

1 Barbara A. Rohr (SBN 273353)  
2 Benjamin Heikali (SBN 307466)  
3 **FARUQI & FARUQI, LLP**  
4 10866 Wilshire Boulevard, Suite 1470  
5 Los Angeles, CA 90024  
6 Telephone: (424) 256-2884  
7 Facsimile: (424) 256-2885  
8 E-mail: brohr@faruqilaw.com  
9 bheikali@faruqilaw.com

10 *Attorneys for Plaintiff Sandy Hafer*

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Case No.: 2:17-cv-00034

14 SANDY HAFER, individually and on  
15 behalf of all others similarly situated,

16 **CLASS ACTION COMPLAINT**

17 Plaintiff,

18 **1. Violation of California Civil  
Code §1750, et seq.**

19 v.

20 **2. Violation of California  
Business and Professions  
Code § 17200, et seq.**

21 NESTLE´ U.S.A., INC.

22 **3. Violation of California  
Business and Professions  
Code § 17500, et seq.**

23 Defendant.

24 **4. Breach of Implied Warranty**

25 **5. Common Law Fraud**

26 **6. Intentional Misrepresentation**

27 **7. Negligent Misrepresentation**

28 **8. Breach of Contract**

**9. Quasi-Contract/Unjust  
Enrichment/Restitution**

**JURY TRIAL DEMANDED**

1 Plaintiff Sandy Hafer (“Plaintiff”) by and through her counsel, brings this Class  
2 Action Complaint against Defendant Nestle’ U.S.A., Inc. (“Nestle” or “Defendant”),  
3 on behalf of herself and all others similarly situated, and alleges upon personal  
4 knowledge as to her own actions, and upon information and belief as to counsel’s  
5 investigations and all other matters, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this consumer protection and false advertising class  
8 action lawsuit against Defendant, based on Defendant’s misleading business practices  
9 with respect to the packaging and sale of its box packaged Raisinets® brand products,  
10 including Nestle’ Milk Chocolate Raisinets and Nestle’ Dark Chocolate Raisinets  
11 (referred to individually as “Product” and collectively as the “Products”).<sup>1</sup>

12 2. At all relevant times, Defendant has packaged and sold the Products in  
13 opaque box packaging that conceals from consumers the amount of Raisinets candies  
14 inside the box packaging. The Products’ packaging leads the reasonable consumer to  
15 believe he or she is purchasing a box full of Raisinets candies.

16 3. In reality, the Products are uniformly under-filled—approximately only  
17 60% of each of the Products’ packaging is filled with Raisinets candies.

18 4. Unbeknownst to consumers, who cannot see the contents inside the  
19 Products’ packaging at the time of purchase, approximately 40% each Products’  
20 packaging is non-functional slack-fill — empty space which serves no functional  
21 purpose under the law.

22 5. Non-functional slack-fill, like the type employed by Defendant, allows  
23 Defendant to reduce its food product costs to the detriment of unwitting customers,  
24 who are not receiving the full benefit of their bargain.

25 6. Plaintiff and others have reasonably relied on Defendant’s deceptive  
26 packaging in purchasing the Products, believing that the Products would be full of  
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28 <sup>1</sup> Depicted, *infra*, in paragraph 15.

1 Raisinets candies. Had Plaintiff and other consumers known that the Products were  
2 not full of Raisinets candies, they would not have purchased the Products or would  
3 have paid significantly less for the Products. Therefore, Plaintiff and other  
4 consumers have suffered injury in fact as a result of Defendant's deceptive practices.

5 7. Plaintiff brings this class action lawsuit on behalf of herself and all  
6 others similarly situated. Plaintiff seeks to represent a Nationwide Class, a California  
7 Subclass, and a California Consumer Subclass (defined *infra* in paragraphs 34-36)  
8 (together referred to as "Classes").

9 8. Plaintiff is seeking damages, restitution, declaratory and injunctive  
10 relief, and all other remedies this court deems appropriate.

11 **JURISDICTION AND VENUE**

12 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
13 1332(d)(2)(A) because this case is a class action where the aggregate claims of all  
14 members of the proposed Classes are in excess of \$5,000,000, exclusive of interests  
15 and costs, and Plaintiff, as well as most members of the proposed Classes, which total  
16 at least thousands of class members, and are citizens of states different from the state  
17 of Defendant.

18 10. This Court has personal jurisdiction over Defendant because Defendant  
19 has sufficient minimum contacts in California or otherwise intentionally did avail  
20 itself of the markets within California, through its sale of the Products to California  
21 consumers.

22 11. Venue is proper in this District pursuant to 28 U.S.C. 1391(a)(1) because  
23 Defendant regularly conducts business throughout this District, and a substantial part  
24 of the events and/or omissions giving rise to this action occurred in this District.

25 **PARTIES**

26 12. Plaintiff Sandy Hafer is a citizen of California, residing within this  
27 District. In 2016, Ms. Hafer purchased the boxed packaged Nestle' Dark Chocolate  
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1 Raisinets from Ralphs in this District. Ms. Hafer purchased the Nestle' Dark  
2 Chocolate Raisinets, relying on the size and shape of the Product's box packaging,  
3 believing that the Product would be full of Raisinets. However, the Nestle' Dark  
4 Chocolate Raisinets Ms. Hafer purchased contained approximately 40% empty space.  
5 Ms. Hafer would not have purchased the Product or would have paid significantly  
6 less for the Product had she known that the package was only approximately 60% full  
7 of Raisinets. Ms. Hafer therefore suffered injury in fact and lost money as a result of  
8 Defendant's misleading, false, unfair, and fraudulent practices, as described herein.

9 13. Defendant Nestle' U.S.A., Inc. is a Delaware corporation with its  
10 principle executive offices located at 800 North Brand Boulevard, Glendale,  
11 California. Nestle' U.S.A., Inc., directly or through its agents, parent company,  
12 related entities, and/or subsidiaries, produces, manufactures, packages, labels,  
13 distributes, markets, advertises and sells the Products nationwide, including in  
14 California. Nestle' U.S.A., Inc., directly or through its agents, parent company,  
15 related entities and/or subsidiaries, has also maintained substantial production,  
16 manufacturing, packaging, labeling, distribution, marketing, advertising and/or sales  
17 operations in this District. Including, but not limited to, a sales office in Brea,  
18 California and distribution center in Mira Loma, California.

19 **FACTUAL ALLEGATIONS**

20 **A. Background**

21 14. At all relevant times, Defendant has manufactured, packaged, labeled,  
22 distributed, marketed, advertised, and sold the Products across California and the  
23 United States. The Products are sold at grocery chains, convenience stores, and other  
24 retail outlets including, but not limited to, Wal-Mart, CVS Pharmacy, Pavilions,  
25 Walgreens, Rite Aid Pharmacy, Ralphs, Target, Amazon.com, CVS.com and  
26 Walmart.com.

