’Ivoire’s national parks and protected areas have been

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

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

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

27 ¹⁶ 2018 Cocoa Barometer, at p.19, https://www.voicenetwork.eu/wp-content/uploads/2019/08/Cocoaborometer2018_web4.pdf

28 ¹⁷ *Id.*

¹⁸ *Id.* p. 18-19

1 entirely or almost entirely cleared of forest and replaced with cocoa growing
2 operations.¹⁹ For years the world’s major chocolate companies have been buying
3 cocoa grown through the illegal deforestation of national parks and other protected
4 forests, in addition to driving extensive deforestation outside of protected areas.²⁰ In
5 the world’s two largest cocoa producing countries, Ivory Coast and Ghana, the market
6 created by the chocolate industry has been the primary source for the destruction of
7 environmentally protected areas.²¹ As Mighty Earth reports, “many of the country’s
8 national parks and conservation lands have been cleared of their forest to make way
9 for cocoa operations to feed demand from large chocolate companies like Nestlé,
10 Cadbury, and Mars.”²²

11 29. Nestlé currently has no protocols in place to prevent purchasing cocoa
12 produced on protected lands. Nestlé’s March 5, 2019 “Action Plan” highlights ending
13 deforestation but extends its original 2012 commitment to 2022.²³ Currently, upwards
14 of 80 percent of cocoa production and sales are done without properly tracing the
15 source of the cocoa. Accordingly, a large percentage of Nestlé’s cocoa is knowingly
16 grown in and purchased from protected nature reserves. As demand continues to
17 expand in cocoa production, rainforests are cut down for new cocoa fields.

18 30. In addition to mass deforestation, the current known and common
19 practices around cocoa farming are not sustainable. There is excessive use of fertilizers
20 and pesticides and a loss of biodiversity.²⁴ Chemicals pollute waterways, killing
21 wildlife and harming communities. Deforestation exposes shade-dependent plants to
22

23 ¹⁹ 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)
24 [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)

25 ²⁰ *Id.*

26 ²¹ *Id.*

27 ²² *Id.*

28 ²³ Nestle Action Plan, March 5th, 2019, at [https://www.nestle.com/asset-](https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/cocoa-and-forests-initiative-nestle-initial-action-plan.pdf)
library/documents/library/documents/corporate_social_responsibility/cocoa-and-forests-initiative-
nestle-initial-action-plan.pdf

²⁴ 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

1 full sun, which increased the biosphere’s susceptibility to disease.

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

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

6 32. As previously stated, even Nestlé's own statistics show that the number of
7 children working in dangerous conditions on the cocoa farms it sources from in Côte
8 d’Ivoire has *increased* considerably in recent years and its alleged efforts have *not*
9 made farmers' lives better as a result of Nestlé's "Cocoa Plan".²⁵

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

13 **2. Nestlé’s “Cocoa Plan” is a Sham**

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

19 35. Nestlé makes false assurances that it is “determined to tackle the
20 problem”²⁶ and that its Nestlé Cocoa Plan (launched in 2009) is helping to “eliminate
21 the use of child labour” and to “stamp out forced labour practices” in the Ivorian cocoa
22 industry. Nestlé also claims that it is “helping the lives of farmers” through the Plan.
23 However, Nestlé’s profiteering off child labor does not help the lives of farmers. Child
24 labor has undisputedly increased in Côte d’Ivoire since Nestlé instituted its “Cocoa
25

26 _____
27 ²⁵ Tulane Report 2015

28 https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf

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

1 Plan.”²⁷ Nestlé has yet to commit to paying farmers a fair price for their cocoa and
2 does not currently have any long-term plans to support farmers achieving a living
3 income.

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

10 37. Independent monitoring visits conducted annually by the Fair Labor
11 Association (“FLA”) confirm the continued presence of child labor on Nestlé Cocoa
12 Plan CLMRS-certified farms. The 2017 FLA assessment found an overall *increase* in
13 the total number of child workers on farms from the previous year. Child labor
14 constituted 21% of the labor on CLMRS farms.²⁹

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

22 39. The World Cocoa Foundation states that: “The organized supply chains
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24 ²⁷ School of Public Health and Tropical Medicine Tulane University, “Survey Research on Child
25 Labor in West African Cocoa Growing Areas”, Tulane University, 30 July 2015, at page 35.

