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*Attorney for Plaintiff Lisa Ohlweiler and the
Plaintiff Class*

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

LISA OHLWEILER, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

MARS, INC., and DOES 1 through 10,
inclusive

Defendants.

Case No.

CLASS ACTION COMPLAINT

- 1. Cal. Bus. & Prof. Code § 17200**
- 2. Cal. Bus. & Prof. Code § 17500**
- 3. Cal. Civ. Code § 1750**
- 4. Breach of Implied Warranty**
- 5. Unjust Enrichment**
- 6. Negligent Misrepresentations**
- 7. Fraud**

JURY TRIAL DEMANDED

Plaintiff, Lisa Ohlweiler, individually and on behalf of all others similarly situated (“Plaintiff” or “Ohweiler”), brings this class action complaint against Mars, Inc. (“Mars” or “Defendant”) and Does 1 through 10, inclusive (collectively referred to herein as “Defendants”) and alleges as follows:

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I.

NATURE OF THE ACTION

1. This is a class action lawsuit brought on behalf of all purchasers of M&M’s Minis tube products (the “Product(s)”) (pictured below). Mars falsely and deceptively misrepresents the quantity of candies contained in each unit of Product by way of its packaging.



2. At all relevant times, Mars has packaged the Products in tube containers, the contents of which cannot be seen or felt at the time of purchase. The packaging of the Products leads the reasonable consumer to believe he or she is purchasing a container full of the advertised candies. In reality, the Product is consistently under-filled by 30% or more (represented by the red line pictured above). The empty space, or “slack-fill,” present in the Products’ packaging is nonfunctional and therefore unlawful. This misleading practice allows Mars to save a considerable amount of money on food production costs to the detriment of unsuspecting consumers.

3. The non-transparent containers of the Products are invariably covered with brightly colored, non-transparent graphic-covered wrappings so that Plaintiff

1 and Class members cannot see the non-functional slack-fill in the container. As
2 shown above, the size of the containers in comparison to the volume of the Products
3 contained therein makes it appear as though Plaintiff and Class members are buying
4 more than what is actually being sold.

5 4. Plaintiff, on behalf of herself and the proposed class, seeks damages,
6 restitution and injunctive relief against Defendants for false and misleading
7 advertising in violation of Business & Professions Code Section 17200, *et seq.*,
8 Business & Professions Code Section 17500, *et seq.*, Civil Code Section 1750, *et*
9 *seq.*, breach of the implied warranty of merchantability, unjust enrichment, negligent
10 misrepresentation, and fraud.

11 5. Defendants were placed on statutory notice of their false and misleading
12 claims pursuant to California Civil Code Section 1782(a).

13 II.

14 JURISDICTION AND VENUE

15 6. This Court has subject matter jurisdiction of this action pursuant to 28
16 U.S.C. §1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or
17 more class members, (ii) there is an aggregate amount in controversy exceeding
18 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity
19 because at least one plaintiff and defendant are citizens of different states. This Court
20 has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

21 7. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action
22 because a substantial part of the events, omissions, and acts giving rise to the claims
23 herein occurred in this District. Plaintiff is a citizen of California, resides in this
24 District, and her purchase of the Product was made in this District. Moreover,
25 Defendants receive substantial compensation from sales in this District, and
26 Defendants made numerous misrepresentations which had a substantial effect in this
27 District, including, but not limited to, label, packaging, and internet advertisements,
28 among other advertising.

1 8. Defendants are subject to personal jurisdiction in California based upon
2 sufficient minimum contacts which exist between Defendants and California.
3 Defendants are authorized to do and doing business in California.

4 **III.**
5 **PARTIES**

6 9. Plaintiff is, and at all times relevant hereto was, an individual residing in
7 Los Angeles County, California, which is located in the federal judicial district for
8 the Central District of California. Plaintiff purchased the M&M's Minis from a Los
9 Angeles supermarket in 2016. After purchasing the Product, Plaintiff subsequently
10 learned the Product was under-filled with candies and contained an unlawful amount
11 of slack-fill to the tune of approximately 30% or more. In making her purchase,
12 Plaintiff relied upon the packaging which was prepared and approved by Defendants
13 and their agents and disseminated statewide and nationwide and designed to
14 encourage consumers to purchase the Product.