27 15. The Products are sold in the following varieties:  
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a. Nestle' Milk Chocolate Raisinets :<sup>2</sup>



b. Nestle' Dark Chocolate Raisinets: <sup>3</sup>



16. All Products' packages have the same dimensions (0.6 inches by 6.3

<sup>2</sup> <https://www.walmart.com/ip/Raisinets-Chocolate-Covered-On-The-Go-Raisins-3.5-Oz/15240678> (last visited 12/30/2016).

<sup>3</sup> <https://www.walmart.com/ip/Nestle-Raisinets-Dark-Chocolate-Covered-Raisins-3.5-oz/38323296> (last visited 12/30/2016).

1 inches by 3.2 inches) and can hold the same volume of product.

2 **B. Federal Slack-fill Law, Legislative History, and FDA Guidance**

3 17. Pursuant to 21 C.F.R. § 100.100:

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

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

18. Furthermore, Congress has recognized that the law preventing  
misleading packaging is “intended to reach deceptive methods of filling...where the  
package is only partly filled and, *despite the declaration of quantity of contents on the  
label*, created the impression that it contains more food than it does.” S. Rep. No.  
493, 73d Cong., 2d sess. 9 (1934) (emphasis added).

1 19. The FDA has also disagreed with the suggestion that net weight  
2 statements protect against misleading fill, finding that “the presence of an accurate  
3 net weight statement does not eliminate the misbranding...” *Misleading Containers;*  
4 *Nonfunctional Slack-Fill*, 58 Fed. Reg. 64,123, 64,128 (Dec. 6, 1993) (codified at 21  
5 C.F.R. pt. 100). Moreover, the FDA has emphasized that “[t]o rule that an accurate  
6 net weight statement protects against misleading fill would render the prohibition  
7 against misleading fill... redundant.” *Id.* at 64,129.

8 **C. The Products Contain Non-functional Slack-fill Under Federal Law**

9 20. Defendant’s Products fit squarely within the foregoing anti-non-  
10 functional slack-fill provisions promulgated by the FDA.

11 21. As depicted in paragraph 15, *supra*, the Products are in opaque  
12 containers that have no holes or slits for consumers to even partially view the  
13 contents inside. Therefore the Products do “not allow the consumer to fully view its  
14 contents.” 21 C.F.R. § 100.100(a)

15 22. The Products’ containers are “filled as to be misleading,” because the  
16 Products’ boxed packaging “contain[] non-functional slack-fill:” a “difference  
17 between the actual capacity of a container and the volume of product contained  
18 therein.” 21 C.F.R. § 100.100(a). In this case, the difference between the Products’  
19 maximum capacity and volume of actual Raisinets candies inside is striking. Indeed,  
20 at least 40% of Products’ packaging volume is empty<sup>4</sup>:

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28 <sup>4</sup> In order to more clearly depict the slack-fill employed by Defendant, counsel for Plaintiff has cut open the Products’ packaging. No further modifications have been made.



23. Furthermore, the slack-fill in the Products is non-functional as it does not fit into any of the safe-harbor provisions promulgated by the FDA:

- (1) Pursuant to 21 C.F.R § 100.100(a)(1), the slack-fill does not protect the contents inside the Products' packaging. Raisinets candies are raisins coated with a hard chocolate finish. Therefore, the Raisinets candies are not susceptible to cracking, breaking, or crumbling like potato chips in a bag would be. The Raisinets candies are also not sticky due to the chocolate being coated with confectioner's glaze (lac-resin), which protects the candies and makes the candies smooth. Therefore, any concern for the safety of the contents inside the Products has been or should be alleviated by both the nature of the Raisinets candies. Any suggestion by Defendant that the Products' roomy box packaging protects the contents inside is inconsistent with Defendant's manufacturing and packaging practices for their other Raisinets

1 products, which are packaged in tightly fitting, flimsy plastic bags. If  
2 anything, if more Raisinets candies were filled into the Products'  
3 packaging or the packaging size was reduced to the volume of the  
4 candies inside, the contents inside would be protected further, as the  
5 candies would be given less room to move around during transport.  
6 Accordingly, the use of smaller packaging or an increase in fill would  
7 offer the same, if not more, protection for the contents inside.

8 (2) Pursuant to 21 C.F.R § 100.100(a)(2), no packaging or machine  
9 enclosure requirements would require that the Products be packaged  
10 with only approximately 60% Raisinets candies.

11 (3) Pursuant to 21 C.F.R § 100.100(a)(3), the slack-fill is not necessary to  
12 accommodate how the Raisinets candies “settle” inside the box.  
13 Raisinets candies are not pliable so as to be subject to settling in the  
14 Products’ packaging.

15 (4) Pursuant to 21 C.F.R § 100.100(a)(4), the Products’ packaging does not  
16 “perform a specific function,” such as playing a role in the preparation  
17 and consumption of the candies. The boxed packaging is simply used to  
18 hold the candies inside and display information about the Products.

19 (5) Pursuant to 21 C.F.R § 100.100(a)(5), the Products are not packaged in a  
20 container that is meant to be reused or otherwise used after consumption  
21 of the Raisinets candies inside. As evidenced in paragraph 22, even if  
22 Defendant has designed the packaging to allow consumers to reseal the  
23 packaging, the resealing mechanism can be implemented in the same  
24 manner regardless of the packaging size or the fill of the box.

25 (6) Pursuant to 21 C.F.R § 100.100(a)(6), Defendant does have the ability to  
26 increase the level of fill or to reduce the size of the Products’ packaging.

27 (A) A significant number of additional Raisinets pieces can be added to  
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1 the current Products without causing any protrusions or toppling over as  
2 shown, *supra*, in paragraph 22 where the box packaging is cut away to  
3 reveal approximately 40% empty space. (B) The addition of candies  
4 would enhance the weight of the Products and prevent any tipping on  
5 shelves or stands. In the alternative, Defendant can reduce the size of  
6 the package as to hold the same amount of candy inside, without any  
7 non-functional slack-fill.

8 **D. The Products' Packaging is Misleading to Reasonable Consumers**

9 24. Defendant's Products' packaging is misleading to reasonable consumers,  
10 including Plaintiff and the class members, and only serves the profit maximizing  
11 interests of Defendant.

12 25. Defendant knows, knew or should have known how the Products are  
13 filled and packaged because it and its agents manufacture, fill, and packaged the  
14 Products. Furthermore, the Products are governed by federal regulations that control  
15 the packaging of the Products, and therefore Defendant is, was aware, or should have  
16 been aware that its Products are not in compliance with federal slack-fill regulations.

17 26. Additionally, Defendant knows, knew or should have known that  
18 Plaintiff and other consumers did and would rely on the size and style of their  
19 packaging in purchasing the Products, and would reasonably believe that the  
20 Products' packaging is full of Raisinets candies.

