

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Rocky Coleman, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Nestle USA, Inc.,

Defendant

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. Nestle USA, Inc. (“Defendant”) manufactures, labels, and sells versions of coffee creamer represented as containing “2X More” than other versions that are half their size and amount (“Product”).



2. The “X” in “2X” is the universal symbol for “times” or “multiplied by.”

3. According to Merrill Perlman, a journalist who studies how the public understands algebraic expressions, describing something as “two times more [than X]” means three multiplied by X.¹

What's being said	What it actually means
two times more	$X + 2 * X = 3X$
twice as much	$2 * X = 2X$
double the amount	$2 * X = 2X$
two times less	$X - 2 * X = -X$
half as much	$(1/2) * X = (1/2)X$
one half the amount	$(1/2) * X = (1/2)X$

where X is the original amount we have.

4. Perlman states that if someone has \$100 and it is “doubled,” they will have \$200.

5. However, if a person has “two times more” than the original \$100, they will have their original \$100 plus \$200, for a total of \$300.

6. The statement of “2X More [] Than Our 15 OZ Product” is false because 30 is not “two times more” than 15.

7. The label does not state it contains “twice” or “double” the amount relative to the reference size, which would have been true.

8. To provide consumers with “2X More,” the Product would need to contain 45 oz, which is 30 oz more than 15 oz.

9. Consumers seeing “2X More” will believe it represents the amount in the container plus twice that amount, for a total of three times the referenced size or amount.

¹ “Much” is used with uncountable nouns, such as water, while “many” is used with countable nouns, such as cats.

10. Consumers are misled to expect a greater quantity and amount than they receive.

11. Consumers will expect the Product's contents are more potent or concentrated, such that it provides the equivalent of "2X More" than the referenced size.

12. However, the contents are not more potent or concentrated than those in the referenced size.

13. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

14. As a result of the false and misleading representations, the Product is sold at a premium price, approximately no less than \$3.59 for 30 oz, excluding tax and sales, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions.

Jurisdiction and Venue

15. Jurisdiction is based on the Class Action Fairness Act of 2005 ("CAFA"). 28 U.S.C. § 1332(d)(2).

16. The aggregate amount in controversy exceeds \$5 million, including statutory and punitive damages, exclusive of interest and costs.

17. Plaintiff Rocky Coleman is a citizen of Florida.

18. Defendant Nestle USA, Inc. is a Delaware corporation with a principal place of business in Arlington, Arlington County, Virginia.

19. The class of persons Plaintiff seeks to represent includes persons who are citizens of different states from which Defendant is a citizen.

20. The members of the class Plaintiff seeks to represent are more than 100, because the Product has been sold with the representations described here from thousands of stores in the States

covered by Plaintiff's proposed classes.

21. The Product is available to consumers from grocery stores, dollar stores, warehouse club stores, drug stores, convenience stores, big box stores, and online.

22. Venue is in this District and assignment is to the Tampa Division because Plaintiff resides in Pasco County, which is where a substantial part of the events or omissions giving rise to the claims occurred, including his purchase, consumption, exposure to and reliance on the representations, and awareness they were misleading.

Parties

23. Plaintiff Rocky Coleman is a citizen of New Port Richey, Florida, Pasco County.

24. Defendant Nestle USA, Inc. is a Delaware corporation with a principal place of business in Arlington, Virginia, Arlington County.

25. Plaintiff is like many consumers who seek to stretch their money as far as possible when buying groceries.

26. Plaintiff looks to bold statements of value when quickly selecting groceries.

27. Plaintiff purchased the Product at locations including Publix, 11400 Ridge Rd, New Port Richey, FL 34654, in May 2022, among other times.

28. Plaintiff believed and expected the Product's contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

29. Plaintiff relied on the words, terms coloring, descriptions, layout, placement, packaging, and/or images on the Product, on the labeling, statements, omissions, claims, statements, and instructions, made by Defendant or at its directions, in digital, print and/or social media, which accompanied the Product and separately, through in-store, digital, audio, and print

marketing.

30. Plaintiff bought the Product at or exceeding the above-referenced price.

31. Plaintiff chose between Defendant's Product and products represented similarly, but which did not misrepresent their attributes, features, and/or components.

32. Plaintiff paid more for the Product than he would have paid and would not have purchased it or paid less had he known the truth.

33. Plaintiff intends to, seeks to, and will purchase the Product again when he can do so with the assurance its representations are consistent with its abilities, attributes, and/or composition.

34. Plaintiff is unable to rely on the labeling and representations not only of this Product, but other similar products promoting their value with algebraic expressions, because he is unsure whether those representations are truthful.

Class Allegations

35. Plaintiff seeks certification under Fed. R. Civ. P. 23 of the following classes:

Florida Class: All persons in the State of Florida who purchased the Product during the statutes of limitations for each cause of action alleged; and

Consumer Fraud Multi-State Class: All persons in the States of Alabama, Georgia, North Carolina, South Carolina, Utah, New Mexico, Alaska, Iowa, Tennessee, and Virginia who purchased the Product during the statutes of limitations for each cause of action alleged.

36. Common questions of issue, law, and fact predominate and include whether Defendant's representations were and are misleading and if Plaintiff and class members are entitled to damages.