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

28 ²⁹ [http://www.fairlabor.org/sites/default/files/documents/reports/2017_nestle_cocoa_executive_sum
mary_october-2018.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/2017_nestle_cocoa_executive_summary_october-2018.pdf), at p. 4.

³⁰ [https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-
sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf](https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf) at p. 6.

1 of a handful of companies reach only a *fraction* of the entire cocoa-growing population
 2 of Côte d'Ivoire and Ghana, and efforts to date have only reached a fraction of the
 3 farmers in those supply-chains.”³¹ “There are approximately two million cocoa farmers
 4 in Côte d'Ivoire and Ghana representing 6-8 million children under the age of 18.”

5 40. The Plan provides that around a third of Nestlé’s total global supply is
 6 currently bought from producers covered by the Nestlé Cocoa Plan.³² Other
 7 information however suggests that as little as 25 percent of its cocoa is bought through
 8 the Nestlé Cocoa Plan, with the remaining 75 percent coming from untraceable
 9 sources.³³

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

13 42. Additionally, out of the 70 co-operatives in Côte d'Ivoire that supply the
 14 small amount of traceable cocoa bought by Nestlé, only 22 co-operatives have
 15 implemented CLMRS.³⁴ In other words, even in the small number of cooperatives
 16 where the cocoa is traceable to farmers, monitoring activities through the Nestlé Cocoa
 17 Plan CLMRS system take place in only a fraction of them.

18 43. Moreover, the available data demonstrates that the areas covered by the
 19 CLMRS constitute a minimal proportion of the total number of farmers and children
 20 supplying cocoa to Nestlé in Côte d'Ivoire.

21 3. The UTZ Certification Promoted by Nestlé Is Also a Sham

22 44. Nestlé couples false assurances of its Cocoa Plan with a reference to a
 23 UTZ certification. Like Nestlé, UTZ claims child labor is prohibited on its certified
 24

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

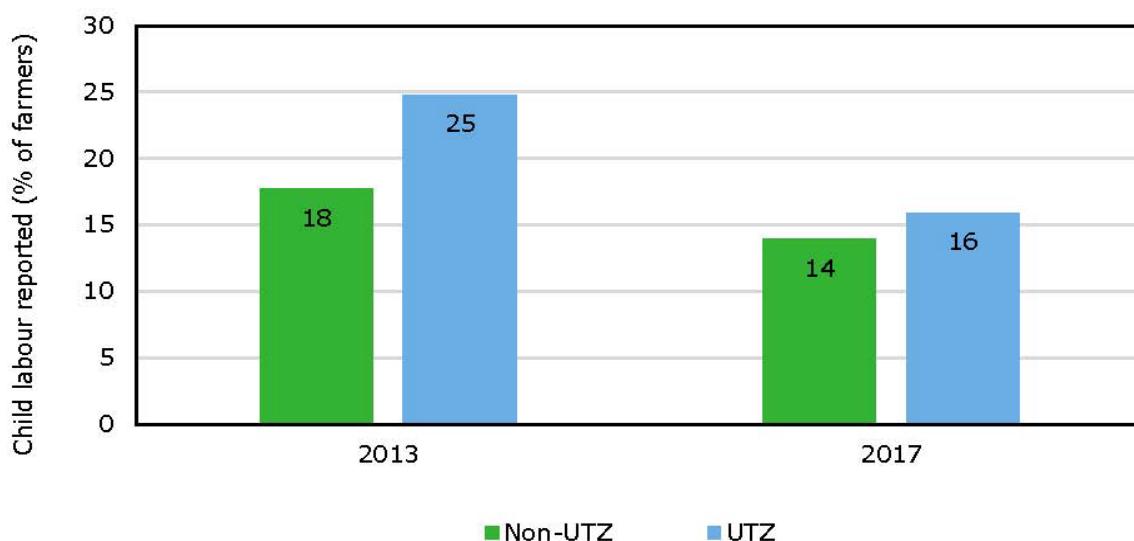
26 ³² <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf>, at p. 11.

27 ³³ Fair Labor Association,
http://www.fairlabor.org/sites/default/files/documents/reports/assessment_nestle_standard_supply_chain_ivory_coast_august_2016.pdf

28 ³⁴ <http://www.nestlecocoaplan.com/better-lives/>

1 farms.³⁵ It purports to regulate the illegal use of child labor through its “UTZ certified
2 traceability system,” the “Good Inside Portal”. It boasts consumers can trust that “the
3 sustainable ingredients sourced for the product has been traced all the way from field
4 to shop shelf, every stage of its journey documented.”³⁶ Nestlé relies on these
5 assurances to sell products it touts as bearing UTZ certification.

6 45. These assurances are false, as Nestlé knows. A 2018 study co-sponsored
7 in part by both Nestlé and UTZ entitled, “Towards sustainable cocoa in Cote
8 d’Ivoire—The impacts and contribution of UTZ certification combined with services
9 provided by companies” found widespread use of child labor on UTZ certified farms
10 and a lack of oversight on those farms.³⁷ The study found that in 2017, only 38 percent
11 of UTZ farmers had been inspected for the use of child labor.³⁸ That same year, 16
12 percent of UTZ farmers reported children doing prohibited hazardous or unhealthy
13 work³⁹



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

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

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

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

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

³⁹ Towards sustainable cocoa in Côte d’Ivoire,
<http://library.wur.nl/WebQuery/wurpubs/fulltext/450223> at p. 62

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

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

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

11 **4. Child Labor and Trafficked Labor Are So Widespread in Côte**
 12 **d'Ivoire That No Chocolate Can Be Labeled as Sustainably**
 13 **Sourced**

14 48. Nestlé admits that the use of child labor and trafficking remains
 15 widespread and endemic. Nestlé cannot claim it is even using primarily or close to
 16 50% child labor free cocoa. As stated in the latest Cocoa Barometer Report: “Not a
 17 single company or government is anywhere near reaching the sector-wide objective of
 18 the elimination of child labour, and not even near their commitments of a 70%
 19 reduction of child labour by 2020.”⁴³

20 49. In the almost 20 years since the execution of the Harkin-Engel protocol,
 21 no significant advancements have been made in Côte d'Ivoire. Rather than decreasing,
 22 child labor has increased in West Africa. According to the 2015 Tulane Report, the
 23 increase in cocoa production has also led to an increase of child laborers to 2.1 million
 24 children in Côte d'Ivoire and a total of more than 3.7 million children in the country.

25 _____
 26 ⁴⁰ <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 62.

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

28 ⁴² <http://library.wur.nl/WebQuery/wurpubs/fulltext/450223>, p. 64

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

1 Of this number, 1,153,672 children working the cocoa sector are involved in hazardous
 2 work,⁴⁴ including using machetes to cut trees or cocoa pods, burning fields, carrying
 3 heavy loads, handling agro-pharmaceutical products, as well as being deprived of
 4 schooling.⁴⁵ Around 90,000 children and adults are estimated to be trafficked to Côte
 5 d'Ivoire from neighboring countries such as Mali and Burkina Faso and subjected to
 6 forced labor on cocoa plantations.⁴⁶ Rather than eliminate the problem, the industry
 7 has merely pledged to reduce child labor in Côte d'Ivoire and Ghana by 70 percent by
 8 2020.⁴⁷

9 **a. The Cocoa Supply Chain is Comprised of Two Million**
 10 **Disperse Small Farms**

11 50. The number of cocoa farmers in Côte d'Ivoire and Ghana is estimated to
 12 be around 2 million.⁴⁸ Most of them are small farms with a size normally of no more
 13 than 3.5 hectares (10,000 square meters).⁴⁹ The majority of these farmers are also
 14 dispersed around the country in a region called the “cocoa belt,” located across the
 15 southern region of Côte d'Ivoire.