15 10. Mars International, Inc. is a corporation headquartered in McLean,
16 Virginia. Mars maintains its principal business office at 6885 Elm St., McLean, VA
17 22101. Mars, directly and through its agents, has substantial contacts with and
18 receives substantial benefits and income from and through the State of California.
19 Mars is the owner, manufacturer, and distributor of the Product, and is the company
20 that created and/or authorized the false, misleading, and deceptive advertisements
21 and/or packaging and labeling for the Product.

22 11. The true names and capacities, whether individual, corporate, associate,
23 or otherwise of certain manufacturers, distributors, and/or their alter egos sued herein
24 as DOES 1 through 10 inclusive are presently unknown to Plaintiff who therefore
25 sues these individuals and/or entities by fictitious names. Plaintiff will seek leave of
26 this Court to amend the Complaint to show their true names and capacities when the
27 same have been ascertained. Plaintiff is informed and believes and based thereon
28 alleges that DOES 1 through 10 were authorized to do and did business in the Central

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1 District of California. Plaintiff is further informed and believes and based thereon
2 alleges that DOES 1 through 10 were and/or are, in some manner or way, responsible
3 for and liable to Plaintiff for the events, happenings, and damages hereinafter set forth
4 below.

5 12. Plaintiff is informed and believes, and based thereon alleges that at all
6 times relevant herein each of these individuals and/or entities was the agent, servant,
7 employee, subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or
8 other representative of each of the remaining defendants and was acting in such
9 capacity in doing the things herein complained of and alleged.

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

15 14. Defendants, upon becoming involved with the manufacture, advertising,
16 and sale of the Products, knew or should have known that the Products were being
17 under-filled, and thus the packaging of the Product was misleading. Defendants
18 affirmatively misrepresented the quantity of the Products' contents in order to
19 convince the public and the Products' consumers to purchase and consume the
20 Products, resulting in profits of millions of dollars or more to Defendants, all to the
21 damage and detriment of the consuming public.

22 **IV.**

23 **CLASS ACTION ALLEGATIONS**

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

- 26 a. All persons residing in the United States who purchased the Product for
27 personal use and not for resale during the time period August 22, 2012,
28 through the present. Excluded from the Class are Defendants' officers,

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1 directors, and employees, and any individual who received remuneration
2 from Defendants in connection with that individual's use or endorsement
3 of the Product.

- 4 b. All persons residing in the State of California who purchased the Product
5 for personal use and not for resale during the time period August 22, 2012,
6 through the present. Excluded from the Class are Defendants' officers,
7 directors, and employees, and any individual who received remuneration
8 from Defendants in connection with that individual's use or endorsement
9 of the Product.

10 16. The Class comprises many thousands of persons throughout the United
11 States and California, the joinder of whom is impracticable, and the disposition of
12 their claims in a Class Action will benefit the parties and the Court. The Class is
13 sufficiently numerous because millions of units of the Product have been sold in the
14 United States and State of California during the time period August 22, 2012, through
15 the present (the "Class Period").

16 17. There exist common questions of law and fact which predominate over
17 questions which may affect individual Class members. Common questions of law
18 and fact include, but are not limited to, the following:

- 19 a. Whether Defendants' conduct is an unlawful business act or practice
20 within the meaning of Business and Professions Code section 17200, *et*
21 *seq.*;
- 22 b. Whether Defendants' conduct is a fraudulent business act or practice
23 within the meaning of Business and Professions Code section 17200, *et*
24 *seq.*;
- 25 c. Whether Defendants' advertising is untrue or misleading within the
26 meaning of Business and Professions Code section 17500, *et seq.*;
- 27 d. Whether Defendants made false and misleading representations in their
28 advertising and packaging of the Product;

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- 1 e. Whether Defendants knew or should have known that the representations
- 2 were false;
- 3 f. Whether Defendants represented that the Product has characteristics,
- 4 benefits, uses, or quantities which the Product does not have;
- 5 g. Whether Defendants warranted that the Product contained an adequate
- 6 amount of candies for a container of its size;
- 7 h. Whether Defendants warranted that the Product is legal for sale in the
- 8 United States;
- 9 i. Whether Defendants breached these warranties; and
- 10 j. Whether Defendants committed statutory and common law fraud by
- 11 doing so.