37. Plaintiff's claims and basis for relief are typical to other members because all were

subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

38. Plaintiff is an adequate representative because his interests do not conflict with other members.

39. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

40. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

41. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

42. Plaintiff seeks class-wide injunctive relief because the practices continue.

Florida Deceptive and Unfair Trade Practices Act,
Fla. Stat. § 501.201, et seq.

43. Plaintiff incorporates by reference all preceding paragraphs.

44. Plaintiff relied on the label to believe the Product's contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

Violation of State Consumer Fraud Acts
(Consumer Fraud Multi-State Class)

45. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class are similar to the consumer protection statute invoked by Plaintiff and prohibit the use of unfair or deceptive business practices in the conduct of commerce.

46. The members of the Consumer Fraud Multi-State Class reserve their rights to assert their consumer protection claims under the Consumer Fraud Acts of the States they represent and/or the consumer protection statute invoked by Plaintiff.

Breaches of Express Warranty,
Implied Warranty of Merchantability/Fitness for a Particular Purpose and
Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

47. The Product was manufactured, identified, marketed, and sold by Defendant and expressly and impliedly warranted to Plaintiff the Product's contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

48. Defendant directly marketed the Product to Plaintiff through its advertisements and marketing, through various forms of media, on the packaging, in print circulars, direct mail, product descriptions distributed to resellers, and targeted digital advertising.

49. Defendant knew the product attributes that potential customers like Plaintiff were seeking, such as good values which would stretch their money, and developed its marketing and labeling to directly meet those needs and desires.

50. Defendant's representations about the Product were conveyed in writing and promised it would be defect-free, and Plaintiff understood this meant that its contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

51. Defendant's representations affirmed and promised that the Product's contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

52. Defendant described the Product so Plaintiff believed its contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount, which became part of the basis of the bargain that it would conform to its affirmations and promises.

53. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

54. This duty is based on Defendant's outsized role in the market for this type of Product, a trusted company, known for its high-quality products, honestly marketed to consumers.

55. Plaintiff recently became aware of Defendant's breach of the Product's warranties.

56. Plaintiff provides or will provide notice to Defendant, its agents, representatives, retailers, and their employees that it breached the Product's express and implied warranties.

57. Defendant received notice and should have been aware of these issues due to complaints by third-parties, including regulators, competitors, and consumers, to its main offices, and by consumers through online forums.

58. The Product did not conform to its affirmations of fact and promises due to Defendant's actions.

59. The Product was not merchantable because it was not fit to pass in the trade as advertised, not fit for the ordinary purpose for which it was intended and did not conform to the promises or affirmations of fact made on the packaging, container or label, because it was marketed as if its contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

60. The Product was not merchantable because Defendant had reason to know the particular purpose for which it was bought by Plaintiff, because he expected its contents were equivalent to the amount in the container plus two times that amount, for a total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount, and he relied on Defendant's skill and judgment to select or furnish such a suitable product.

Negligent Misrepresentation

61. Defendant had a duty to truthfully represent the Product, which it breached.

62. This duty was non-delegable, based on Defendant's position, holding itself out as having special knowledge and experience in this area, a trusted company, known for its high-quality products, honestly marketed to consumers.

63. Defendant's representations and omissions regarding the Product went beyond the specific representations on the packaging, as they incorporated the extra-labeling promises and commitments to quality, transparency and putting customers first, that it has been known for.

64. These promises were outside of the standard representations that other companies may make in a standard arms-length, retail context.

65. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in Defendant.

66. Plaintiff reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, their purchase of the Product.

Fraud

67. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that its contents were equivalent to the amount in the container plus two times that amount, for a

total of three times the referenced amount and/or it was more potent and concentrated than the product sold in the referenced amount.

68. The records Defendant is required to maintain, and/or the information inconspicuously disclosed to consumers, provided it with actual and constructive knowledge of the falsity and deception, through statements and omissions.

Unjust Enrichment

69. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of Plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as counsel for the class;
2. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
3. Awarding monetary, statutory and/or punitive damages;
4. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
5. Other and further relief as the Court deems just and proper.

Dated: September 12, 2022

Respectfully submitted,

/s/Will Wright

The Wright Law Office, P.A.

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West Palm Beach FL 33401
(561) 514-0904
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Rocky Coleman, individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Pasco
(c) Attorneys (Firm Name, Address, and Telephone Number)
The Wright Law Office, P.A., 515 N Flagler Dr Ste P-300 West Palm Beach FL 33401, (561) 514-0904

DEFENDANTS
Nestle USA, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [X] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions .

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from Another District (specify) [] 6 Multidistrict Litigation - Transfer [] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332
Brief description of cause:
False advertising

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE September 12, 2022 SIGNATURE OF ATTORNEY OF RECORD /s/Will Wright

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Middle District of Florida

Rocky Coleman, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Nestle USA, Inc.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Nestle USA, Inc.
c/o The Corporation Trust Company
1209 N Orange St
Wilmington DE 19801-1120

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: The Wright Law Office, P.A., 515 N Flagler Dr Ste P-300 West Palm Beach FL 33401, (561) 514-0904

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: