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Attorney for Plaintiff Anthony Bush and the Plaintiff Class

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

ANTHONY BUSH, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

MONDELEZ INTERNATIONAL,
INC., MONDELEZ GLOBAL, LLC,
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 Anthony Bush, individually and on behalf of all others similarly situated, brings this class action complaint against Mondelez International, Inc. and Mondelez Global, LLC (collectively “Mondelez”) 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 Go-Paks manufactured, advertised, distributed, and/or sold by Mondelez, including Mini Chips Ahoy!, Mini Oreo, Golden Oreo Mini, Nutter Butter Bites, Mini Nilla Wafers, Ritz Bits, and Teddy Grahams (the “Product(s)”) (pictured below). Mondelez falsely and deceptively misrepresents the quantity of food contained in each unit of Product by way of its packaging.



2. At all relevant times, Mondelez has packaged the Products in small, cup-shaped 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 cookies. In reality, the Product is uniformly under-filled by 25% or more (represented by the red striped lines above).

1 same have been ascertained. Plaintiff is informed and believes and based thereon
2 alleges that DOES 1 through 10 were authorized to do and did business in the
3 Northern District of California. Plaintiff is further informed and believes and based
4 thereon alleges that DOES 1 through 10 were and/or are, in some manner or way,
5 responsible for and liable to Plaintiff for the events, happenings, and damages
6 hereinafter set forth below.

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

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

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

24 **IV.**

25 **CLASS ACTION ALLEGATIONS**

26 15. Plaintiff brings this action on his own behalf and on behalf of all other
27 persons similarly situated. The Classes which Plaintiff seeks to represent are:
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1 a. All persons residing in the United States who purchased the Product for
2 personal use and not for resale during the time period May 5, 2012,
3 through the present. Excluded from the Class are Defendants’ officers,
4 directors, and employees, and any individual who received remuneration
5 from Defendants in connection with that individual’s use or endorsement
6 of the Product.

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

13 16. The Class comprises many thousands of persons throughout the United
14 States and California, the joinder of whom is impracticable, and the disposition of
15 their claims in a Class Action will benefit the parties and the Court. The Class is
16 sufficiently numerous because millions of units of the Product have been sold in the
17 United States and State of California during the time period May 5, 2012, through the
18 present (the “Class Period”).

19 17. There is a well-defined community of interest in the questions of law and
20 fact involved affecting the parties to be represented. The questions of law and fact
21 common to the Class predominate over questions which may affect individual Class
22 members. Common questions of law and fact include, but are not limited to, the
23 following:

24 a. Whether Defendants’ conduct is an unlawful business act or practice
25 within the meaning of Business and Professions Code section 17200, *et*
26 *seq.*;

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- b. Whether Defendants' conduct is a fraudulent business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- c. Whether Defendants' advertising is untrue or misleading within the meaning of Business and Professions Code section 17500, *et seq.*;
- d. Whether Defendants made false and misleading representations in their advertising and packaging of the Product;
- e. Whether Defendants knew or should have known that the representations were false;
- f. Whether Defendants represented that the Product has characteristics, benefits, uses, or quantities which the Product does not have;
- g. Whether Defendants warranted that the Product contained an adequate amount of cookies for a container of its size;
- h. Whether Defendants warranted that the Product is legal for sale in the United States;
- i. Whether Defendants breached these warranties; and
- j. Whether Defendants committed statutory and common law fraud by doing so.

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

19. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' false representations. Plaintiff purchased units of the Products under the belief that they were adequately filled with food items. Plaintiff relied on Defendants' packaging and would not have purchased the Product if he had known that the Product did not have the characteristics, ingredients, uses, benefits, or quantities as represented.

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26. Defendants lacked any lawful justification for doing so.

27. Plaintiff and members of the Class relied on and were deceived by Defendants' misleading slack filled packaging.

28. Plaintiff purchased slack-filled packages of Defendants' Products, including Mini Chips Ahoy!, Mini Oreo, Golden Oreo Mini, Nutter Butter Bites, Mini Nilla Wafers, Ritz Bits, and Teddy Grahams Go Paks.