12 18. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will
13 fairly and adequately represent and protect the interests of the Class. Plaintiff has
14 retained competent and experienced counsel in class action and other complex
15 litigation.

16 19. Plaintiff and the Class have suffered injury in fact and have lost money as
17 a result of Defendants' false representations. Indeed, Plaintiff purchased the Product
18 under the belief that they were appropriately filled. Plaintiff relied on Defendants'
19 packaging and would not have purchased the Product if she had known that the
20 Product did not have the characteristics, ingredients, uses, benefits, or quantities as
21 represented.

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

26 21. The trial and litigation of Plaintiff's claims are manageable. Individual
27 litigation of the legal and factual issues raised by Defendants' conduct would increase
28 delay and expense to all parties and the court system. The class action device presents

1 far fewer management difficulties and provides the benefits of a single, uniform
2 adjudication, economies of scale, and comprehensive supervision by a single court.

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

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

15 V.

16 **FACTUAL BACKGROUND**

17 24. The Product is marketed and sold at retailers across California and the
18 United States with the packaging at issue.

19 25. Defendants regularly employed slack-filled packaging to mislead
20 consumers into believing they were receiving more than they actually were.

21 26. Defendants lacked any lawful justification for doing so. Under the Federal
22 Food Drug and Cosmetic Act (herein "FDCA"), Section 403(d) (codified as 21
23 U.S.C. § 343(d)), a food shall be deemed misbranded "[i]f its container is so made,
24 formed, or filled as to be misleading." Consumer protection laws of the fifty states
25 and the District of Columbia correspond to the requirements of the FDCA, 21 U.S.C.
26 §§ 343 *et seq.*

27 27. According to 21 C.F.R. 100.100:

28 In accordance with section 403(d) of the act, a food shall be deemed to be

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misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other non-mandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

28. However, none of the above provisions apply to the Products. Defendants deliberately incorporated non-functional slack-fill in its packaging of the Products in order to deceive the consumers, including Plaintiff and members of the Class.

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1 29. Plaintiff and members of the Class relied on and were deceived by
2 Defendants’ misleading slack-filled packaging. Plaintiff purchased slack-filled
3 packages of Defendants’ M&M’s Minis Products. In reliance on Defendants’ product
4 packaging, Plaintiff and Class members believed that they were getting more of the
5 Products than was actually being sold. Had Plaintiff and Class members known that
6 exclusive of functional headspace, Defendants’ Products contained significant non-
7 functional slack-fill, they would not have bought the Products.

8 30. Plaintiff did not know, and had no reason to know, that Defendants’
9 misbranded food products were slack-filled and misbranded, given the fact that the
10 containers are not transparent and thus give no indication as to actual quantity. Had
11 Plaintiff known Defendants’ packaging was slack-filled she would not have bought
12 the slack-filled Products. Because of Defendants’ slack-fill packaging violations
13 these products were misbranded and could not be legally held or sold.

14 31. Upon information and belief, Plaintiff alleges that during the course of
15 the deception, Defendants have sold millions of units of the Product based upon the
16 misleading size of the Product container.

17 32. Plaintiff and the Class have suffered injury in fact and have lost money as
18 a result of Defendants’ unlawful slack-fill. Indeed, Plaintiff paid an unwarranted
19 premium for these products. Plaintiff would not have purchased the Product if she
20 had known that the containers were not adequately filled.

21 33. Defendants’ false and misleading packaging should be enjoined due to
22 the false, misleading, and/or deceptive nature of Defendants’ inadequately filled
23 containers. In addition, Defendants should be compelled to provide restitution and
24 damages to consumers who paid a premium price for the Product due to Defendants’
25 representation that it contained an adequate amount of candies for a container of its
26 size.