- 21 a. According to Congress, "[c]onsumers develop expectations as to the  
22 amount of product they are purchasing based, at least in part, on the *size*  
23 *of the container.*" *Misleading Containers; Nonfunctional Slack-Fill*, 58  
24 Fed. Reg. 64,123, 64,131 (emphasis added). Moreover, because  
25 "[p]ackages have replaced the salesman," "packaging becomes the 'final  
26 salesman' between the manufacturer and the consumer, communicating  
27 information about the quantity and quality of product in a container." *Id.*  
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1 b. Furthermore, according to a peer reviewed journal article, an average  
2 consumer spends approximately 12 seconds purchasing a product in-  
3 store and approximately 19 seconds purchasing a product online.<sup>5</sup>  
4 Furthermore, according to peer reviewed journal article analyzing the  
5 effects container size and shape on consumer perception, “[p]ackages  
6 that appear larger will be more likely to be purchased.”<sup>6</sup>

7 c. Moreover, research has consistently demonstrated that consumers rarely  
8 read details beyond the final price of the product and, often, not even  
9 that.<sup>7</sup> Consumers often do not consult quantity indications on packages  
10 but use alternative methods (e.g., visual impressions of the package size,  
11 total package price, or previous purchase experience) to judge product  
12 quantity and to calculate product value.<sup>8</sup>

13 27. In reasonable reliance on the size and style of the packaging, and  
14 believing that the Products would be full of Raisinets, Plaintiff and members of the  
15 Classes purchased the Products.

16 28. Plaintiff and members of the Classes do not know, did not know, and  
17 have no reason to know, that the Products actually contained a significant amount of  
18 empty space, lacking Raisinets candies, because the containers are opaque with no  
19 view of the contents inside, at the time of purchase. A reasonable consumer cannot  
20 accurately determine the fill of the Products by shaking or squeezing packaging, and  
21 is certainly not expected to do so prior to purchasing the Products.

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23 <sup>5</sup> C.J. Gobb & W.D. Hoyer, *Direct observation of search behavior in the purchase of two*  
24 *nondurable products*, *Psychology & Marketing* 2: 161–179 (1985).

25 <sup>6</sup> Priya Raghbir & Aradhna Krishna, *Vital Dimensions in Volume Perception: Can the Eye Fool*  
*the Stomach?*, 36 *Journal of Marketing Research*, No. 3, 313-326 (1999).

26 <sup>7</sup> Peter R Dickson & Alan G. Sawyer, *Point of Purchase Behavior and Price Perceptions of*  
*Supermarket Shoppers*, Marketing Science Institute Report No. 86-102. Cambridge, MA: Marketing  
27 Science Institute (1986).

28 <sup>8</sup> Omprakesh K. Gupta et al., *Package downsizing: is it ethical?* 21 *AI & Society*, No. 3, 239-  
250 (2007).

1 a. Research indicates that 90% of consumers make a purchase after only  
2 visually examining the front of the packaging but without physically  
3 having the product in their hands.<sup>9</sup>

4 29. Because the Products do not contain the amount of Raisinets reasonably  
5 expected by Plaintiff and consumers, Defendant's uniform practice of filling and  
6 packaging the Products in the foregoing manner was and continues to be misleading  
7 and deceptive, and cheats consumers.

8 30. Each consumer has been exposed to the same or substantially similar  
9 deceptive practice as each of the Products (1) contain the same misleading size and  
10 style of packaging, and (2) contain approximately 40% non-functional slack-fill.

11 31. Plaintiff and other consumers have paid an unlawful premium for the  
12 Products. More specifically, they paid for candies they expected but never received.  
13 Plaintiff and other consumers would have paid significantly less for the Products had  
14 they known that the Products were filled with only approximately 60% Raisinets  
15 candies. In the alternative, Plaintiff and other consumers would not have purchased  
16 the Products at all had they known that the Products were filled with only  
17 approximately 60% Raisinets candies. Therefore, Plaintiff and other consumers  
18 purchasing the Products suffered injury in fact and lost money as a result of  
19 Defendant's false, unfair, and fraudulent practices, as described herein.

20 32. As a result of its misleading business practice, and the harm caused to  
21 Plaintiff and other consumers, Defendant should be enjoined from inadequately  
22 filling its packaging of the Products. Furthermore, Defendant should be required to  
23 pay for all damages caused to misled consumers, including Plaintiff.

24 33. Despite being misled by Defendant, Plaintiff would likely purchase the  
25 Products in the future if the Products were full of Raisinets candies.

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28 <sup>9</sup> Jesper Clement, *Visual influence on in-store buying decisions: an eye-track experiment on the visual influence of packaging design*, 23 *Journal of Marketing Management*, 917-928 (2007).

1 **CLASS ACTION ALLEGATIONS**

2 34. Plaintiff brings this case as a class action that may be properly  
3 maintained under Federal Rule of Civil Procedure 23 on behalf of herself and all  
4 persons in the United States, who within the relevant statute of limitations periods,  
5 purchased the Products (“Nationwide Class”).

6 35. Plaintiff also seeks to represent a subclass defined as all California  
7 residents, who within the relevant statute of limitations periods, purchased Products  
8 (“California Subclass”).

9 36. Plaintiff also seeks to represent a subclass defined as all California  
10 residents, who within the relevant statute of limitations periods, purchased the  
11 Products for personal, family, or household purposes (“California Consumer  
12 Subclass”).

13 37. Excluded from the Classes are Defendant, the officers and directors of  
14 the Defendant at all relevant times, members of their immediate families and their  
15 legal representatives, heirs, successors or assigns and any entity in which Defendant  
16 has or had a controlling interest. Any judge and/or magistrate judge to whom this  
17 action is assigned and any members of such judges’ staffs and immediate families are  
18 also excluded from the Classes. Also excluded from the Classes are persons or  
19 entities that purchased the Products for sole purposes of resale.

20 38. Plaintiff hereby reserves the right to amend or modify the class  
21 definitions with greater specificity or division after having had an opportunity to  
22 conduct discovery.

23 39. Plaintiff is a member of all Classes.

24 40. Numerosity: Defendant has sold millions of units of the Products. The  
25 Products are available for sale at grocery chains, convenience stores, and other retail  
26 outlets including, but not limited to, Wal-Mart, CVS Pharmacy, Pavilions,  
27 Walgreens, Rite Aid Pharmacy, Ralphs, Target, Amazon.com, CVS.com and  
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1 Walmart.com. Accordingly, members of the Classes are so numerous that their  
2 individual joinder herein is impractical. While the precise number of class members  
3 and their identities are unknown to Plaintiff at this time, the number may be  
4 determined through discovery.

5 41. Common Questions Predominate: Common questions of law and fact  
6 exist as to all members of the Classes and predominate over questions affecting only  
7 individual class members. Common legal and factual questions include, but are not  
8 limited to, the following: whether the Products' packaging contains non-functional  
9 slack-fill and is misleading to a reasonable consumer, and therefore violates various  
10 consumer protection statutes and common laws.