16 51. Their small operation and fragmented presence across the country favor a
 17 system in which farmers sell to intermediaries who will collect the beans and gather
 18 them in warehouses. These intermediaries are either cooperatives, where the farmers
 19 are part of a cooperative system, or individuals called “middlemen”, who are not part
 20

21 ⁴⁴ School of Public Health and Tropical Medicine Tulane University, “Survey Research on Child
 22 Labor in West African Cocoa Growing Areas”, Tulane University, 30 July 2015, at page 35.
 23 [https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_](https://makechocolatefair.org/sites/makechocolatefair.org/files/newsimages/tulane_university_-_survey_research_on_child_labor_in_the_cocoa_sector_-_30_july_2015.pdf)
 24 [_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)

25 ⁴⁵ Id. at page 60-61.

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

28 ⁴⁷ Chocolate’s Dark Secret, Might 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 at p. 14

⁴⁸ Fountain, A.; Huetz-Adams, F. “Cocoa Barometer 2018”, Voice Network, The Netherlands,
 2018.

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

1 of any formal organization. Middlemen collect beans across diverse farms in the cocoa
2 belt, where no monitoring takes place, to sell to grinders or traders, and then to
3 manufacturers such as Nestlé.

4 52. A small percent of farmers, estimated at 20%, are in a formal cooperative
5 system in Côte d'Ivoire.⁵⁰ In other words, the vast majority of the cocoa sourced in
6 Côte d'Ivoire comes from untraceable farms, in which child and slave labor is a
7 common and widespread practice.

8 53. No companies, including Nestlé, can claim to be sourcing sustainable
9 cocoa, as nearly Nestlé's totality of cocoa sourced in the country comes from farms in
10 which no auditing, monitoring, awareness training, remediation mechanisms or
11 environmental-friendly practices are set up by the industry.

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

14 54. Around 25 percent of the cocoa procured from Côte d'Ivoire by Nestlé is
15 at present covered by the Nestlé Cocoa Plan and the remaining percentage comes from
16 the yet to-be-traced "standard supply chain" through non-certified cooperatives or
17 middlemen.⁵¹

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

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

25 _____
26 ⁵⁰ Fair Labor Association, Assessment of Nestlé's Standard Cocoa Supply Chain in Côte d'Ivoire,
27 August 2016,
28 http://www.fairlabor.org/sites/default/files/documents/reports/assessment_nestle_standard_supply_chain_ivory_coast_august_2016.pdf, page 8.

⁵¹ *Id.* at p. 7.

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

4 57. The chocolate oligopolists have repeatedly broken promises to eliminate
5 child slavery in Côte D'Ivoire. In 2001, Senator Tom Harkin and Congressman Eliot
6 Engel established the Harkin-Engel Protocol aimed at eliminating the worst forms of
7 child labor in the cocoa sector. The worst forms of child labor are defined by the
8 International Labor Organization (ILO)'s Convention 182 to include all forms of slavery
9 or practices similar to slavery, such as the sale and trafficking of children, debt bondage
10 and forced or compulsory labor.⁵²

11 58. While grossly misrepresenting the abhorrence and scale of child slavery,
12 Nestlé has proven to be unable or unwilling to eliminate the practice. The Harkin-Engel
13 Protocol committed to eliminating the worst forms of child labor in Côte d'Ivoire and
14 Ghana by July 2005.⁵³ In 2005, cocoa industry leaders admitted the goals would not be
15 "fully met" but assured Sen. Harkin and Rep. Engel they were "committed to achieving
16 a certification system...within three years."⁵⁴ Then in 2008, industry leaders again
17 extended their self-imposed deadline by two years.⁵⁵ In 2010, the industry delayed the
18 implementation date by a full decade to 2020.

19 59. Nestlé is a member of the World Cocoa Foundation.⁵⁶ At the most recent
20 8th Annual World Cocoa Foundation Meeting in August 2018 the industry admitted it
21 could not make its 2020, or even 2025 goal of eradicating child labor in the cocoa supply
22 chain. Effectively abandoning any set date, the Foundation admitted it was not likely it
23

24 ⁵²[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)
25 182

26 ⁵³ <http://fortune.com/big-chocolate-child-labor/>

27 ⁵⁴ <http://www.cacao.gouv.ci/commun/documents/jointstatementSenateurTomHarkin.pdf>