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VI.

FIRST CAUSE OF ACTION

**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF
BUSINESS & PROFESSIONS CODE § 17200, et seq.**

(By Plaintiff against all Defendants)

34. Plaintiff repeats and realleges the allegations set forth above, and incorporate the same as if set forth herein at length.

35. This cause of action is brought pursuant to Business and Professions Code § 17200, et seq., on behalf of a Class consisting of all persons who purchased the Product in the United States for personal use and not for resale during the time period August 22, 2012, through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or endorsement of the Product.

36. In the alternative, this cause of action is brought pursuant to Business and Professions Code § 17200, et seq., on behalf of a Class consisting of all persons who purchased the Product in the State of California for personal use and not for resale during the time period August 22, 2012, through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or endorsement of the Product.

37. Defendants are subject to California’s Unfair Competition Law, Cal. Bus. & Prof. Code 17200, et seq. The UCL provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising...”

38. Defendants’ packaging of the Product, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable.

39. Defendants are aware that the packaging of the Product is false, deceptive,

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misleading, and unreasonable.

40. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed above constitutes an unfair and fraudulent business practice within the meaning of California Business & Professions Code § 17200.

41. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein.

42. All of the conduct alleged herein occurs and continues to occur in Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

43. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the members of the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of under filling the Product’s containers. Likewise, Plaintiff and the members of the Class seek an order requiring Defendants to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendants by means of responsibility attached to Defendants’ failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

44. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants’ unlawful slack-fill. Indeed, Plaintiff paid an unwarranted premium for these products. Plaintiff would not have purchased the Product if she had known that the containers were not adequately filled and is therefore entitled to restitution in an amount to be determined at trial.

VII.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING IN VIOLATION OF

BUSINESS & PROFESSIONS CODE § 17500, et seq.

(By Plaintiff against all Defendants)

45. Plaintiff repeats and realleges the allegations set forth in the preceding

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paragraphs, and incorporates the same as if set forth herein at length.

46. This cause of action is brought pursuant to Business and Professions Code § 17200, *et seq.*, on behalf of a Class consisting of all persons who purchased the Product in the United States for personal use and not for resale during the time period August 22, 2012, through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or endorsement of the Product.

47. In the alternative, this cause of action is brought pursuant to Business and Professions Code § 17200, *et seq.*, on behalf of a Class consisting of all persons who purchased the Product in the State of California for personal use and not for resale during the time period August 22, 2012 through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or endorsement of the Product.

48. California's False Advertising Law, Cal. Bus. & Prof. Code 17500, *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

49. Defendants committed acts of false advertising, as defined by §17500, by misrepresenting that the Product contained an adequate amount of candies for a container of its size and that the Product is legal for sale in the United States.

50. Defendants knew or should have known, through the exercise of reasonable care that their representations about the Product were untrue and misleading.

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51. Defendants’ actions in violation of 17500 were false and misleading such that the general public is and was likely to be deceived.

52. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the members of the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of under filling the Product’s containers. Likewise, Plaintiff and the members of the Class seek an order requiring Defendants to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendants by means of responsibility attached to Defendants’ failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

53. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants’ false representations. Indeed, Plaintiff purchased the Product in reliance of the claims by Defendants that the Product was of the quality represented by Defendants’ packaging and advertising. Plaintiff would not have purchased the Product if she had known that the claims and advertising as described herein were false and is therefore entitled to restitution in an amount to be determined at trial.

VIII.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.

(By Plaintiff against all Defendants)

54. Plaintiff repeats and realleges the allegations of the previous paragraphs, and incorporates the same as if set forth herein at length.

55. This cause of action is brought pursuant to Civil Code § 1750, *et seq.*, the Consumers Legal Remedies Act (“CLRA”), on behalf of a Class consisting of all persons who purchased the Product in the United States for personal use and not for resale during the time period August 22, 2012, through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or

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endorsement of the Product.

56. In the alternative, this cause of action is brought pursuant to the CLRA on behalf of a Class consisting of all persons who purchased the Product in the State of California for personal use and not for resale during the time period August 22, 2012, through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual’s use or endorsement of the Product.