11 42. Typicality: Plaintiff's claims are typical of the claims of the Classes she  
12 seeks to represent in that Plaintiff and members of the Classes were exposed to  
13 Defendant's misleading packaging, purchased the Products relying on the misleading  
14 packaging, and suffered losses as a result of such purchases.

15 43. Adequacy: Plaintiff is an adequate representative of the Classes because  
16 her interests do not conflict with the interests of the members of the Classes she seeks  
17 to represent, she has retained competent counsel experienced in prosecuting class  
18 actions, and she intends to prosecute this action vigorously. The interests of the  
19 members of the Classes will be fairly and adequately protected by the Plaintiff and  
20 her counsel.

21 44. Superiority: A class action is superior to other available means for the  
22 fair and efficient adjudication of the claims of the members of the Classes. The size  
23 of each claim is too small to pursue individually and each individual Class member  
24 will lack the resources to undergo the burden and expense of individual prosecution  
25 of the complex and extensive litigation necessary to establish Defendant's liability.  
26 Individualized litigation increases the delay and expense to all parties and multiplies  
27 the burden on the judicial system presented by the complex legal and factual issues of  
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1 this case. Individualized litigation also presents a potential for inconsistent or  
2 contradictory judgments. The class action mechanism is designed to remedy harms  
3 like this one that are too small in value, although not insignificant, to file individual  
4 lawsuits for.

5 45. This lawsuit is maintainable as a class action under Federal Rule of Civil  
6 Procedure 23(b)(2) because Defendant has acted or refused to act on grounds that are  
7 generally applicable to the class members, thereby making final injunctive relief  
8 appropriate with respect to all Classes.

9 46. This lawsuit is maintainable as a class action under Federal Rule of Civil  
10 Procedure 23(b)(3) because the questions of law and fact common to the members of  
11 the Classes predominate over any questions that affect only individual members, and  
12 because the class action mechanism is superior to other available methods for the fair  
13 and efficient adjudication of the controversy.

14  
15 **FIRST CLAIM FOR RELIEF**  
16 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
17 **California Civil Code §§ 1750, et seq.**  
*(for the California Consumer Subclass)*

18 47. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
19 fully set forth herein.

20 48. Plaintiff brings this claim individually and on behalf of the members of  
21 the proposed California Consumer Subclass against Defendant.

22 49. The Products are “goods” within the meaning of Cal. Civ. Code §  
23 1761(a), and the purchases of such products by Plaintiff and members of the  
24 California Consumer Subclass constitute “transactions” within the meaning of Cal.  
25 Civ. Code § 1761(e).

26 50. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or  
27 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
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1 quantities which they do not have . . . .” By filling and packaging the Products in their  
2 current misleading packages, Defendant has represented and continues to represent that  
3 the Products have quantities which they do not have. Therefore, Defendant violates  
4 section 1770(a)(5) of the CLRA.

5 51. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services  
6 with intent not to sell them as advertised.” By deceitfully filling and packaging the  
7 Products, and then intentionally not selling the Products to meet the expectations that  
8 they are full of Raisinets candies, Defendant has violated section 1770(a)(9) of the  
9 CLRA.

10 52. At all relevant times, Defendant has known or reasonably should have  
11 known that the Products were not full of Raisinets candies, that the Products instead  
12 contain a significant amount of non-functional slack-fill, and that Plaintiff and other  
13 members of the California Consumer Subclass would reasonably and justifiably rely  
14 on the size and style of the package in purchasing the Products.

15 53. Plaintiff and members of the California Consumer Subclass have  
16 reasonably and justifiably relied on Defendant’s misleading, and fraudulent conduct  
17 when purchasing the Products. Moreover, based on the very materiality of  
18 Defendant’s fraudulent and misleading conduct, reliance on such conduct as a  
19 material reason for the decision to purchase the Products may be presumed or  
20 inferred for Plaintiff and members of California Consumer Subclass.

21 54. Plaintiff and members of the California Consumer Subclass have  
22 suffered and continue to suffer injuries caused by Defendant because they would not  
23 have purchased the Products or would have paid significantly less for the Products,  
24 had they known that Defendant’s conduct was misleading and fraudulent.

25 55. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California  
26 Consumer Subclass seek damages, restitution, declaratory and injunctive relief, and  
27 all other remedies the Court deems appropriate for Defendant’s violations of the  
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1 CLRA. Plaintiff seeks to enjoin Defendant from use of deceptive non-functional  
2 slack-fill in its Products.

3 56. Pursuant to Cal. Civ. Code § 1782, on November 23, 2016, counsel for  
4 Plaintiff mailed a notice and demand letter by certified mail, with return receipt  
5 requested, to Defendant. Nestle´ received the notice and demand letter on November  
6 28, 2016.<sup>10</sup> Because Defendant has failed to fully rectify or remedy the damages  
7 caused after waiting more than the statutorily required 30 days after it received the  
8 notice and demand letter, Plaintiff is timely filing this Class Action Complaint.

9  
10 **SECOND CLAIM FOR RELIEF**  
11 **Violation of California’s Unfair Competition Law (“UCL”),**  
12 **California Business & Professions Code §§ 17200, et seq.**  
13 ***(for the California Subclass and California Consumer Subclass)***

14 57. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
15 fully set forth herein.

16 58. Plaintiff brings this claim individually and on behalf of the members of  
17 the proposed California Subclass and California Consumer Subclass against  
18 Defendant.

19 59. UCL §17200 provides, in pertinent part, that “unfair competition shall  
20 mean and include unlawful, unfair or fraudulent business practices and unfair,  
21 deceptive, untrue or misleading advertising . . . .”

22 60. Under the UCL, a business act or practice is “unlawful” if it violates any  
23 established state or federal law.

24 61. Defendant’s false and misleading advertising of the Products therefore  
25 was and continues to be “unlawful” because it violates 21 C.F.R. § 100.100 and 21  
26 U.S.C. § 343(d), because it contains unlawful slack-fill as detailed above in  
27 paragraphs 20-23.

28 62. Furthermore, Defendant’s conduct also violates the CLRA, California’s

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<sup>10</sup> See Exhibit “A.”

1 False Advertising Law (“FAL”), and other applicable laws as described herein.

2 63. As a result of Defendant’s unlawful business acts and practices,  
3 Defendant has unlawfully, unfairly and/or fraudulently obtained money from  
4 Plaintiff, and members of both the California Subclass and California Consumer  
5 Subclass.

6 64. Under the UCL, a business act or practice is “unfair” if the Defendant’s  
7 conduct is substantially injurious to consumers, offends public policy, and is  
8 immoral, unethical, oppressive, and unscrupulous, as the benefits for committing such  
9 acts or practices are outweighed by the gravity of the harm to the alleged victims.