28 ⁵⁵ http://www.csrwire.com/press_releases/14132-Joint-Statement-from-U-S-Senator-Tom-Harkin-Representative-Eliot-Engel-and-the-Chocolate-and-Cocoa-Industry-on-the-Implementation-of-the-Harkin-Engel-Protocol-#

⁵⁶ <https://www.worldcocoafoundation.org/about-wcf/members/>

1 would meet its “aspiration for 2020” nor other targets “for the eradication of child labor
2 by 2025.”⁵⁷

3 V. THE REGULATORY FRAMEWORK

4 A. The FTC Greenguides Prohibit Nestlé’s Misleading Statements

5 60. The Federal Trade Commission has issued guidelines for companies that
6 market their products as environmentally-friendly.

7 61. The FTC Green Guides (“Guides”) apply to claims about the
8 “environmental attributes” of products. The FTC does not define the phrase
9 “environmental attributes,” but California has interpreted this to include claims that
10 products are earth friendly, environmentally friendly, or green. (Cal. Bus. & Prof.
11 Code) § 17580.5. Claims may be asserted directly or by implication, such as through
12 the use of symbols, logos, or certifications. 16 C.F.R. § 260.1.

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

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

22 64. To avoid deceiving consumers, marketers should use “clear and
23 prominent qualifying language” explaining that a general environmental claim refer
24 only to specific, limited benefits. This is important when marketers utilize
25 environmental certifications or seals, which might otherwise convey a broad meaning.
26 16 C.F.R. § 260.6.

27 _____
28 ⁵⁷ <https://www.worldcocoafoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>

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

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

6 67. Sustainability is a broad concept that encompasses a wide range of
7 environmental and social practices. The term generally connotes a combination of
8 environmental, social, and ethical concerns.⁵⁸ For example, Unilever describes its
9 sustainable sourcing strategy as an “an unwavering commitment to deeper
10 transparency and traceability on climate and social impact issues,” which includes “a
11 focus on living conditions and economic viability for the smallholders in [its] supply
12 chain.”⁵⁹ Similarly, PepsiCo’s sustainable sourcing efforts include a focus on “health,
13 safety, and hygiene, environmental and management system, and working hours.”⁶⁰
14 In the context of the chocolate industry, Nestle’s competitor, Barry Callebaut, defines
15 sustainability to include human rights as well as environmental impact.⁶¹

16 68. By labeling its products as “sustainably sourced,” Nestlé advances an
17 unqualified general environmental claim. Based on Nestlé’s representation of its
18 products as “sustainably sourced,” Plaintiff reasonably inferred that Nestlé’s
19 “sustainably sourced” cocoa was produced in a socially and environmentally conscious
20 manner.

21 69. Nestlé cannot substantiate its claims to use “sustainably sourced cocoa.”
22 To the extent that “sustainably sourced” encompasses a concern for social as well as
23 environmental welfare, Nestlé’s reliance on the worst forms of child labor contradicts
24 any such claim. Labor involving hazardous and environmentally-destructive

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

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

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

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

1 chemicals, dangerous machinery, and victims of trafficking is the subject of
2 international condemnation.⁶² A reasonable consumer would not view such practices
3 as “sustainable” in any sense of the word.

4 70. Nestlé’s misrepresentations materially influenced Plaintiff’s decision to
5 purchase its chocolate products.

6 **B. California Environmental Marketing Claims Act**

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

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

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

20 **C. Intent of California Transparency in Supply Chain Act**

21 74. The California Transparency in Supply Chain Act, California Civil Code
22 § 1714.43 requires companies that do business in California and have worldwide gross
23 receipts exceeding \$100 million to disclose on their websites their efforts to eradicate
24 slavery and human trafficking from their direct supply chain for tangible goods offered
25 for sale. It requires companies subject to the Act to post disclosures related to five
26 specific areas: verification, audits, certification, internal accountability, and training.

27
28

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

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

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

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

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

23 79. Nestlé’s use of Ivorian cocoa in the supply for its chocolate violates the
24 publicly available statements made through its Supply Chain Act website page, as well

25 _____
26 ⁶³ The Nestlé Corporate Business Principles, June 2010, [https://www.nestle.com/asset-](https://www.nestle.com/asset-library/documents/library/documents/corporate_governance/corporate-business-principles-en.pdf)
library/documents/library/documents/corporate_governance/corporate-business-principles-en.pdf

27 ⁶⁴ Id.

