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6 *Counsel for Nestlé USA, Inc.*

7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 LINDA CHESLOW and STEVEN  
PRESCOTT, individually and on behalf of all  
others similarly situated,

11 Plaintiffs,

12 v.

13 NESTLÉ USA, INC., and DOES 1 THROUGH  
14 10, inclusive.

15 Defendants.

Case No. 5:19-cv-07471

**NOTICE OF REMOVAL BY  
DEFENDANT NESTLÉ USA, INC.**

16 **NOTICE OF REMOVAL**

17 Defendant Nestlé USA, Inc. (“Nestlé”), through undersigned counsel, removes the  
18 above-captioned action from the Superior Court for Santa Cruz County to the United States District  
19 Court for the Northern District of California in accord with 28 U.S.C. §§ 1332(d), 1441, and 1446.

20 1. On September 19, 2019, plaintiffs Linda Cheslow and Steven Prescott sued Nestlé  
21 and “DOES 1 through 10” in the Superior Court for Santa Cruz County.

22 2. In accord with 28 U.S.C. § 1446(a), attached as Exhibit 1 is a copy of “all process,  
23 pleadings, and orders” served on Nestlé in this action.

24 3. In accord with 28 U.S.C. §1446(d), Nestlé will promptly serve this notice on  
25 plaintiffs’ counsel and file a copy with the clerk of the Superior Court for Santa Cruz County.



**BRIEF OVERVIEW OF THE PLAINTIFFS' ALLEGATIONS**

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2 11. In this putative class action under the UCL, CLRA, and FAL, the plaintiffs claim  
3 that Nestlé “affirmatively misrepresented” the “nature and characteristics” of Nestlé’s Premier  
4 White Morsels. *E.g.*, Compl. ¶ 31.

5 12. The plaintiffs claim that Nestlé deceptively advertised that Nestlé’s Premier White  
6 Morsels contain “white chocolate” when in fact the White Morsels allegedly “do[] not contain *any*  
7 white chocolate. It is fake white chocolate.” Compl. ¶ 3.

8 13. The plaintiffs incorporate into the complaint (¶ 3) the front of the White Morsels  
9 package and suggest that the package falsely advertises that the “White Morsels” contain white  
10 chocolate. (In fact, the word “chocolate” appears nowhere on the package.)

11 14. In addition to claiming that Nestlé falsely advertised that the White Morsels contain  
12 white chocolate, the plaintiffs protest the product’s use of the word “premier.” According to the  
13 plaintiffs, the word “premier” misleads consumers “into thinking that the [p]roduct contains  
14 premier ingredients, not fake white chocolate.” Compl. ¶ 4. The plaintiffs claim that “[r]easonable  
15 consumers do not expect that the [p]roduct does not contain white chocolate, or inferior ingredients  
16 such as hydrogenated oils.” *Id.*

17 15. On behalf of themselves and a putative nationwide class comprising “[a]ll persons  
18 who purchased the [p]roduct in the United States or, alternatively, in California for personal  
19 consumption and not for resale” from September 19, 2015 “through the present,” Cheslow and  
20 Prescott sue under the UCL, FAL, and CLRA.

21 16. The plaintiffs request for themselves and the putative class restitution, an  
22 attorney’s fee and costs, and an injunction. Prayer for Relief §§ A-C.

**THE PROPOSED CLASS EXCEEDS 100 MEMBERS**

23  
24 17. The plaintiffs sue on behalf of a nationwide class of consumers who bought the  
25 White Morsels between September 19, 2015 and the present. Nationwide retailers, such as  
26 Walmart and Kroger, sell the White Morsels in at least hundreds of stores across the United  
27 States. Without more, these facts compel concluding that more than 100 putative class members  
28 bought the White Morsels. *See Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1062 (11th Cir.

1 2010) (“[C]ourts may use their judicial experience and common sense in determining whether  
2 the case stated in the complaint meets federal jurisdiction requirements.”).

3 18. Also, the plaintiffs allege that “the [c]lass consists of millions of persons.”  
4 Compl. ¶ 83; *see also, e.g., Roppo v. Travelers Comm. Ins. Co.*, 869 F.3d 568, 581 (7th Cir.  
5 2017) (“[The defendant] may rely on the estimate of the class number set forth in the  
6 complaint.”). Common sense and the plaintiffs’ allegations independently satisfy the  
7 requirement to show that the putative class likely exceeds 100 members.