10 65. Defendant’s conduct was and continues to be of no benefit to purchasers  
11 of the Products, as it is misleading, unfair, unlawful, and is injurious to consumers  
12 who rely on the size of the Products’ packaging. Creating consumer confusion as to  
13 the actual quantity of candy is of no benefit to consumers. Therefore, Defendant’s  
14 conduct was and continues to be “unfair.”

15 66. As a result of Defendant’s unfair business acts and practices, Defendant  
16 has and continues to unfairly obtain money from Plaintiff, and members of both the  
17 California Subclass and California Consumer Subclass.

18 67. Under the UCL, a business act or practice is “fraudulent” if it actually  
19 deceives or is likely to deceive members of the consuming public.

20 68. Defendant’s conduct here was and continues to be fraudulent because it  
21 has the effect of deceiving consumers into believing that the Products are full of  
22 Raisinets candies, when they are not. Because Defendant misled Plaintiff and  
23 members of both the California Subclass and California Consumer Subclass,  
24 Defendant’s conduct was “fraudulent.”

25 69. As a result of Defendant’s fraudulent business acts and practices,  
26 Defendant has and continues to fraudulently obtain money from Plaintiff, and  
27 members of both the California Subclass and California Consumer Subclass.

28

1 70. Plaintiff requests that this Court cause Defendant to restore this  
2 unlawfully, unfairly, and fraudulently obtained money to Plaintiff, and members of  
3 both the California Subclass and California Consumer Subclass, to disgorge the  
4 profits Defendant made on these transactions, and to enjoin Defendant from violating  
5 the UCL or violating it in the same fashion in the future as discussed herein.  
6 Otherwise, Plaintiff, and members of both the California Subclass and California  
7 Consumer Subclass, may be irreparably harmed and/or denied an effective and  
8 complete remedy if such an order is not granted.

9  
10 **THIRD CLAIM FOR RELIEF**  
11 **Violation of California’s False Advertising Law (“FAL”),**  
12 **California Business & Professions Code §§ 17500, et seq**  
13 ***(for the California Subclass and California Consumer Subclass)***

14 71. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
15 fully set forth herein.

16 72. Plaintiff brings this claim individually and on behalf of the members of  
17 the proposed California Subclass and California Consumer Subclass against  
18 Defendant.

19 73. California’s FAL makes it “unlawful for any person to make or  
20 disseminate or cause to be made or disseminated before the public . . . in any  
21 advertising device . . . or in any other manner or means whatever, including over the  
22 Internet, any statement, concerning . . . personal property or services professional or  
23 otherwise, or performance or disposition thereof, which is untrue or misleading and  
24 which is known, or which by the exercise of reasonable care should be known, to be  
25 untrue or misleading.”

26 74. Defendant has represented and continues to represent to the public,  
27 including Plaintiff and members of both the California Subclass and California  
28 Consumer Subclass, through their deceptive packaging, that the Products are full of  
Raisinets candies. Defendant’s representation is misleading because the Products’

1 packaging is at least 40% empty. Because Defendant has disseminated misleading  
2 information regarding their Products, and Defendant knows, knew, or should have  
3 known through the exercise of reasonable care, that the representation was and  
4 continues to be misleading, Defendant violates the FAL.

5 75. Furthermore, Defendant knows, knew or should have known through the  
6 exercise of reasonable care that such representation was and continues to be  
7 unauthorized and misleading.

8 76. As a result of Defendant's false advertising, Defendant has and  
9 continues to fraudulently obtain money from Plaintiff and members of both the  
10 California Subclass and California Consumer Subclass.

11 77. Plaintiff request that this Court cause Defendant to restore this money to  
12 Plaintiff and members of both the California Subclass and California Consumer  
13 Subclass, to disgorge the profits Defendant made on these transactions, and to enjoin  
14 Defendant from violating the FAL or violating it in the same fashion in the future as  
15 discussed herein. Otherwise, Plaintiff and members of both the California Subclass  
16 and California Consumer Subclass may be irreparably harmed and/or denied an  
17 effective and complete remedy if such an order is not granted.

18 **FOURTH CLAIM FOR RELIEF**  
19 **Breach of Implied Warranty**  
20 **California Commercial Code § 2314**

21 *(for the California Subclass and California Consumer Subclass)*

22 78. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
23 fully set forth herein.

24 79. Plaintiff brings this claim individually and on behalf of the members of  
25 the proposed California Subclass and California Consumer Subclass against  
26 Defendant.

27 80. California Commercial Code § 2314(1) provides that "a warranty that  
28 the goods shall be merchantable is implied in a contract for their sale if the seller is a

1 merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

2 81. California Commercial Code § 2314(2) provides that “[g]oods to be  
3 merchantable must be at least such as... (e)[a]re adequately contained, packaged, and  
4 labeled as the agreement may require.” Cal. Com. Code § 2314(2)(e).

5 82. Defendant is a merchant with respect to the sale of candy products,  
6 including the Products here. Therefore, a warranty of merchantability is implied in  
7 every contract for sale of the Products to California consumers.

8 83. By filling and packaging the Products in their current boxes, Defendant  
9 made implied promised that the packaging would be full of Raisinets candies. By  
10 under-filling the amount of Raisinets candies in the current Products’ packaging,  
11 Defendant have not “adequately...packaged” the Products as promised. Plaintiff and  
12 California consumers did not receive the goods as impliedly warranted by Defendant  
13 to be merchantable.

14 84. Therefore, the Products are not merchantable under California law and  
15 Defendant has breached their implied warranty of merchantability in regard to the  
16 Products.

17 85. If Plaintiff and members of both the California Subclass and California  
18 Consumer Subclass had known that the Products were not adequately packaged, they  
19 would not have purchased the Products, would have purchased less of the products,  
20 or would not have been willing to pay the premium price associated with Products.  
21 Therefore, as a direct and/or indirect result of Defendant’s breach, Plaintiff and  
22 members of both the California Subclass and California Consumer Subclass have  
23 suffered injury and deserve to recover all damages afforded under the law.

24  
25  
26  
27  
28

**FIFTH CLAIM FOR RELIEF**  
**Common Law Fraud**  
*(for the Classes)*

1  
2  
3 86. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
4 fully set forth herein.

5 87. Plaintiff brings this claim individually and on behalf of the members of  
6 the Classes against Defendant.

7 88. Defendant has willfully, falsely, and knowingly filled and packaged the  
8 Products in a manner indicating that the Products are full of Raisinets candies.  
9 However, the Products contain only approximately 60% Raisinets candies and instead  
10 contain significant amounts of non-functional slack-fill. Therefore Defendant has  
11 made misrepresentations as to the Products.

12 89. Defendant's misrepresentations are and were material (i.e., the type of  
13 misrepresentations to which a reasonable person would attach importance and would  
14 be induced to act thereon in making purchase decisions), because they relate to the  
15 quantity of Products the consumer is receiving.