28 ⁶⁵ The Nestlé Supplier Code of Conduct, July 2018, [http://www.nestle.com/asset-](http://www.nestle.com/asset-library/Documents/Library/Documents/Suppliers/nestle-responsible-sourcing-standard-english.pdf)

library/Documents/Library/Documents/Suppliers/nestle-responsible-sourcing-standard-english.pdf
⁶⁶ Id.

1 as its Corporate Business Principles and its Supplier Code. The website is designed to
 2 create the impression that Nestlé monitors its supply chain and takes measures to obtain
 3 compliance with its codes. Nestlé states that “we do not tolerate child labour in our
 4 supply chain.”⁶⁷ However, it not only is tolerating but in fact is profiting from child
 5 labor.

6 80. Plaintiff read this website page and the affirmative statements that appear
 7 in both Nestlé’s Corporate Business Principles as well as in its Supplier Code of
 8 Conduct that contain affirmative misrepresentations about the Nestlé’s efforts to
 9 eradicate slavery and human trafficking from its cocoa supply chain.

10 81. Although the California Transparency in Supply Chain Act does not
 11 require companies to take action to mitigate human trafficking or forced labor risks in
 12 their supply chains, it does require companies to disclose true and verifiable
 13 information. By making false affirmative statements to the public, Nestlé has violated
 14 the very purpose of this Act, which was intended to “provides consumers with critical
 15 information about the efforts that companies are undertaking to prevent and root out
 16 human trafficking and slavery in their product supply chains – whether here or
 17 overseas”.⁶⁸

18 **1. Nestle Fails to Comply with the CTSA by Greenwashing**
 19 **Slave Labor**

20 82. Nestlé blatantly greenwashes its products in order to increase its own sales
 21 and deceptively earn the goodwill and support of the public. “Greenwashing” is
 22 commonly known as the practice of making an unsubstantiated or misleading claim
 23 about the environmental or social benefits of a product, service, technology or
 24 company practice.⁶⁹ Nestlé claims, among others, that its products are sustainable and

25 _____
 26 ⁶⁷ [http://www.nestle.com/asset-](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF)
 27 [library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF)
 28 [cocoa_report.PDF](http://www.nestle.com/asset-library/Documents/Creating%20Shared%20Value/Rural_development/Action_Plan_for_FLA_%20cocoa_report.PDF), at 1.

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

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

1 its relationship with the suppliers improves the lives of the cocoa farmers in the Côte
2 D'Ivoire region. This could not be further from the truth. Nestlé's products were not
3 sourced from sustainable farming practices but rather off the backs of child slave and
4 trafficked labor.

5 **a. Equating Slave Labor to an Environmentally**
6 **Sustainable Practice is Abhorrent**

7 83. Greenwashing in its own right can be an extremely misleading and
8 oftentimes harmful practice. In Nestlé's case, its actions have perpetuated and funded
9 child slave labor. Nestlé represents that its products not only support sustainable
10 farming practices but provide other general environmental and social benefits. This is
11 difficult to reconcile with the fact that Nestlé actively exploits child slaves in order to
12 obtain an ongoing, cheap supply of cocoa. Nestlé maintains exclusive supplier/buyer
13 relationships with local farms and/or farmer cooperatives in Côte d'Ivoire and dictates
14 the terms by which such farms produce and supply cocoa to them, including
15 specifically the labor conditions under which the beans are produced.