8 **THE PARTIES ARE AT LEAST MINIMALLY DIVERSE**

9 19. Relaxing the complete-diversity requirement, CAFA permits removal if the  
10 parties are minimally diverse, that is, if the citizenship of at least one putative class member  
11 differs from the citizenship of at least one defendant. 28 U.S.C. § 1332(d)(2)(A); *Dart*, 135 S. Ct.  
12 at 552.

13 20. Cheslow resides in California (¶ 25), and on information and belief, Cheslow is a  
14 citizen of California. *See also Cheslow v. Monsanto Co.*, case no. 3:19-cv-3566 at Doc. 3 ¶ 57  
15 (N.D. Cal. June 3, 2019) (Cheslow’s complaint, which alleges that Cheslow “is a citizen of  
16 California”).

17 21. Prescott resides in California (¶ 24), and on information and belief, Prescott is a  
18 citizen of California.

19 22. Nestlé USA, Inc., is a Delaware corporation with its principal place of business in  
20 Virginia. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (explaining what constitutes a  
21 corporation’s principal place of business). Under 28 U.S.C. § 1332(c)(1), Nestlé USA, Inc., is a  
22 citizen of Delaware and Virginia.

23 23. Because the plaintiffs are citizens of California and because defendant Nestlé  
24 USA, Inc., is a citizen of Delaware and Virginia, the parties are at least minimally diverse.

25 **THE AGGREGATE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

26 24. The amount in controversy “is simply an estimate of the total amount in dispute,  
27 not a prospective assessment of the defendant’s liability.” *Lewis v. Verizon Comms., Inc.*, 627 F.3d  
28 395, 400 (9th Cir. 2010).

1           25. Under CAFA, determining if the amount in controversy exceeds \$5 million  
2 requires aggregating the claims of the putative class members. 28 U.S.C. § 1332(d)(6).

3           26. In this action, the aggregate amount in controversy from the plaintiffs' putative  
4 nationwide class allegations far exceeds \$5 million, excluding costs and interest.

5           27. The plaintiffs allege that Nestlé "has sold millions of units or more of the product."  
6 Compl. ¶ 43.

7           28. Between September 19, 2015 and the present, Nestlé's gross revenue from the  
8 sale of the White Morsels exceeded \$5 million.

9           29. The amount paid by Cheslow and Prescott (and the putative class) exceeds  
10 Nestlé's gross receipts from wholesale distribution because the plaintiffs bought the White  
11 Morsels at retailers, which sell the product for more than the wholesale cost. *See, e.g.*, Compl.  
12 ¶¶ 24-25 (alleging that the plaintiffs each bought the White Morsels at Target).

13           30. The plaintiffs request restitution and claim that they "would not have purchased the  
14 Product but for the representations by Defendant about the product." *E.g.*, Compl. ¶ 50.

15           31. In addition to claiming that they would not have purchased the White Morsels but  
16 for the alleged misrepresentations, the plaintiffs imply that consumers who bought the White  
17 Morsels for baking received no benefit from the product because it "does not melt like real  
18 chocolate." *E.g.* Compl. ¶¶ 11-16. For example, the plaintiffs allege that a consumer "ended up  
19 throwing the whole product away." Compl. ¶ 14.

20           32. Under either theory (that the plaintiffs would not have bought the White Morsels  
21 but for the alleged misrepresentations or that consumers received no benefit from the White  
22 Morsels because they failed to "melt like real chocolate"), the plaintiffs may claim that damages  
23 include the purchase price. *See, e.g.*, *Spann v. J.C. Penney Corp.*, 2015 WL 1526559 at \*6 (C.D.  
24 Cal. Mar. 23, 2015) (finding "complete restitution" of the purchase price a viable measure of  
25 damages where the plaintiff showed that "every dollar she spent was as a result of [the  
26 defendant's] alleged false advertising"); *Allen v. Hyland's Inc.*, 300 F.R.D. 643, 671 (C.D. Cal.  
27 Aug. 1, 2014) (holding that plaintiffs might recover "full restitution" because the products were  
28 allegedly "ineffective").



1           40.    If any question arises about the propriety of removal, Nestlé requests an opportunity  
2 to submit briefing and present oral argument in support of removal before an order resolves the  
3 question.

4           41.    Nothing about this removal waives (or should be construed to waive) any available  
5 right, argument, or objection, including an objection to the lack of personal jurisdiction.

6           42.    Nestlé respectfully reserves the right to amend or supplement this notice.  
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8 DATED: November 13, 2019

MAYER BROWN LLP  
DALE J. GIALI

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By: \_\_\_\_\_  
      /s/ Dale J. Giali  
      Dale J. Giali

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*Counsel for Nestlé USA, Inc.*

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