16 90. Defendant knew or recklessly disregarded the fact that the Products  
17 contained a significant amount of non-functional slack-fill.

18 91. Defendant intended and intends that Plaintiff and others consumers rely  
19 on these representations, as evidenced by Defendant intentionally manufacturing  
20 packaging that is significantly larger than the volume of the contents inside.

21 92. Plaintiff and members of the Classes have reasonably and justifiably  
22 relied on Defendant's misrepresentations when purchasing the Products and had the  
23 correct facts been known, would not have purchased the Products or would not have  
24 purchased them at the prices at which they were offered.

25 93. Therefore, as a direct and proximate result of Defendant's fraud,  
26 Plaintiff and members of the Classes have suffered economic losses and other general  
27 and specific damages, including but not limited to the amounts paid for the Products,  
28

1 and any interest that would have accrued on those monies, all in an amount to be  
2 proven at trial.

3  
4 **SIXTH CLAIM FOR RELIEF**  
5 **Intentional Misrepresentation**  
6 *(for the Classes)*

7 94. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
8 fully set forth herein.

9 95. Plaintiff brings this claim individually and on behalf of the members of  
10 the Classes against Defendant.

11 96. Defendant has filled and packaged the Products in a manner indicating  
12 that the Products are full of Raisinets candies. However, the Products contain only  
13 approximately 60% Raisinets candies and instead contain a significant amount of  
14 non-functional slack-fill. Therefore Defendant has made misrepresentations as to the  
15 Products.

16 97. Defendant's misrepresentations regarding the Products are material to a  
17 reasonable consumer because they relate to the quantity of product received by  
18 consumers. A reasonable consumer would attach importance to such representations  
19 and would be induced to act thereon in making purchase decisions.

20 98. At all relevant times when such misrepresentations were made,  
21 Defendant knew that the representations were misleading, or has acted recklessly in  
22 making the representations, without regard to the truth.

23 99. Defendant intended and intends that Plaintiff and others consumers rely  
24 on the size and style of the Products' packaging, as evidenced by Defendant's  
25 intentionally manufacturing, marketing, and selling packaging that is significantly  
26 larger than the volume of the contents inside.

27 100. Plaintiff and members of the Classes have reasonably and justifiably  
28 relied on Defendant's intentional misrepresentations when purchasing the Products,

1 and had the correct facts been known, would not have purchased the Products or  
2 would not have purchased them at the prices at which they were offered.

3 101. Therefore, as a direct and proximate result of Defendant's intentional  
4 misrepresentations, Plaintiff and members of the Classes have suffered economic  
5 losses and other general and specific damages, including but not limited to the  
6 amounts paid for the Products, and any interest that would have accrued on those  
7 monies, all in an amount to be proven at trial.

8  
9 **SEVENTH CLAIM FOR RELIEF**  
10 **Negligent Misrepresentation**  
11 ***(for the Classes)***

12 102. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
13 fully set forth herein.

14 103. Plaintiff brings this claim individually and on behalf of the members of  
15 the Classes against Defendant.

16 104. Defendant has filled and packaged the Products in a manner indicating  
17 that the Products are full of Raisinets candies. However, the Products contain only  
18 approximately 60% Raisinets candies and instead contain a significant amount of  
19 non-functional slack-fill. Therefore Defendant has made misrepresentations as to the  
20 Products.

21 105. Defendant's misrepresentations regarding the Products are material to a  
22 reasonable consumer because they relate to the quantity of product received by the  
23 consumer. A reasonable consumer would attach importance to such representations  
24 and would be induced to act thereon in making purchase decisions.

25 106. At all relevant times when such misrepresentations were made,  
26 Defendant knew or has been negligent in not knowing that that the Products are not  
27 full of Raisinets candies and instead contain a significant amount of non-functional  
28 slack-fill. Defendant has no reasonable grounds for believing its misrepresentation is

1 not false and misleading.

2 107. Defendant intended and intends that Plaintiff and others consumers rely  
3 on the size and style of the Products' packaging, as evidenced by Defendant's  
4 packaging that is significantly larger than the volume of the contents inside.

5 108. Plaintiff and members of the Classes have reasonably and justifiably  
6 relied on Defendant's negligent misrepresentations when purchasing the Products,  
7 and had the correct facts been known, would not have purchased the Products or  
8 would not have purchased them at the prices at which they were offered.

9 109. Therefore, as a direct and proximate result of Defendant's negligent  
10 misrepresentations, Plaintiff and members of the Classes have suffered economic  
11 losses and other general and specific damages, including but not limited to the  
12 amounts paid for the Products, and any interest that would have accrued on those  
13 monies, all in an amount to be proven at trial.

14  
15 **EIGHTH CLAIM FOR RELIEF**  
16 **Breach of Contract**  
***(for the Classes)***

17 110. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
18 fully set forth herein.

19 111. Plaintiff brings this claim individually and on behalf of the members of  
20 the Classes against Defendant.

21 112. In purchasing the Products, Plaintiff and members of the Classes have  
22 formed valid contracts that are supported by sufficient consideration, pursuant to  
23 which Defendant is obligated to provide Products that are full of Raisinets candies, as  
24 deceptively represented by Defendant's packaging.

25 113. Defendant has materially breached its contracts with Plaintiff and  
26 members of the Classes by selling Products that are not full of Raisinets candies and  
27 instead contain a significant amount of non-functional slack-fill.

28

1 114. As a direct and proximate result of Defendant's breaches, Plaintiff and  
2 members of the Classes were damaged in that they received products with less value  
3 than the amounts paid. Moreover, Plaintiff and members of the Classes have suffered  
4 economic losses and other general and specific damages, including but not limited to  
5 the amounts paid for the Products, and any interest that would have accrued on those  
6 monies, all in an amount to be proven at trial.

7  
8 **NINTH CLAIM FOR RELIEF**  
9 **Quasi Contract/Unjust Enrichment/Restitution**  
10 ***(for the Classes)***

11 115. Plaintiff repeats the allegations contained in paragraphs 1-46 above as if  
12 fully set forth herein.

13 116. Plaintiff brings this claim individually and on behalf of the members of  
14 the Classes against Defendant.

15 117. As alleged herein, Defendant has intentionally and recklessly made  
16 misleading representations to Plaintiff and members of the Classes to induce them to  
17 purchase the Products. Plaintiff and members of the Classes have reasonably relied  
18 on the misleading representations and have not received all of the benefits promised  
19 by Defendant. Plaintiff and members of the Classes therefore have been induced by  
20 Defendant's misleading and false representations about the Products, and paid for  
21 them when they would and/or should not have or paid more money to Defendant for  
22 the Products than they otherwise would and/or should have paid.

23 118. Plaintiff and members of the Classes have conferred a benefit upon  
24 Defendant as Defendant has retained monies paid to them by Plaintiff and members  
25 of the Classes.