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

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

6 85. According to the World Fair Trade Organization, Fair Trade is a trading
7 partnership, based on dialogue, transparency and respect, that seeks greater equity in
8 international trade. It contributes to sustainable development by offering better trading
9 conditions to, and securing the rights of, marginalized producers and workers.⁷⁰

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

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

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

21 88. Not only are the practices by which Nestlé obtains its cocoa supply
22 harmful to the child laborers, but current methods of cocoa production are causing
23 harm to the environment as well. For example, current cocoa farming is causing soil
24 erosion as well as deforestation. When the soil erodes the land becomes less and less
25 fertile and yields decrease.⁷¹ It's no secret that farms' cocoa crop outputs struggle to

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

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

1 match the increasing demand for chocolate. It is estimated that the demand for
2 chocolate will increase twofold by the year 2050.⁷² As a result, farmers have shifted
3 towards unsustainable, less environmentally conscious practices to meet these
4 demands.⁷³

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

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

21 91. In short, Nestlé greenwashes its products in order to gain consumer
22

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

25 ⁷³ Slomkowski, K. (2005). *Chocolate’s Dark Side*. *E: The Environmental Magazine*, 16(6), 33-342.

26 ⁷⁴ Rice, R.A., Greenburg, R. (2000). Cacao Cultivation and the Conservation of Biological
27 Diversity. *Ambio*, 29(3), 167-173.

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

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

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

1 support and approval of its “sustainable” practices. In reality, Nestlé contributes to
2 environmentally damaging practices that affect the health of the surrounding
3 ecosystems as well as the child laborers forced to participate in this hazardous work.
4 Nestlé attempts to turn a blind eye as it actively exploits child slaves in order to obtain
5 an ongoing, cheap supply of cocoa, all the while fostering the exclusive relationships
6 in Côte d’Ivoire that perpetuate these harmful operations.

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

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

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

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

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

22 **CLASS ACTION ALLEGATIONS**

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

26 All United States residents who purchased Nestle Products marked
27 with the “Nestle Cocoa Plan”, “UTZ” seals, “sustainably sourced”,
28 or “improv[ing] the lives of farmers” within the United States from
the period of April 18, 2015 to the present. Excluded from the Class

1 are any of Defendant's officers, directors, or employees; officers,
2 directors, or employees of any entity in which Defendant currently
3 has or has had a controlling interest; and Defendant's legal
representatives, heirs, successors, and assigns.

4 95. At this time, Plaintiff does not know the exact number of Class members;
5 however, given the nature of the claims and the number of stores in the United States
6 selling Nestlé's Products, Plaintiff believes that the Class members are so numerous
7 that joinder of all members is impracticable.

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

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

25 97. Plaintiff's claims are typical of those of the Class because Plaintiff, like
26 all Class members, purchased Nestlé's products bearing the fair trade, environmentally
27 sustainable and socially beneficial labeling, seals or certifications in a typical consumer
28

1 setting and sustained damages from Nestlé’s wrongful conduct.

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

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

7 100. The prerequisites to maintaining a class action for injunctive or equitable
8 relief pursuant to Fed. R. Civ. P. 23(b)(2) are met, as Nestlé has acted or refused to act
9 on grounds that apply generally to the Class, so that final injunctive relief or
10 corresponding declaratory relief is appropriate with respect to the Class as a whole.

11 101. Nestlé’s conduct is generally applicable to the Class as a whole and
12 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As
13 such, Nestlé’s systematic policies and practices make declaratory relief with respect to
14 the Class as a whole appropriate.

15 102. The requirements of Fed. R. Civ. P. 23(b)(3) are met as common issues
16 predominate over any individual issues, and treatment of this matter as a class action
17 is superior to numerous individual actions.

18 103. The litigation of separate actions by Class members would create a risk
19 of establishing inconsistent rulings and/or incompatible standards of conduct for
20 Nestlé. For example, one court might enjoin Nestlé from performing the challenged
21 acts, whereas another might not. Additionally, individual actions may be dispositive
22 of the interests of the Class, although certain Class members are not parties to such
23 actions.

24 **COUNT I**

25 **(Unfair and Deceptive Acts and Practices In Violation of**
26 **the California Consumers Legal Remedies Act)**

27 104. Plaintiff incorporates by reference each of the allegations contained in the
28 preceding paragraphs of this Complaint and further alleges as follows:

1 105. This cause of action is brought pursuant to the California Consumers
2 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

3 106. Plaintiff and the other Class members are “consumers,” as the term is
4 defined by California Civil Code § 1761(d), because they bought the products at issue
5 for personal, family, or household purposes.