57. The Class consists of thousands of persons, the joinder of whom is impracticable.

58. There are questions of law and fact common to the class, which questions are substantially similar and predominate over questions affecting the individual members, including but not limited to: (a) Whether Defendants represented that the Product has characteristics, benefits, uses or quantities which it does not have; (b) Whether the existence, extent and significance of the major misrepresentations regarding the purported benefits, characteristics and efficacy of the Product violates the Act; and (c) Whether Defendants knew of the existence of these misrepresentations.

59. The policies, acts, and practices heretofore described were intended to result in the sale of the Product to the consuming public and violated and continue to violate § 1770(a)(5) and (9), of the CLRA, respectively, by representing that the Product: (1) has characteristics, ingredients, uses, benefits, and quantities which it does not have, and (2) advertising the Product with intent not to sell it as advertised.

60. Defendants fraudulently deceived Plaintiff and the Class by representing that the Product has certain characteristics, benefits, uses, and quantities which they do not have (e.g., that the Product was adequately filled with candies). In doing so, Defendants intentionally misrepresented and concealed material facts from Plaintiff and the Class. Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and the Class and depriving them of their legal rights and

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money.

61. Defendants fraudulently deceived Plaintiff and the Class by advertising the Product with intent not to sell it as advertised (e.g., by intentionally under-filling the Product’s containers). In doing so, Defendants intentionally misrepresented and concealed material facts from Plaintiff and the Class. Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and the Class and depriving them of their legal rights and money.

62. Defendants knew or should have known, through the exercise of reasonable care that the Product’s packaging was misleading.

63. Defendants’ actions as described hereinabove were done with conscious disregard of Plaintiff’s rights and Defendants were wanton and malicious in its concealment of the same.

64. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants’ false representations and is therefore entitled to restitution in an amount to be determined at trial.

IX.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiff against all Defendants)

65. Plaintiff repeats and realleges the allegations of the previous paragraphs, and incorporates the same as if set forth herein at length.

66. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendants.

67. Defendants, as the designer, manufacturer, marketer, distributor, and/or seller, impliedly warranted that the Product contained an adequate amount of candies for a container of its size and that the Products is legal for sale in the United States.

68. Defendants breached the warranty implied in the contract for the sale of the Product because it could not pass without objection in the trade under the contract

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1 description, the goods were not of fair average quality within the description, and the
2 goods were unfit for their intended and ordinary purpose because the Product does
3 not contain an adequate amount of candies for a container of its size and is illegal for
4 sale in the United States. As a result, Plaintiff and Class members did not receive the
5 goods as impliedly warranted by Defendants to be merchantable.

6 69. Plaintiff and Class members purchased the Product in reliance upon
7 Defendants’ skill and judgment and the implied warranties of fitness for the purpose.

8 70. The Product was defectively designed and unfit for its intended purpose,
9 and Plaintiff and Class members did not receive the goods as warranted.

10 71. As a direct and proximate cause of Defendants’ breach of the implied
11 warranty, Plaintiff and the Class have suffered injury in fact and have lost money as
12 a result of Defendants’ false representations. Indeed, Plaintiff purchased the Product
13 in reliance of the claims by Defendants that the Product was of the quality represented
14 by Defendants’ packaging. Plaintiff would not have purchased the Product if she had
15 known that the claims and advertising as described herein were false.

16 **X.**

17 **FIFTH CAUSE OF ACTION**

18 **UNJUST ENRICHMENT**

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

20 72. Plaintiff hereby incorporates by reference the allegations contained in all
21 preceding paragraphs of this complaint.

22 73. Plaintiff brings this claim individually and on behalf of the members of
23 the proposed Class against Defendants.

24 74. Plaintiff and Class members conferred benefits on Defendants by
25 purchasing the Product.