29. Plaintiff did not know, and had no reason to know, that Defendants' misbranded food products were slack-filled and misbranded, given the fact that the containers are not transparent and thus give no indication as to actual quantity. Had Plaintiff known Defendants' packaging was slack-filled he would not have bought the slack-filled products. Because of Defendants' slack-fill packaging violations these products were misbranded and could not be legally held or sold.

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

31. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' unlawful slack-fill. Plaintiff paid an unwarranted premium for these products. Specifically, Plaintiff paid for Product he never received. Plaintiff would not have purchased the Product if he had known that the containers were not adequately filled.

32. Defendants' false and misleading packaging should be enjoined due to the false, misleading, and/or deceptive nature of Defendants' inadequately filled containers. In addition, Defendants should be compelled to provide restitution and damages to consumers who paid a premium price for the Product due to Defendant's representation that it contained an adequate amount of cookies for a container of its 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)

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

34. 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 May 5, 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.

35. 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 May 5, 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. Defendant is 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...”

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

38. Defendants are aware that the packaging of the Product is false, deceptive, misleading, and unreasonable.

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39. 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.

40. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein. Defendants could have used packaging appropriate for the amount of Product contained therein.

41. 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.

42. 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.

43. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' unlawful slack-fill. Plaintiff paid an unwarranted premium for these products. Specifically, Plaintiff paid for Product he never received. Plaintiff would not have purchased the Product if he had known that the containers were not adequately filled.

VII.
SECOND CAUSE OF ACTION
FALSE AND MISLEADING ADVERTISING IN VIOLATION OF
BUSINESS & PROFESSIONS CODE § 17500, et seq.
(By Plaintiff against all Defendants)

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

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

2 45. This cause of action is brought pursuant to Business and Professions Code
3 § 17200, *et seq.*, on behalf of a Class consisting of all persons who purchased the
4 Product in the United States for personal use and not for resale during the time period
5 May 5, 2012, through the present. Excluded from the Class are Defendants’ officers,
6 directors, and employees, and any individual who received remuneration from
7 Defendants in connection with that individual’s use or endorsement of the Product.

8 46. In the alternative, this cause of action is brought pursuant to Business and
9 Professions Code § 17200, *et seq.*, on behalf of a Class consisting of all persons who
10 purchased the Product in the State of California for personal use and not for resale
11 during the time period May 5, 2012 through the present. Excluded from the Class
12 are Defendants’ officers, directors, and employees, and any individual who received
13 remuneration from Defendants in connection with that individual’s use or
14 endorsement of the Product.

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

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

25 49. Defendant knew or should have known, through the exercise of
26 reasonable care that their representations about the Product were untrue and
27 misleading.

28 50. Defendant’s actions in violation of §17500 were false and misleading

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1 such that the general public is and was likely to be deceived.

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

10 52. Plaintiff and the Class have suffered injury in fact and have lost money as
 11 a result of Defendants' false representations. Plaintiff purchased the Product in
 12 reliance of the claims by Defendants that the Product was of the quality represented
 13 by Defendants' packaging and advertising. Plaintiff would not have purchased the
 14 Product if he had known that the claims and advertising as described herein were
 15 false.

16 VIII.

17 THIRD CAUSE OF ACTION

18 VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.

19 (By Plaintiff against all Defendants)

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

22 54. This cause of action is brought pursuant to Civil Code § 1750, *et seq.*, the
 23 Consumers Legal Remedies Act ("CLRA"), on behalf of a Class consisting of all
 24 persons who purchased the Product in the United States for personal use and not for
 25 resale during the time period May 5, 2012, through the present. Excluded from the
 26 Class are Defendants' officers, directors, and employees, and any individual who
 27 received remuneration from Defendants in connection with that individual's use or
 28 endorsement of the Product.