26 119. The monies received were obtained under circumstances that were at the  
27 expense of Plaintiff and members of the Classes – i.e., Plaintiff and members of the  
28 Classes did not receive the full value of the benefit conferred upon Defendant.

1 120. Therefore, it is inequitable and unjust for Defendant to retain the profit,  
2 benefit, or compensation conferred upon them without paying Plaintiff and the  
3 members of the Classes back for the difference of the full value of the benefits  
4 compared to the value actually received.

5 121. As a direct and proximate result of Defendant's unjust enrichment,  
6 Plaintiff and members of the Classes are entitled to restitution, disgorgement, and/or  
7 the imposition of a constructive trust upon all profits, benefits, and other  
8 compensation obtained by Defendant from its deceptive, misleading, and unlawful  
9 conduct as alleged herein.

10 **PRAYER FOR RELIEF**

11  
12 WHEREFORE, Plaintiff, individually and on behalf of all others  
13 similarly situated, seeks judgment against Defendant, as follows:

14 a) For an order certifying the Nationwide Class, the California Subclass,  
15 and the California Consumer Subclass, under Rule 23 of the Federal Rules of Civil  
16 Procedure; naming Plaintiff as representative of all Classes; and naming Plaintiff's  
17 attorneys as Class Counsel to represent all Classes.

18 b) For an order declaring that Defendant's conduct violates the statutes  
19 and laws referenced herein;

20 c) For an order finding in favor of Plaintiff, and all Classes, on all counts  
21 asserted herein;

22 d) For an order awarding all compensatory and punitive damages,  
23 including under the California Consumers Legal Remedies Act on behalf of the  
24 California Consumer Subclass, in amounts to be determined by the Court and/or  
25 jury;

26 e) For prejudgment interest on all amounts awarded;

27 f) For interest on the amount of any and all economic losses, at the  
28

1 prevailing legal rate;

2 g) For an order of restitution and all other forms of equitable monetary  
3 relief;

4 h) For injunctive relief as pleaded or as the Court may deem proper;

5 i) For an order awarding Plaintiff and all Classes their reasonable  
6 attorneys' fees, expenses and costs of suit, including as provided by statute such as  
7 under California Code of Civil Procedure section 1021.5; and

8 j) For any other such relief as the Court deems just and proper.

9

**DEMAND FOR TRIAL BY JURY**

10

11 Plaintiff demands a trial by jury on all issues so triable.

12

13 Dated: January 3, 2017

**FARUQI & FARUQI, LLP**

14

*By: /s/ Barbara A. Rohr*  
Barbara A. Rohr, Bar No. 273353  
Benjamin Heikali, Bar No. 307466  
10866 Wilshire Blvd., Suite 1470  
Los Angeles, CA 90024  
Telephone: 424.256.2884  
Fax: 424.256.2885  
E-mail: brohr@faruqilaw.com  
bheikali@faruqilaw.com

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*Counsel for Plaintiff Sandy Hafer*

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**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

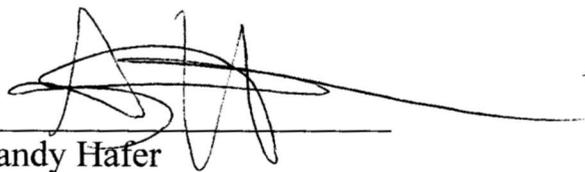
I, Sandy Hafer, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place for trial because I purchased one of the Products in the Central District of California, and Defendant conducts a substantial amount of business in this District.

3. In 2016, I purchased the Nestle' Dark Chocolate Raisinets from Ralphs located in this District, relying on the size and style of the Product packaging.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on December 30, 2016 at Los Angeles, California.

  
Sandy Hafer

# EXHIBIT A



**FARUQI & FARUQI**  
LLP  
ATTORNEYS AT LAW

NEW YORK

CALIFORNIA

DELAWARE

PENNSYLVANIA

BARBARA A. ROHR  
brohr@faruqilaw.com

November 23, 2016

**Via Certified U.S. Mail**  
**Return Receipt Requested**

Nestle' U.S.A., Inc.  
C/O Nestle Holdings, Inc.  
383 Main Avenue, 5th Floor  
Norwalk, Connecticut 06851

Re: *Class Action Notification and Pre-Lawsuit Demand Pursuant to California Civil Code Section 1782 and All Other Applicable Laws Requiring Pre-Suit Notice Concerning Raisinets®*

To Whom It May Concern:

Please be advised that Faruqi & Faruqi, LLP represents Sandy Hafer ("Client"), purchaser of Raisinets® brand products. Our Client seeks to represent a class of consumers ("Class") who, within the relevant time period,<sup>1</sup> purchased Raisinets® brand products<sup>2</sup> in "movie theater" style packaging<sup>3</sup> (the "Products"). This letter provides Nestle' U.S.A., Inc. ("Defendant") with notice and demand for corrective action. All further communications intended for our Client must be directed through this office. Furthermore, this demand and notice letter is meant to comply with the requirements of *California Civil Code* §1782, and all other laws requiring a pre-suit demand and notice prior to litigation, on behalf of our Client and all others similarly situated should this matter proceed to litigation.

During the relevant time period, Defendant has manufactured, filled, marketed, advertised, distributed, and sold the Products to consumers across the country. However, Defendant's utilization of the "movie theater" style packaging has been and continues to be deceitful to consumers, as at least 40% of the Products' packaging volume is nonfunctional slack-fill.<sup>4,5</sup>

Ms. Hafer, a consumer residing in California, purchased the Raisinets® Products in Los Angeles, California. Based on the size and style of the packaging, she reasonably believed that the Products would be full of Raisinets® candy. The Products' packaging is false and misleading, however, as at least 40% of the volume of the Products' packaging is empty space.

---

<sup>1</sup> From four years prior to the date of a prospective complaint filed by our Client.

<sup>2</sup> Including, but not limited to: Nestle' Raisinets and Nestle' Dark Raisinets.

<sup>3</sup> E.g., see **Exhibit A**.

<sup>4</sup> As defined in 21 C.F.R. § 100.100(a).

<sup>5</sup> E.g., see **Exhibit B**.



These business practices violate several California consumer protection statutes and laws. Pursuant to *California Civil Code* §1782(a)(1), our Client and the Class further provide notice that they believe Defendant has violated, and continues to violate the California Consumers Legal Remedies Act ("CLRA"), and specifically *California Civil Code* §1770, in at least the following manner:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have (Section 1770(a)(5)); and
2. Advertising goods or services with intent not to sell them as advertised (Section 1770(a)(9)).

It is our opinion that Defendant has also violated and continues to violate California Business and Professions Code Sections 17200 and 17500, in addition to common law and other statutory violations.

This letter not only serves as notification of Defendant's alleged violations of *California Civil Code* §1770 as outlined above, but also as our Client's demand, and all others similarly situated, that Defendant immediately corrects, repairs, refunds and otherwise rectifies the violations of § 1770 and the other statutes and causes of action referenced above, on a class-wide basis.