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

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

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

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

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

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

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

1 a. remove and/or refrain from making statements representing that products
2 derived from alleged certified cocoa farms support sustainable farming or
3 provide other general environmental and social benefits; and/or

4 b. remove and/or refrain from making representations that the fair trade,
5 environmentally sustainable and socially beneficial seals or certifications
6 indicate that a product has been independently verified as having been
7 produced using environmentally sound and socially responsible practices.

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

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

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

19 **COUNT II**

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

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

23 118. By committing the acts and practices alleged herein, Nestlé has violated
24 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-
25 17210, as to the Class as a whole, by engaging in unlawful, fraudulent, and unfair
26 conduct.

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

- 1 (a) violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and
2 (a)(9), as alleged above; and
3 (b) violations of California’s Environmental Marketing Claims Act, Cal.
4 Bus. & Prof. Code §§ 17580-17581, as alleged below:

5 120. Nestlé has made misrepresentations that the environmental and socially
6 beneficial seals or certifications indicate that a product has been independently verified
7 as having been produced using environmentally sound and socially responsible
8 practices.

9 121. Plaintiff and the other Class members have suffered injury in fact and
10 have lost money or property as a result of Nestlé’s violations of California’s
11 Environmental Marketing Claims Act (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-
12 17581.

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

18 123. The Federal Trade Commission (FTC), whose mission is partly “[t]o
19 prevent business practices that are anticompetitive or deceptive or unfair to
20 consumers,” has promulgated industry guidelines, known as the “FTC Green
21 Guides,”⁷⁷ that apply to the unfair and deceptive nature of Nestlé’s environmental
22 marketing claims.

23 124. Environmental marketing claims that violate the standards of the Green
24 Guides are *per se* unlawful under California’s Environmental Marketing Claims Act
25 (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-17581. The acts and omissions alleged
26

27 ⁷⁷ 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).

1 herein are in contravention of the FTC Green Guides and in violation of the EMCA in
 2 several respects. The FTC Green Guides lay out three applicable principles. First,
 3 manufacturers should avoid making general environmental claims without noting
 4 specific benefits.⁷⁸ Second, endorsements that appear to be from third-party
 5 organizations must be independent and any material connections with the manufacturer
 6 must be disclosed.⁷⁹ Additionally, any representations that appear to be endorsement
 7 must also comply with the FTC Guide on Endorsements.⁸⁰

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

13 126. Pursuant to California Business and Professions Code §§ 17203 and
 14 17535, Plaintiff and the other Class members seek an order of this Court that includes,
 15 but is not limited to, an order requiring Nestlé to:

- 16 a. remove and/or refrain from making statements representing that products
 17 derived from the Nestlé Cocoa Plan and/or have UTZ certification support
 18 sustainable practices or provide other general environmental and social
 19 benefits; and/or

20 _____
 21 ⁷⁸ 16 C.F.R. § 260.3(a) Additionally, such specific claims should be clear, prominent, and specific.
Id.

22 ⁷⁹ *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
 website is truthful and accurate. 16 C.F.R. § 260.6(e). This subsection specifies that a certification
 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).

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

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

1 b. remove and/or refrain from making representations that the
2 environmental and socially beneficial seals or certifications indicate that
3 a product has been independently verified as having been produced using
4 environmentally sound and socially responsible practices.

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

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

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

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

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

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

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

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

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

- 18 a. remove and/or refrain from making statements representing that products
19 derived from the Nestlé Cocoa Plan and/or UTZ certified farms support
20 sustainable farming or provide other general environmental and social
21 benefits; and/or
22 b. remove and/or refrain from making representations that the
23 environmental and socially beneficial seals or certifications indicate that
24 a product has been independently verified as having been produced using
25 environmentally sound and socially responsible practices;
26 c. provide restitution to Plaintiff and the other Class members;
27 d. disgorge all revenues obtained as a result of violations of the UCL; and
28 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: September 2, 2022

Respectfully submitted,

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

17 By: /s/ Helen I. Zeldes

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*Attorneys for Plaintiff Marie Falcone and the
Putative Class*

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

1 the United States of America the above is true and correct and of my own personal
2 knowledge.

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Date: September 2, 2022

Respectfully submitted,

**SCHONBRUN SEPLOW HARRIS
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