1 55. In the alternative, this cause of action is brought pursuant to the CLRA
2 on behalf of a Class consisting of all persons who purchased the Product in the State
3 of California for personal use and not for resale during the time period May 5, 2012,
4 through the present. Excluded from the Class are Defendants' officers, directors, and
5 employees, and any individual who received remuneration from Defendants in
6 connection with that individual's use or endorsement of the Product.

7 56. The Class consists of thousands of persons, the joinder of whom is
8 impracticable.

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

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

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

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

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

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

12 63. Plaintiff and the Class have suffered injury in fact and have lost money as
13 a result of Defendants’ false representations in an amount to be determined at trial.

14 **IX.**

15 **FOURTH CAUSE OF ACTION**

16 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

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

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

20 65. Plaintiff brings this claim individually and on behalf of the members of
21 the proposed Class against Defendant.

22 66. Defendant, as the designer, manufacturer, marketer, distributor, and/or
23 seller, impliedly warranted that the Product contained an adequate amount of cookies
24 for a container of its size and that the Products is legal for sale in the United States.

25 67. Defendant breached the warranty implied in the contract for the sale of
26 the Product because it could not pass without objection in the trade under the contract
27 description, the goods were not of fair average quality within the description, and the
28 goods were unfit for their intended and ordinary purpose because the Product does

1 not contain an adequate amount of cookies for a container of its size and is illegal for
2 sale in the United States. As a result, Plaintiff and Class members did not receive the
3 goods as impliedly warranted by Defendant to be merchantable.

4 68. Plaintiff and Class members purchased the Product in reliance upon
5 Defendant's skill and judgment and the implied warranties of fitness for the purpose.

6 69. The Product was defectively designed and unfit for its intended purpose,
7 and Plaintiff and Class members did not receive the goods as warranted.

8 70. As a direct and proximate cause of Defendant's breach of the implied
9 warranty, Plaintiff and the Class have suffered injury in fact and have lost money as
10 a result of Defendants' false representations. Plaintiff purchased the Product in
11 reliance of the claims by Defendants that the Product was of the quality represented
12 by Defendants' packaging. Plaintiff would not have purchased the Product if he had
13 known that the claims and advertising as described herein were false.

14 **X.**

15 **FIFTH CAUSE OF ACTION**

16 **UNJUST ENRICHMENT**

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

18 71. Plaintiff hereby incorporates by reference the allegations contained in all
19 preceding paragraphs of this complaint.

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

22 73. Plaintiff and Class members conferred benefits on Defendants by
23 purchasing the Product.

24 74. Defendants have been unjustly enriched in retaining the revenues derived
25 from Plaintiff and Class members' purchases of the Product. Retention of those
26 moneys under these circumstances is unjust and inequitable because Defendants
27 misrepresented that the Product contained an adequate amount of cookies for a
28 container of its size and that the Product is legal for sale in the United States. These

1 misrepresentations caused injuries to Plaintiff and Class members because they
2 would not have purchased the Product if the true facts were known.

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

7 **XI.**

8 **SIXTH CAUSE OF ACTION**

9 **NEGLIGENT MISREPRESENTATION**

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

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

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

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

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

22 80. At a minimum, Defendants negligently misrepresented and/or negligently
23 omitted material facts about the Product.

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

28 82. Plaintiff and Class members would not have purchased the Product if the

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1 true facts had been known.

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

4 **XII.**

5 **SEVENTH CAUSE OF ACTION**

6 **FRAUD**

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

8 84. Plaintiff hereby incorporates by reference the allegations contained in all
9 preceding paragraphs of this complaint.

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

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

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

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

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XIII.

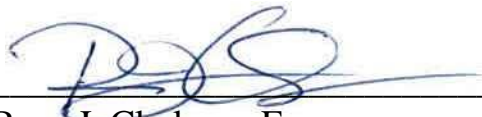
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself 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: May 5, 2016

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

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JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: May 5, 2016

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