26 75. Defendants have been unjustly enriched in retaining the revenues derived
27 from Plaintiff and Class members’ purchases of the Product. Retention of those
28 moneys under these circumstances is unjust and inequitable because Defendants

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1 misrepresented that the Product contained an adequate amount of candies for a
2 container of its size and that the Product is legal for sale in the United States. These
3 misrepresentations caused injuries to Plaintiff and Class members because they
4 would not have purchased the Product if the true facts were known.

5 76. Because Defendants’ retention of the non-gratuitous benefits conferred
6 on them by Plaintiff and Class members is unjust and inequitable, Defendants must
7 pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered
8 by the Court.

9 **XI.**

10 **SIXTH CAUSE OF ACTION**

11 **NEGLIGENT MISREPRESENTATION**

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

13 77. Plaintiff hereby incorporates by reference the allegations contained in all
14 preceding paragraphs of this complaint.

15 78. Plaintiff brings this claim individually and on behalf of the members of
16 the proposed Class against Defendants.

17 79. As discussed above, Defendants misrepresented that the Product
18 contained an adequate amount of candies for a container of its size and that the
19 Product is legal for sale in the United States. Defendants had a duty to disclose this
20 information.

21 80. At the time Defendants made these representations, Defendants knew or
22 should have known that these representations were false or made them without
23 knowledge of their truth or veracity.

24 81. At an absolute minimum, Defendants negligently misrepresented and/or
25 negligently omitted material facts about the Product.

26 82. The negligent misrepresentations and omissions made by Defendants,
27 upon which Plaintiff and Class members reasonably and justifiably relied, were
28 intended to induce and actually induced Plaintiff and Class members to purchase the

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1 Product.

2 83. Plaintiff and Class members would not have purchased the Product if the
3 true facts had been known.

4 84. The negligent actions of Defendants caused damage to Plaintiff and Class
5 members, who are entitled to damages and other legal and equitable relief as a result.

6 **XII.**

7 **SEVENTH CAUSE OF ACTION**

8 **FRAUD**

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

10 85. Plaintiff hereby incorporates by reference the allegations contained in all
11 preceding paragraphs of this complaint.

12 86. Plaintiff brings this claim individually and on behalf of the members of
13 the proposed Class against Defendants.

14 87. As discussed above, Defendants provided Plaintiff and Class members
15 with false or misleading material information and failed to disclose material facts
16 about the Product, including but not limited to the fact that it contained an adequate
17 amount of candies for a container of its size and that the Product is legal for sale in
18 the United States. These misrepresentations and omissions were made with
19 knowledge of their falsehood.

20 88. The misrepresentations and omissions made by Defendants, upon which
21 Plaintiff and Class members reasonably and justifiably relied, were intended to
22 induce and actually induced Plaintiff and Class members to purchase the Product.

23 89. The fraudulent actions of Defendants caused damage to Plaintiff and
24 Class members, who are entitled to damages and other legal and equitable relief as a
25 result.

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XIII.

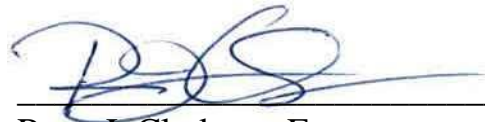
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members of the Class defined herein, prays for judgment and relief on all Causes of Action as follows:

- A. An order certifying that the action may be maintained as a Class Action;
- B. An order enjoining Defendants from pursuing the policies, acts, and practices complained of herein and requiring Defendants to pay restitution to Plaintiff and all members of the Class in an amount to be determined at trial;
- C. Actual damages;
- D. Punitive damages;
- E. For pre-judgment interest from the date of filing this suit;
- F. Reasonable attorney fees;
- G. Costs of this suit; and
- H. Such other and further relief as the Court may deem necessary or appropriate.

DATED: August 22, 2016

CLARKSON LAW FIRM, P.C.



Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Attorneys for Plaintiff and the Proposed Plaintiff Class

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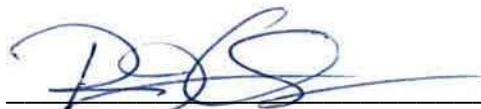
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JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: August 22, 2016

CLARKSON LAW FIRM, P.C.



Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Attorneys for Plaintiff and the Proposed
Plaintiff Class