To cure the harmful conduct noted herein, we demand that Defendant: (1) cease and desist from marketing and selling of the Products in a false and misleading manner; (2) issue an immediate recall of the Products; and (3) make full restitution to the Class of all money obtained from the sales thereof.

We further demand that Defendant preserve all documents, emails, other electronically stored information and other evidence which refer or relate to any of the above-described practices, including, but not limited to:

1. All documents concerning the development and/or testing of the Products;
2. All documents concerning the manufacturing, filling, packaging, advertisement, promotion, marketing and sale of the Products;
3. All documents concerning communications with any individual involved in the manufacturing, packaging, marketing, advertising, promotion, and/or sale of the Products;
4. All documents concerning communications with purchasers of the Products;
5. All documents concerning the sales volume of the Products (in units and/or dollars), and the revenues derived therefrom; and



**FARUQI & FARUQI**  
LLP  
ATTORNEYS AT LAW

Nestle' USA, Inc.  
Page 3  
November 23, 2016

6. All documents concerning the identities and location of potential class members who purchased the Products.

Further, this letter serves as a thirty (30) day notice and demand requirement under §1782 for damages. Accordingly, should Defendant fail to rectify the unfair and deceptive scheme within thirty (30) days of receipt of this letter, our Client will file a class action complaint for actual damages, punitive damages, and all other damages permitted under the CLRA and the other statutes and causes of action available to her, along with interest, attorneys' fees and costs for Defendant's violations.

We are willing to discuss an appropriate way to remedy the demands asserted in this letter. If Defendant wishes to enter into such a discussion, please contact our firm immediately. If we do not hear from Defendant promptly, we will conclude that Defendant is not interested in resolving this dispute short of litigation in the form of a class action lawsuit. If Defendant contends that any statement in this letter is inaccurate in any respect, please provide our firm with Defendant's contentions and supporting documents promptly.

Please contact the undersigned if there are any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Rohr'. The signature is fluid and cursive, with a large initial 'B'.

Barbara A. Rohr

cc: Timothy J. Peter  
Ben Heikali

# EXHIBIT A

MILK  
CHOCOLATE

offering raisins covered in chocolate



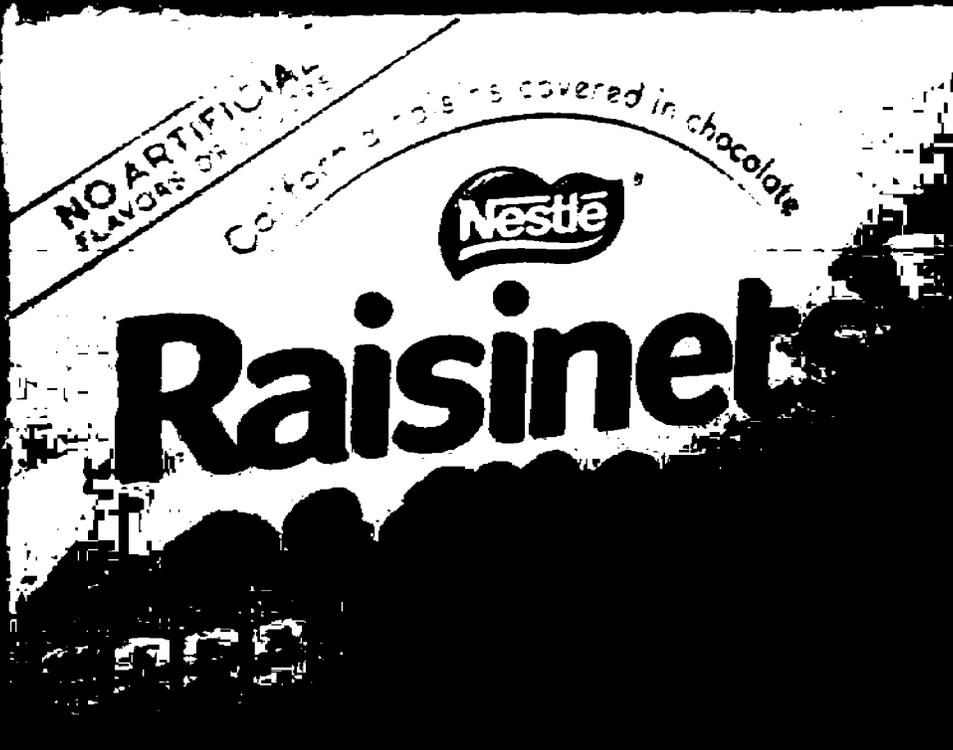
aisinets

# EXHIBIT B



MILK  
CHOCOLATE

REAL RAISINS



MILK  
CHOCOLATE

7016 2070 0000 1841 2584

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Certified Mail Fee \$3.30  
 Extra Services & Fees (check box, add fee as indicated)  
 Return Receipt (hardcopy) \$0.00  
 Return Receipt (electronic) \$0.00  
 Certified Mail Restricted Delivery \$0.00  
 Adult Signature Required \$0.00  
 Adult Signature Restricted Delivery \$0.00  
 Postage \$0.68  
 Total Postage and Fees \$6.68

Postmark Here  
 NOV 23 2016  
 11/23/2016

Sent To  
 NESTLE USA Inc. C/O NESTLE HOLDINGS, INC.  
 Street and Apt. No., or PO Box No.  
 383 MAIN AVE, 5TH FLOOR  
 City, State, ZIP+4®  
 NORWALK, CONNECTICUT 06851

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NESTLE USA INC  
 C/O NESTLE HOLDINGS, INC.  
 383 MAIN AVE, 5TH FLOOR  
 NORWALK, CONNECTICUT 06851

9590 9402 1733 6074 8743 45

2. Article Number (Transfer from service label)  
 7016 2070 0000 1841 2584

PS Form 3811, July 2015 PSN 7530-02-000-9055

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 [Signature]  Agent  Addressee

B. Received by (Printed Name)  
 Vicki Hughes

C. Date of Delivery  
 11/28/16

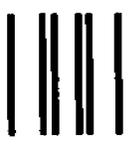
D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Adult Signature  Priority Mail Express®  
 Adult Signature Restricted Delivery  Registered Mail™  
 Certified Mail®  Registered Mail Restricted Delivery  
 Certified Mail Restricted Delivery  Return Receipt for Merchandise  
 Collect on Delivery  Signature Confirmation™  
 Collect on Delivery Restricted Delivery  Signature Confirmation Restricted Delivery  
 Insured Mail  Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

**USPS TRACKING#**

9590 9402 1733 6074 8743 45



First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

**United States Postal Service**

\* Sender: Please print your name, address, and ZIP+4® in this box\*

Faruqi & Faruqi, LLP, Ste 1470  
 10866 Wilshire Boulevard  
 Los Angeles, CA 90024

